



सत्यमेव जयते



ANNUAL REPORT 2010-2011

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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CHAPTER 1 – INTRODUCTION

This is the 6th Annual Report of the National Commission for Minority Educational Institutions (NCMEI) prepared in pursuance of Section 16 of National Commission for Minority Educational Institutions Act, 2004. The Government promulgated an Ordinance dated 11th November 2004 establishing the Commission and the Ordinance was replaced by the National Commission for Minority Educational Institutions Act (in short NCME Act), 2004. The Commission was constituted on 16th November, 2004 by the Ministry of Human Resource Development with its headquarters at Delhi.

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.

The Commission is a quasi-judicial body and has been endowed with the powers of a Civil Court. This is the first time 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:-

S. No.	Name of Post	Number
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
	Total	33

Some of the posts have been filled up by the Commission on deputation basis and some others have been filled through direct recruitment. Some persons have been engaged on contract basis and 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 its core function and also for taking care of computerization of all records. Though Act has been amended to provide for the third Member of the Commission, Government is yet to make appointment for the same.

CHAPTER 2 – COMPOSITION AND FUNCTION OF THE COMMISSION

The Commission was established through an Ordinance (No. 6 of 2004) notified on 11th 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 6th January 2005. The Parliament passed the NCMEI (Amendment) Act 2006 which was notified on 29th March 2006. The Act was further amended by the National Commission for Minority Educational Institutions (Amendment) Act, 2010.

The Government issued notification on 26th 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. 11th September 2007. Thereafter, Smt. Vasanthi Stanley was appointed as the Member and on her resignation on 5th March, 2008, Sr. Jessy Kurian was appointed as Member on 27th, 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 8th April 2010 and 12th April 2010 respectively for a term of five years each.

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

- (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;
- (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) make recommendations 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

Section 12 (3) of NCMEI Act provides that 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 2010-11 Commission conducted 130 sittings as a court and heard 4774 cases as per details given below:

S. No.	Date of Meeting	No. of Cases
1	01.04.2009	56
2	02.04.2009	37
3	08.04.2009	37
4	09.04.2009	25
5	15.04.2009	36
6	16.04.2009	44
7	21.04.2009	30
8	22.04.2009	44
9	23.04.2009	34
10	28.04.2009	94
11	29.04.2009	44
12	05.05.2009	35
13	06.05.2009	65
14	12.05.2009	80
15	13.05.2009	22
16	19.05.2009	84
17	20.05.2009	33
18	21.05.2009	02
19	26.05.2009	45
20	27.05.2009	39
21	28.05.2009	30
22	29.05.2009	83
23	02.06.2009	40
24	03.06.2009	45
25	04.06.2009	01

S. No.	Date of Meeting	No. of Cases
26	09.06.2009	37
27	10.06.2009	17
28	11.06.2009	02
29	16.06.2009	19
30	17.06.2009	76
31	18.06.2009	03
32	23.06.2009	03
33	24.06.2009	34
34	02.07.2009	37
35	07.07.2009	55
36	08.07.2009	41
37	09.07.2009	03
38	13.07.2009	03
39	14.07.2009	45
40	15.07.2009	35
41	21.07.2009	49
42	22.07.2009	43
43	23.07.2009	48
44	27.07.2009	01
45	28.07.2009	137
46	29.07.2009	43
47	30.07.2009	49
48	05.08.2009	31
49	11.08.2009	42
50	12.08.2009	03
51	18.08.2009	05
52	19.08.2009	37
53	20.08.2009	40
54	24.08.2009	45
55	25.08.2009	61
56	26.08.2009	42
57	27.08.2009	02
58	28.08.2009	01
59	01.09.2009	22

S. No.	Date of Meeting	No. of Cases
60	03.09.2009	40
61	07.09.2009	03
62	08.09.2009	42
63	09.09.2009	37
64	10.09.2009	43
65	15.09.2009	42
66	16.09.2009	64
67	17.09.2009	02
68	23.09.2009	29
69	24.09.2009	37
70	30.09.2009	04
71	20.10.2009	21
72	21.10.2009	39
73	22.10.2009	44
74	26.10.2009	03
75	27.10.2009	42
76	28.10.2009	56
77	29.10.2009	36
78	03.11.2009	39
79	04.11.2009	03
80	05.11.2009	51
81	09.11.2009	20
82	10.11.2009	23
83	11.11.2009	44
84	12.11.2009	33
85	16.11.2009	13
86	17.11.2009	39
87	18.11.2009	42
88	19.11.2009	46
89	23.11.2009	04
90	24.11.2009	45
91	25.11.2009	27

S. No.	Date of Meeting	No. of Cases
92	26.11.2009	08
93	05.01.2010	31
94	06.01.2010	34
95	12.01.2010	45
96	13.01.2010	34
97	14.01.2010	32
98	19.01.2010	05
99	20.01.2010	59
100	21.01.2010	32
101	27.01.2010	36
102	28.01.2010	43
103	02.02.2010	39
104	03.02.2010	54
105	11.02.2010	54
106	15.02.2010	81
107	16.02.2010	27
108	17.02.2010	64
109	18.02.2010	32
110	23.02.2010	39
111	24.02.2010	56
112	25.02.2010	40
113	03.03.2010	29
114	04.03.2010	29
115	09.03.2010	26
116	10.03.2010	35
117	11.03.2010	33
118	16.03.2010	40
119	22.03.2010	41
120	23.03.2010	23
121	30.03.2010	67
	TOTAL	4377

The number of court sittings conducted during the year is much higher than the previous years as indicated below:

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

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 than the previous years.

Sittings of the court were held by the Commission every week. Maximum number of sittings i.e. 14 was held in each of the months of November 2010 and March 2011. The number of sittings in each of the months of July 2010 and August 2010 were 13. In the months of July 2010 and January 2011 the court met 12 times each month. In November 2010 and July 2010 the court meetings were 11 each month. In December 2010, the court met 10 times. In the months of June 2010 and October 2010 the court met 7 times each month. In the month of February 2011 the court meetings were 6 in all. The court disposed of maximum number of cases (577) in the month of July 2010, followed by the months of August 2010 (540), April 2010 (518), May 2010 (492), March 2010 (488), January 2011 (444), September 2010(407), December 2010 (262), October 2010(216), June 2010(209) and February 2011 (183).

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 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 endeavour 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.

As per the provisions of the Act, the Commission can also hold its sittings outside Delhi. Section 9 of the NCMEI Act provides that Commission shall meet as and when necessary at such time and place as the Chairperson may think fit. This provision empowers the Commission to hold its sittings outside Delhi also. However, during the year 2010-11 the Commission's meetings were held only in Delhi. Some requests were received for holding of Commission's meetings at different locations. In the eventuality of large number of cases emanating from a particular place, Commission could hold its sittings at that particular place subject to getting adequate facilities from the concerned State Government.

During the year, Commission also held meetings with the Chairman and senior officers of regulatory authorities. Commission has thought it fit to hold such meetings as many petitions/complaints relate to rules and regulations formulated by the regulatory authorities such as UGC, AICTE, NCTE, MCI, DCI, CBSE, ICSE etc. The issues discussed included problems relating to affiliation, issue of NOC, fulfillment of norms required for affiliation, inspection, norms for staff etc.

The Commission's interactions have proved fruitful as the regulatory authorities initiated action to modify/amend some of the rules and regulations which were not in conformity with the rights guaranteed under Article 30 of the Constitution. The Commission has pointed out that the Apex Court judgements which have the effect of law has to be taken into account by the regulatory authorities in modifying / amending their rules and regulations. The meetings held with regulatory authorities have also resulted in better appreciation of the need to set up special cells or appoint nodal officers for dealing with the problems of the minority educational institutions. Commission intends to continue such interactions on a regular basis.

CHAPTER 4 – HIGHLIGHTS OF THE YEAR

Disposal of pending cases during the year has been the priority area of the Commission. Cases registered during the previous years were taken up on priority basis and parties were cautioned not to seek adjournments. Consequently it was possible to dispose of more number of cases pending from the previous years.

Commission has been interacting with various stakeholders and on the basis of feedbacks received from various sources and analysis of cases registered in the Commission, it was decided to bring out guidelines regarding minority status and recognition and affiliation matters relating to minority educational institutions. Commission found that there were no uniform standards in the rules and regulations notified by the State Governments. In order to help the State Government authorities, the Commission published Guidelines for determination of Minority Status, recognition, affiliation and related matters in respect of Minority Educational Institutions under the Constitution of India. These guidelines have also been displayed on the website of the Commission.

A Delegation from Indonesia led by Mr. K.H. Ma'ruf Amin, Hon'ble Member of Advisory Council on Religious Affairs of Republic of Indonesian visited office of National Commission for Minority Educational Institutions on 10.11.2010. The interaction between the Indonesian delegation and officials in the National Commission for Minority Educational Institutions centered on the state of dynamic of the interfaith and Minority group's relations in India. The Indian side was represented by Justice M.S.A. Siddiqui, Hon'ble Chairman, NCMEI, Members and Secretary, NCMEI. The Indonesian side was represented by Mr. Amin and six other members of the delegation. Chairman, NCMEI gave an overview about the constitutional provisions as in Article 30(1) guaranteeing the rights of the persons belonging to the minority communities to establish and administer the educational institutions of their choice. Hon'ble Chairman explained that minority communities as notified by the Government of India were Muslims, Sikhs, Christians, Jains and Parsis. The Indonesian delegation was apprised that Government had set up the National Commission for Minority Educational Institutions under an Act of Union Legislature as a quasi-judicial body with three roles: namely, the advisory, adjudicatory and recommendatory. It was stated that the minority educational institutions had been provided certain privileges such as choosing their own governing bodies, devising their fee structure, appointment of teaching and non-teaching staff subject to the criteria prescribed and eligibility conditions laid down by the respective State Governments. It was further informed that the Commission had its own mechanism for grant of Minority Status Certificate to Minority Institutions. The Commission has also power of appeal against the decision of the State Governments or other authorities. Under the advisory role, the Commission could advise the Central and State Governments on any question relating to educational rights of minorities which may be referred to the Commission. During the interactive session that followed, the doubts and queries of Indonesian side were clarified to their satisfaction.

Despite persistent efforts the posts of programmer and data entry operator could not be sanctioned and the Commission could not undertake the computerization work of all its activities. However, with the engagement of a contract appointee the computerization of old records could be completed. Of course, the software solution had been provided by M/S NIIT Ltd.

Larger numbers of cases were taken up and more sittings of the Commission were scheduled during the year to ensure speedy disposal of the cases. Commission also considered more number of cases in each sitting.

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 under the Right to Information Act, 2005. During 2010-11, Shri R. Renganath, former Secretary, NCMEI functioned as 'Public Information Officer' and Hon'ble Chairman, NCMEI was the 'Appellate Authority'. 38 applications and 3 appeals were received in the Commission during the period under report. All these applications and appeals have since been disposed off.

CHAPTER 5 – TOURS AND VISITS

Details of the tours undertaken by the Commission to various places during the year 2010-11:

S.No.	Dates of Tour	Stations visited
1.	2.4.2010 to 3.4.2010	Amroha
2.	31.3.2010 to 1.4.2010	Kolkata
3.	9.4.2010 to 11.4.2010	Guwahati
4.	16.4.2010 to 19.4.2010	Calicut
5.	15.4.2010 to 18.4.2010	Thiruvananthapuram
6.	24.4.2010 to 26.4.2010	Surat
7.	22.4.2010 to 26.4.2010	Kochi-Trichur
8.	30.5.2010 to 31.5.2010	Bangalore
9.	5.5.2010 to 10.5.2010	Kochi
10.	14.6.2010 to 14.6.2010	Moradabad
11.	29.6.2010 to 30.6.2010	Jabalpur
12.	8.7.2010 to 9.7.2010	Allahabad
13.	31.7.2010 to 2.8.2010	Chennai
14.	29.7.2010 to 2.8.2010	Thiruvananthapuram
15.	17.9.2010 to 20.9.2010	Patna – Siwan
16.	10.10.2010 to 12.10.10	Nanded
17.	13.10.2010 to 15.10.2010	Patiala
18.	31.10.2010 to 1.11.2010	Mumbai
19.	15.11.2010 to 22.11.2010	Jabalpur
20.	14-11-2010	Amroha
21.	28.11.2010	Mumbai
22.	27.11.2010 to 29.11.2010	Mumbai
23.	1.12.2010 to 6.12.2010	Lucknow
24.	18.12.2010 to 19.12.2010	Ranchi
25.	7.1.2011 to 9.1.2011	Mumbai
26.	27.11.2011 to 28.11.2010	Mumbai
27.	23.1.2011 to 24.1.2011	Bikaner

S.No.	Dates of Tour	Stations visited
28.	28.1.2011 to 3.2.2011	Bangalore – Kozhikode – Chennai
29.	1.2.2011 to 3.2.2011	Chennai
30.	11.2.2011	Meerut
31.	13.2.2011 to 16.2.2011	Lucknow
32.	17.2.2011 to 19.2.2011	Varanasi – Azamgarh
33.	11.3.2011 to 14.3.2011	Patiala
34.	18.3.2011 to 20.3.2011	Vidisha – Bhopal

The Chairman and Members visited some places together and other places separately as per their convenience. The tours were undertaken with the intent to interact with members of the minority communities. Such meetings with the members of the minority communities helped in understanding the difficulties faced by them and provided a forum for discussing their grievances. It also gave an opportunity to the Commission to apprise the members of the minority communities about their constitutional rights as well as the powers and functions of the Commission. Wherever possible, the Commission had also interacted with some of the political functionaries of the States and Government officials concerned with educational matters. This has helped in sensitizing the officials of the State Governments about the rights of the minority communities enshrined in Article 30(1) of the Constitution. The Commission found that majority of the officers in the Education Departments of State Governments were not fully aware either of the functions or powers of the Commission or the scope or width of educational rights of the minority communities enshrined under Article 30(1) of the Constitution. These visits and interactions were found to be mutually beneficial as the Commission was able to develop first hand knowledge of the extent and diversity of the problems faced by the minority educational institutions at various places. The interactions resulted in broadening the outlook of the providers and managers of the minority educational institutions and it also fostered in them a sense of partnership with the State in the practice of education.

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 held with representatives of the minority educational institutions helped in explaining the functions of the Commission and the procedure and formalities involved in approaching the Commission. The Commission has devised a specific format for applying for grant of minority status certificate to 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.

Chairman visited Chennai from 16.7.2010 to 19.7.2010. There, he addressed the audience of Anjuman E-Himayath-E-Islam and apprised them about the importance of quality education

and scope and object of the Commission. On 17.7.2010, Chairman had meeting and discussions with Mr. K.A. Rahman, Chairman, Tamil Nadu Waqf Board who agreed to provide every help to the members of the Muslim community who want to set up educational institutions of their choice. Chairman also visited Madarsa-e-Azam and addressed the gathering to apprise them about the importance of modern education, among others. Chairman attended functions organized by the New College and the Confederation of Minority Educational Institutions of Tamil Nadu. On 18.7.2010, the Chairman participated in a seminar organized by IMECC Trust on "Rights and Opportunities for Minority Institutions of Tamil Nadu" attended by the members of the Muslim and Christian Communities. 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.

On 19.7.2010, the Chairman attended a function organized by Justice Bashir Ahmad Syed College for Women, Chennai. The Chairman apprised the audience of the importance of girl's education; the Chairman also participated in a Seminar at B.S. Abdur Rehman University, Chennai where he apprised the audience about the importance of knowledge economy in a developing country like India. He emphasized upon that creation of knowledge should be the fundamental objective of higher education and it would equip the Muslim youth to assume leadership role in nation building.

Chairman visited Patna, Bihar on 18.9.2010 and participated in a Seminar organized by Anjuman Taraqqi-e-Urdu on Rights to Education Act. Chairman assured the members of Muslim minority that their fear that the Right to Education Act would endanger Madarsa education was unfounded in the context of constitutional guarantee enshrined in Article 30(1).

On 19.9.2010, the Chairman inaugurated a Seminar at Siwan where, in his address, the Chairman exhorted the Muslim Community to introspect where the main blame of its backwardness lies i.e. education. Chairman exhorted them to go for education at all levels and try to catch up with their Muslim brethren of South India which had improved their lot in comparison.

Chairman, NCMEI alongwith Dr. Shabistan Gaffar, Chairperson, Committee on Girls Education participated and addressed the 13th Annual Islamic Women Welfare Conference organized at the Crescent Group of Institutions at Madurai. The Chairman apprised the audience of their rights as minority community as enshrined in Article 30(1) of the Constitution and role and scope of NCMEI in the context of setting up and managing / administering such institutions.

Dr.Mohinder Singh, Hon'ble Member, was invited by the Punjabi University, Patiala as a chief guest to inaugurate the 43rd session of the Punjab History Conference at Punjabi University Patiala. He was invited by the Khalsa College, Patiala for lecture where he was presented

'College Ratna Award'. He was also invited by Guru Govind Singh College Society to address the faculty of the educational institutions being run by the Society. He visited Nanded, Maharashtra where he met Mr. P.S.Pasricha, former Chief of Maharashtra Police and now Chairman of the Board of Administration of 'Takht Shri Hazoor Sahib', one of the five religio-temporal seats of the Sikh community and Baba Narinder Singh, Chief of the Langar Sahib Gurudwara where representatives of the educationally backward members of the Sikh communities, specially, Vanjara and Sikligars were present to discuss the educational backwardness of the Sikh community and different measures to improve their lot. It was discussed that because of low levels of education of these communities and Dakhni Sikhs, polytechnics, providing vocational training to be opened, rather than regular degree colleges. He also accompanied the Hon'ble Chairman on tours to Chennai & Mumbai.

Dr. Cyriac Thomas, Hon'ble Member has made driven efforts to improve the minority education sector in his official capacity through various interactions with key figures and talks on various topics. He addressed the faculty and students of the Mahatma Gandhi University Centre for Gandhian Studies on the 'Constitutional Rights of the Minorities'. He was the keynote speaker at the Conference of Principals of Christian CBSE Schools organized by the Xavier Board of Education which was inaugurated by the Hon'ble Minister of State for HRD, Dr. D.Purandeswari where he spoke on 'Quality and Excellence in Higher Education. He also delivered the keynote address on 'High Values of Indian Secularism' at the Kerala Catholic Students League Conference. He met with his Grace Archbishop Mar Joseph Povvathil, Chairman, Inter-Church Council for Education, Kerala, other state officials and Church leaders in the self financing educational sector on various occasions to discuss the problems of the minority educational institutions in the state. He was also the keynote speaker at the UGC National seminar organized by St. Theresa's College for Women, Ernakulam, All India Conference of self financing colleges, Ernakulam and at the State Conference of Catholic Teachers Guild held at Changanacherry, Kottayam. He also attended the national seminar on Girls' Education alongwith the Hon'ble Chairman in Chennai organized by the Committee on Girls' Education.

Dr. Shabistan Gaffar, Chairperson, Committee on Girls' Education visited Jabalpur from 16th to 21st November 2010 to participate in a National Seminar on 'Importance of Girls Education'. Various problems being faced by the minority communities in education sector e.g. non-reaching of various Central and State Governments education welfare schemes for upliftment of minorities; low level of enrolment of minority girls for higher education; lack of vocational and technical institutes; drop out of minority girls; child labour etc. were discussed. She also visited Priyadarshini Anjuman Islamia Girls College at Gohalpur, Jabalpur and EWS Girls Higher Secondary School, Gohalpur, Jabalpur and had interactive sessions with Managers, Principals, teaching and non-teaching staff and students regarding the educational rights of the minorities. Ms. Gaffar was guest of honour at Jahangirabad Educational Trust Group of Institutions, Barabanki, UP and addressed the audience on the importance of girls' education in a Seminar on 'Minority Education in India'. The Seminar was attended by Managers/

stakeholders of various educational institutions of the minority communities like Muslims, Christians, Sikh, Jain etc. Secretary, NCMEI visited Trivandrum in July 2010 and addressed a gathering of managers, principals and faculty members of institutions being managed and administered by the minority communities and apprised them about the protections under Article 30(1) of the Constitution of India and the role and objectives of the NCMEI.

In other places Commission has ensured that interaction is held with as many members of the minority communities as possible. For this purpose, meetings with smaller groups were held instead of organizing bigger functions. Interaction with smaller groups ensured better exchange of information. It was stressed that education should be the backbone of one's character and it should make all round development of a person. Education should be for nation-building and should instill the constitutional values of justice, liberty, equality and fraternity. During the interaction with the participants, clarifications were given about educational rights of the minorities. Various judgements pronounced by the Supreme Court and High Courts were touched upon in explaining the details of rights enshrined under Article 30 (1) of the Constitution. In most of the places, the issues discussed included the rights of the minorities in the establishment of an educational institution, constitution of managing committee, right to appoint teaching and non-teaching staff, right to appoint head of institution, grant of minority status certificate, grant of NOC, right to set a reasonable fee structure, right to take disciplinary action against teaching and non-teaching staff etc.. Main problems faced by the minority communities were lack of educational facilities, especially for the children from the muslim community, inordinate delay in the recognition of schools, non-issue of minority status certificate, inordinate delay in considering applications for grant of minority status certificate, insistence on application of reservation policy on minority educational institutions, lack of schools teaching Urdu, lack of teachers in Urdu, disparity in pay of teachers, non-availability of text books, etc.

Another fact which was brought out in many places is lack of facilities for girls' education especially for girls from the Muslim community. The importance of girls' education should be an intrinsic part of the State policy designed to ensure the reach of education to the population at large in general and Muslims in particular. Emphasis should be placed on the need to spread girl's education among Muslims where poverty, underdevelopment and social disability have to be overcome by making available the benefits of education. The community has to ensure that the drop out rates of girl students especially from Muslim community is reduced. Parents should be motivated and encouraged to send their daughters to schools. The government must formulate innovative schemes for empowering Muslim women through education. Revolutionary steps and long term measures have to be taken to provide quality education to girls to enable them to stand up to the intellectual as well as technical strain of the burden that they will have to carry. They should be educated about the essential qualities in the character of a creative citizen so that they may be able to share actively in the common weal and woe and share common burdens willingly.

In some places it was found that the infrastructural and instructional facilities were poor. Commission emphasized that importance should be given to build proper infrastructure not only to fulfill the norms prescribed by the authorities but also to attract students. Investing funds in the field of education should be with devotion of service to the society and commercial endowment should be completely avoided. Commission would not give any relaxation in the basic norms prescribed by the authorities regarding infrastructural and instructional facilities and would not support any “teaching shop”. Commission exhorted philanthropic individuals to invest in providing better educational facilities with an eye on creating a healthy and prosperous society.

In the case of higher education, emphasis was placed in building proper educational institutions which would progressively transform the student community into a knowledge society. The Indian universities should be prime centers of scholarship and should play a significant role in generating a base for creating new knowledge and technology. The pressing need to improve the health of higher education and research was impressed upon exhorting all to strive to develop the concept of global university of excellence and make the existing educational institutions to promote internationalism in higher education. This initiative would create new opportunities of promoting growth and development in education. Private sector should be encouraged to establish educational institutions of global excellence.

Chapter – 6: ANALYSIS OF PETITIONS AND COMPLAINTS RECEIVED DURING THE YEAR

The Commission registers cases calendar-year-wise. During the year 2010, 2187 cases were registered which were more than the cases registered in the previous year which were 1883. Even though the Commission has prescribed specific format indicating the details required for the petition/ application requesting for grant of minority status certificate, it was found that quite a few petitions/ applications for grant of minority status certificate were not in the prescribed format. Such petitioners were asked to send their applications in the prescribed format with requisite number of copies. Some of the petitions were not properly drafted and there were few petitions which did not give full details of the issues involved. There has been a tendency to send petitions in the format of a letter containing general issues without seeking any specific relief. In such cases the Commission had advised the petitioners to submit modified/ revised petitions giving details of the issues involved with supporting documents and also mentioning specific relief sought.

The broad subjects of the cases registered by the Commission during the period included subjects 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 is 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 deprived rural areas, etc.

Some of the petitions were outside the cognizance of the Commission's powers contained in the NCMEI Act. Those cases which pertained to the State Government authorities were sent to the concerned Secretary of the Department for appropriate action with an endorsement to the petitioner. Some of the petitions/ applications related to Maulana Azad Foundation, Central Wakf Board etc. and such petitions were sent to them for such action as deemed appropriate. Since Article 30 of the Constitution of India includes Linguistic minorities, the Commission, during the course of the year, received some petitions relating to linguistic minorities which were returned to the petitioner with the direction to approach the Linguistic Minority Commission.

During the period of the report Commission passed several orders. Some of the orders passed were of the cases registered in the previous years. The orders included in this report pertain to the period from 1st April, 2010 to 31st March 2011. All the orders passed during this period are not covered or mentioned in this report and only some of the orders are mentioned in this Chapter and the next Chapter for want of space. Details of all the orders passed by the Commission are being included in the website of the Commission.

There were some cases wherein the respondents had failed to submit the replies even after reasonable opportunity was afforded. It is important that the respondents file their replies within the stipulated date. Non-filing of reply would result in losing the opportunity to present their point of view and the Commission is forced to decide the case ex-parte. Commission, as a policy, has made it explicit that inordinate delay in sending reply on the part of the respondents will not be entertained. Even after 2 or 3 notices, failure of the respondents to file reply would also imply that they are not denying the contents of the petitions and in effect are not refuting the claims made. If the averments made in the petition are not controverted, the Commission is bound to proceed on the claims made in the petition.

Some of the orders passed by the Commission are given in this chapter and below and in the next Chapter.

Case No. 1506 of 2009

Petition for grant of No Objection Certificate by the State to set up Minority institution

Petitioner : Assembly of Angels Secondary School Bungalow No. 80, Middle Road, Barrackpore Kolkata, West Bengal – 700 120

Respondent: Deputy Director of School Education (Anglo-Indian School), Government of West Bengal, 7th Floor, Bikash Bhavan Salt Lake, Kolkata – 91.

By this petition, the petitioner, which is a minority educational institution within the meaning of Section 2(g) of the National Commission for Minority Education Act (for short the Act), seeks a declaration under Sub Section (3) of Section 10 of the Act to the effect that the competent authority of the State Government has deemed to have granted No Objection Certificate for its permanent affiliation to the Council for the Indian School Certificate Examinations (for short the Council). It is alleged that pursuant to the grant of a provisional no objection certificate, the petitioner school got temporary affiliation from the Council. It is alleged that on 15.5.2009 petitioner had applied to the competent authority of the State Government for grant of permanent No Objection Certificate, but the competent authority of the State Government has not passed any order thereon within a period of 90 days from the receipt of the said application and as such it shall be deemed that the competent authority had granted No Objection Certificate to the petitioner in terms of Sub Section (3) of Section 10 of the Act.

The respondent resisted the petition on the ground that the school authorities were requested to attend hearing on 1.12.2009 with all the relevant documents but they did not attend the hearing on the said date. It is also alleged that the Director of School Education (Anglo Indian Schools), West Bengal submits his recommendation to the Secretary, School Education Department, which is the competent authority for issuance of No Objection Certificate.

It is alleged in the rejoinder filed by the petitioner that the letter of the Deputy Director, Education requiring the school authorities to attend the hearing on 1.12.2009 was received by the petitioner on 16.12.2009 as it was posted on 15.12.2009. Since no notice was received by the petitioner before the date i.e. 1.12.2009 fixed for hearing, the petitioner could not appear on the said date.

On the basis of the rival contentions of the parties, the point which arises for consideration is : whether the petitioner school is entitled to invoke the deeming provisions of Sub Section (3) of the Section 10 of the Act? It would be useful to reproduce the provisions of Sub Section (3) and (4) of Section 10 of the Act, which are as under:-

“10.Right to establish a Minority Educational Institution -

(3) Where within a period of ninety days from the receipt of the application under subsection (1) for the grant of no objection certificate, -

(a) the competent authority does not grant such certificate; or

(b) where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate, it shall be deemed that the competent authority has granted a no objection certificate to the applicant.

(4) The applicant shall, on the grant of a no objection certificate of where the competent authority has deemed to have granted the no objection certificate, be entitled to commence and proceed with the establishment of a minority educational institution in accordance with the rules and regulations, as the case may be, laid down by or under any law for the time being in force.”

It is beyond the pale of controversy, that the petitioner school is a minority educational institution within the meaning of Section 2(g) of the Act vide certificate granted by this Commission in Case No. 296/2007. It is also undisputed that the competent authority of the State Government had granted a provisional No Objection Certificate to the petitioner school regarding its affiliation to the Council. In this view of the matter it may safely be inferred that the provisional No Objection Certificate was granted to the petitioner school on the basis of availability of all the infrastructural and instructional facilities in accordance with the relevant rules. It is also an admitted position that on 15.5.2009, the petitioner had applied to the competent authority of the State Government for grant of permanent No Objection Certificate and there is nothing on record to show or suggest that the competent

authority of the State Government has passed any order on the said application, (which was received in the office on 15.5.2010.), within a period of 90 days from the date of its receipt. It transpires from the record that the petitioner did not receive any notice before the date, i.e. 1.12.2009 fixed for hearing. The earliest communication from the Deputy Director, Education was received by the petitioner on 16.12.2009 whereby the petitioner was required to attend the hearing on 1.12.2009. This letter was posted on 15.12.2009 i.e. much after expiry of the date fixed for hearing. Be that as it may, the fact remains that the competent authority had not passed any order on the petitioner's application dated 15.5.2009 within 90 days from the date of its receipt. In this view of the matter, the petitioner is entitled to a declaration in terms of Sub Section (3) of Section 10 of the Act to the effect that the competent authority has deemed to have granted the permanent No Objection Certificate as sought by the petitioner.

For the reasons discussed above, it is hereby declared under Sub Section (3) of Section 10 of the Act that the competent authority of the State Government has deemed to have granted the N.O.C. as sought by the petitioner. A certificate of the said declaration be issued accordingly. The petitioner may apply to the Council for grant of permanent affiliation on the basis of the said certificate, in terms of sub-Section (4) of Section 10 of the Act.

Case No.1376 of 2008

Petition to seek direction for grant of permission for Establishment of College by Minority Community

Petitioner: Adhunik Shikshan Prasarak Mandal Amodi Compled, Juna Bazar Aurangabad – 431 001, (Maharashtra)

- Respondents:**
1. The Chief Secretary, Government of Maharashtra Room No. 518, 5th Floor Mantralaya, Mumbai – 32, (Maharashtra)
 2. The Secretary School Education & Sports Department, Government of Maharashtra, 4th Floor, room No. 424, Mantralaya, Mumbai-32, (Maharashtra)
 3. The Education Officer, High School Department Beed Zila Parishad, Near Shivaji Putla, Shivaji Chowk, Beed - 431122 (Maharashtra).

By this petition, the President of the Adhunik Shikshan Prasarak Mandal, Auragabad, Maharashtra, which has been certified as a society constituted by religious (Muslim) minority educational society vide orders dated 17.7.2008 of the Government of Maharashtra, seeks a direction to the Government of Maharashtra for grant of permission for establishment of a Junior College at Upali, Tq. Wadwani, Distt. Beed, Maharashtra. It is alleged that the petitioner society has all the infrastructural and instructional facilities for establishment of the proposed Junior College and has a bank balance of Rs. 3, 81,000/- against the requirement of Rs. 1 lakh

prescribed by the Government. It is alleged that the society owns land and building with a total built up area of 22500 sq. ft. and land area of 43578 sq. ft. The land includes play ground and the building has computer room, science laboratory, library, toilets, electricity facility etc.. The State Government declined to give permission as sought by the petitioner society on the sole ground that the proposal was not recommended by the District and State Level Committee. According to the petitioner the impugned action of the State Government in not granting the permission as sought by the petitioner is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

The respondent Education Officer, Zila Parishad, Beed has resisted the petition on the ground that the proposal submitted by the petitioner was not recommended by the State Level Committee as a result whereof the proposal was rejected by the State Government. It is also alleged that there is educational facility available in the area.

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 Junior College 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 availability of

the educational facilities in the area. The petitioner has stated that there is no Junior College within the radius of 5 kms. from the proposed institution and, therefore, there will be no unhealthy competition. He has also stated that there are other high schools which are 6-7 kms. away from the proposed Junior College. Details of the schools with the distance and number of students in Xth standard are as follows:

Sr. No.	Name of the School	Distance from proposed Junior College	No. of Students in 10th Standard
1.	Upali High School, Upali	00 km.	95
2.	Rajesaheb Vidyalaya, Kuppa	06 kms	55
3.	Krantisiha Nana patil M. Vidyalaya, Kari	07 kms	50
4.	New High School, Ahbewadgaon	06 kms	47
Total			247

To start a division of Junior College, the petitioner needs a maximum of 30 students per faculty and for the three faculties they require maximum 90 students. Since there are already 247 students available for admission to the new Junior College, the permission sought by the petitioner for establishment of the proposed College is fully justified. It is also relevant to mention that according to the petitioner there is no other Junior College within the radius of 10 kms. and the nearest junior college namely Saraswati Junior College, Telgaon is 13 kms away from the proposed College. It has been held by the Bombay High court in case of Gramvikas Shikshan Prasarak Mandal, Sondoli vs. the State of Maharashtra & Ors 2004(4) Bom. C.R. 379 that the grant of permission to establish educational institution by religious and linguistic minorities will be in accordance with their rights under Article 30(1) of the Constitution. In the present case, the impugned action of the State Government in not granting permission to the petitioner for establishment of the proposed Junior College is eclipsed by the fundamental right 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. In the instant case, the State Government has also violated Art. 21 of the Constitution by denying permission to the petitioner for starting women’s College at Beed.

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, I find and hold that the impugned action of the State Government in not granting permission to the petitioner to start the proposed Junior College 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 proposed Junior College at Upali, Tq. Wadwani, Distt. Beed, Maharashtra by the petitioner.

Case No. 600 of 2008

Petition seeking directions to State to grant Recognition to a minority institution

Petitioner : Madrasa Madni Women's Welfare U-loom, Dumduma, H.B. Colony Distt. Khurda, Bhubaneshwar, Orissa

Respondent : The Commissioner-cum-Principal Secretary, Department of School and Mass Education, Govt of Orissa , Secretariat, Bhubaneshwar, Orissa

By this petition, the petitioner madarsa seeks directions to the State Government to grant its recognition, for allotment of land, provision of teaching staff, mid day meals and for supply of free text books, school uniforms to the children and teaching material etc. under the Sarva Shiksha Abhiyan programme. It is alleged that the Madarsa Madni Women's Welfare U-loom, Distt. Khurda, Bhubaneshwar is running an Urdu medium madrasa at Plot No. LIV/453, Phase IV, Dumuduma H.B. colony, Distt. Khurda, Bhubaneshwar since 1998. More than 150 students are still studying in the school from class 1 to class V. The petitioner has applied for recognition of the madrasa to the Department of School & Mass Education of the Government of Orissa in 2005 and the matter is still pending. It is also alleged that the Education Guarantee Scheme (EGS) under the Sarva Shiksha Abhiyan (SSA) was applied to the petitioner madrasa in the year 2005 and was provided with one lady teacher in addition to mid-day meals. On 31.3.2008, the Government of Orissa closed all the EGS centers in Orissa under the Sarva Shiksha Abhiyan including the petitioner madrasa. The petitioner had also applied to the Commissioner-cum-Secretary, General Administration Department, Government of Orissa for allotment of a vacant land in the locality for permanent construction of the madrasa building and the matter is still pending with the government.

In his reply, the State Project Director, Orissa Primary Education Programme Authority (OPEPA), Bhubaneshwar has stated that the petitioner madrasa was supported under SSA as Education Guarantee Scheme center till 31.3.2008. Pursuant to the decision of Government of India, the Education Guarantee Scheme (EGS) was closed in Orissa w.e.f. 1.4.2008. Therefore, it is not possible to continue support to the petitioner madrasa as an EGS Center. It is alleged that there is a government primary school at a distance of 600 mtrs. from the madrasa and, therefore, there is no need for opening another new primary school in the concerned locality.

The Collector-cum-Chairman, SSA , Khurda has stated in his reply that recognition to the madrasa has to be granted by the Department of School and Mass Education. On verification of the petitioner's application, process has been initiated and the matter would be sent to the

Department of School and Mass Education. Proposal of grant to the institution for its teacher can be considered only after grant of recognition. Request of the petitioner to convert it into an AIE Centre has been repeatedly examined by the District Authorities and the OPEPA and since the EGS scheme has been abolished from 1.4.2008, it is not possible to convert the petitioner madrasa into an AIE Centre as such centres cater to drop outs and never enrolled over aged children whereas the petitioner madrasa caters to normal school going children.

Pursuant to the notice issued by the Commission, the General Administration Department of Government of Orissa has intimated the Commission that the matter regarding allotment of land for the petitioner institution is under consideration and on grant of recognition by the School & Mass Education Department, steps will be taken up to consider allotment of land.

In the rejoinder, the petitioner has stated that it is catering to the students of the Muslim community and follows the syllabus of Orissa State Board of Madrasa Education. It is alleged that the petitioner madrasa is only madrasa within the Bhubaneswar Municipal Corporation. Since there is no Urdu primary school in the Bhubaneswar Municipal Corporation, there is a need for the madrasa which is teaching in Urdu language and is catering to the needs of the Muslim community. It is further alleged that the Inspector of Schools, Khurda Circle has inspected the premises of the madrasa and it has been confirmed that the madrasa has been running classes from 1 to V and has appointed adequate teaching staff vide report dated 29.4.2008.

A minority educational institution seeking recognition must fulfill the statutory requirements concerning the academic excellence, minimum qualification of the eligibility prescribed by the statutory authorities for its teaching staff and the course of studies and curriculum. It must have sufficient infrastructure and instructional facilities as well as financial resources for its growth. It is well settled that no condition should be imposed for grant of recognition, which would, in truth and in effect, infringe the right guaranteed under Article 30(1) of the Constitution or impinge upon the minority character of the institution concerned.

It is an admitted position that the competent authority of the State Government had applied the Education Guarantee Scheme (EGS) under the SSA to the petitioner madrasa in the year 2005 and was also provided with one lady teacher in addition to mid-day meals. It is also undisputed that on 31.3.2008, the Government of Orissa closed all EGS centres in Orissa under the SSA including the petitioner madrasa. This clearly indicates that the petitioner madrasa has all the infrastructural and instructional facilities for grant of recognition otherwise the State Government would not have applied the EGS scheme in the said madrasa. It is also an admitted position that the petitioner madrasa is catering to the educational needs of the Muslim community and it is following the syllabus of Orissa State Board of Madrasa Education. It is stated in the rejoinder filed by the petitioner that the Inspector of Schools, Khurda Circle has inspected the premises of the madrasa and he has confirmed that the madrasa is running classes from 1 to V and has appointed adequate teaching staff. This fact has not been controverted by the State Government. The aforesaid facts clearly prove that the petitioner madrasa is eligible for grant

of recognition by the State Government. Recognition is a facility which the State grants to an educational institution. No educational institution can survive without recognition by the State Government. Without recognition the educational institution cannot avail any benefit flowing out of various beneficial schemes implemented by the Central Government. In (Managing Board of Milli Talimi Mission Bihar vs. State of Bihar 1984 SCC (4) 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 declines to grant recognition to a minority educational institution without just and sufficient grounds, the direct consequence would be to destroy the very existence of the institution itself. Thus, refusal to grant recognition or affiliation by the statutory authorities without just and sufficient grounds amounts to violation of the right guaranteed under Article 30(1) of the Constitution. The right of the minorities to establish educational institution of their choice will be without any meaning if recognition is denied. As stated earlier the State Government had already applied the EGS scheme under the SSA to the petitioner madrasa and that by itself is sufficient to show that the State Government had impliedly granted recognition to the petitioner madrasa otherwise the said scheme would not have been applied to the petitioner madrasa. Having regards to the facts and circumstances of the case we find that there are just and valid grounds for grant of recognition to the petitioner madrasa by the State Government.

As regards the allotment of land for the petitioner madrasa, the General Administration Department, Government of Orissa has intimated the Commission that the same is under active consideration and on grant of recognition to the petitioner institution; steps will be taken to consider the allotment of land to the petitioner. In the facts and circumstances of the case, we may recommend to the State Government to expedite the allotment of land to the petitioner madrasa.

For the foregoing reasons, we recommend to the State Government to grant recognition to the petitioner madrasa as sought by it. We further recommend to the State Government to expedite the process for allotment of land to the petitioner madrasa for raising its permanent structure.

Case No. 1320 of 2009

Petition to grant Minority Status to a Minority Institution

Petitioner: Buckley Primary School, Mission Road, P.O. Buxibazar, Distt. Cuttack, Orissa – 743 001

Respondent: The Principal Secretary to Government, School & Mass Education Department, Government of Orissa, Orissa Secretariat, Bhubaneshwar, Orissa – 751 001

The petitioner school has applied for grant of minority status certificate on the ground that the same has been established and is being administered by Buckley Primary School

which is a registered trust constituted by members of Christian community. It is stated in the petition that on 7.1.2009, 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 cannot be kept under suspended animation. In this view of the issue, we find it just and expedient in the interest of justice to intervene in the matter.

Despite grant of repeated adjournments, the State Government did not file its written statement in opposition to the petition filed by the petitioner. However, following issues arise for consideration:-

- (i) Whether the petitioner institution has been established by the Christian community which is a notified minority community?
- (ii) Whether the petitioner institution has been established for the benefit of the Christian community?
- (iii) Whether the petitioner institution is being administered by the Christian community?

Issue No 1 – it is stated in the petition that the petitioner school has been established by the Buckley Primary School, which is a registered trust, constituted by the members of the Christian community. The petitioner has produced original deed of trust of the Buckley Primary School, Cuttack which clearly proves that the said Trust has been constituted by members of the Christian Community and all the trustees of the Trust are from the Christian Community. It further proves that the petitioner school has also been established by the said Trust. It needs to be highlighted that the respondent has not even controverted the factual matrix of the case. The petitioner has also filed a xerox copy of the Memo No. 5397 dated 31.3.2010 of the Director, Elementary Education, Orissa which clearly indicates that the petitioner school has been recognized by the State Government. It is also mentioned in the said letter that the petitioner school was established in the year 1837 and it was managed by the Diocese, Cuttack. This letter read along with the Trust Deed of the Buckley Primary School clearly proves that the petitioner institution has been established by the Christian community. As stated earlier, the petitioner school has been founded by the Christian Community and it is being managed by the Diocese of Cuttack. In this view of the matter, it may safely be inferred that the objective of founding the institution, inter alia, was to give Catholic youth of the Christian community a full course of moral and liberal education, by imparting through religious instructions and by maintaining a catholic atmosphere in the institution. There is not an iota of evidence on record to rebut the evidence produced by the petitioner. Consequently, we find and hold that the petitioner institution has been established by the Christian Community.

Issue No. 2 – The Trust Deed of the Buckley School clearly reflects that the beneficiaries of the petitioner school are members of the Christian Community. This fact also finds ample corroboration from the uncontroverted affidavit of Mrs. Smruti Rekha Panda, Head Mistress of the petitioner school. There is not even a shred of evidence on record to rebut the said evidence produced on behalf of the petitioner school. Consequently, we find and hold that beneficiaries of the petitioner institution are members of the Christian community.

Issue No. 3 – The Trust Deed of the Buckley Primary School, Cuttack clearly proves that the petitioner institution is being administered by the Christian Community. The aforesaid fact also find ample corroboration from the affidavit of Mrs. Smruti Rekha Panda and the Memo No. 5397 dated 31.3.2010 issued by the Director, Elementary Education, Government of Orissa. The Memo dated 31.3.2010 clearly contains an admission of the State Government that the petitioner institution is being managed by the Diocese, Cuttack. Consequently, we find and hold that the petitioner institution is being managed by the Christian community.

It is stated in the affidavit of Mrs. Smruti Rekha Panda, Head Mistress of the petitioner institution that out of 297 students admitted in the institution, only 95 students are from the Christian community. Thus, the percentage of students from Christian community admitted in the petitioner school is 31.98% only. Here an interesting question which arises for consideration is : whether percentage of admission of students from a notified minority community in a minority educational institution can be included in the indicia for determining the minority status of such an institution? Learned counsel for the petitioner has strenuously urged that the indentifying criteria of a minority educational institution based on bulk or majority of admission of a minority community or on the basis of ratio of admission of students belonging to minority community fixed by the State Government would be unreasonable, impractical and unworkable. According to the learned counsel, this identifying test of a minority educational institution would annihilate the rights of the minorities enshrined in Article 30(1) of the Constitution. He has further contended that the rights of the minorities under Article 30(1) are absolute and subject only to the regulations made by the State for ensuring excellence in education of the institution and no other restrictions can be imposed upon minorities under Article 30(1). Learned counsel has invited our attention to the decisions rendered by the Supreme Court in T.M.A. Pai Foundation Case vs. State of Karnataka (2002) 8 SCC 481, Islamic Academy of Education vs. State of Karnataka (2003) 6 SCC 697 and P.A. Inamdar vs. State of Maharashtra 2005 6 SCC 537 in support of the said contentions.

It is necessary to first take into consideration the background in which the said cases came to be instituted, the basic points involved therein and the results thereof. In T.M.A. Pai, the scheme as formulated in Unnikrishnan vs. State of Andhra Pradesh (1993) 1 SCC 645 was challenged. In the context of all pervasive and all embracing attack on the scheme formulated in Unnikrishnan's case, the Supreme Court in T.M.A. Pai case framed under the five heads, eleven questions. The five headings under which discussion on the eleven questions were classified read as follows : -

- “(i) Is there a fundamental right to set up educational institutions and if so, under which provision?
- (ii) Does Unnikrishnan case requires a re-consideration?
- (iii) In case of private institutions, can there be Government regulation and if so, to what extent?
- (iv) In order to determine the existence of religious or linguistic minority in relation of Article 30 what is to be the unit – the state or the country as a whole?
- (v) To what extent can the rights of the aided private minority institutions be regulated?

It has been held by the Supreme Court in T.M.A. Pai case (supra) that “a minority institution does not cease to be so, the moment the grant-in-aid is received by the institution. 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 in Article 29 (2) are not infringed. What would be the reasonable extent would vary from types of institution, the course of education for which admission is sought and other factors like educational needs. The State Government concerned has to notify the percentage of the non minority students to be admitted in the in the light of the above observations.....”

In St. Stephen’s College vs. University of Delhi (1992) 1 SCC 558, the Supreme Court has held that “in view of the importance which the Constitution attaches to protective measures to minorities under Article 30(1), the minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions subject, of course, to conformity with the university standard. The State may regulate the intake in this category with due regard to the need of the community in the area which the institution is intended to serve. But in no case such intake shall exceed 50 per cent of the annual admission. The minority institutions shall make available at least 50 percent of the annual admission to members of communities other than the minority community. The admission of other community candidates shall be done purely on the basis of merit.”

In T.M.A. Pai case (supra) the Supreme Court while interpreting Articles 29(2) and 30(1) of the Constitution held that a balance has to be struck. While holding that no distinction could be made between citizens on the ground of religion, race, caste or language in view of Article 29(2), it was further held that the said Article would not mean that it was intended to nullify the special rights guaranteed to the minorities under Article 30(1). It was also observed that St. Stephen’s case (supra) endeavoured to strike a balance between Articles 29(2) and 30(1) and even though the ratio in St. Stephen’s case holds the field for over a decade, there

were compelling reservations in not accepting the rigid percentage of 50 per cent stipulated therein.

According to the dictum laid down in T.M.A. Pai's case (supra), as Articles 29(2) and 30(1) applied not only to institutions of higher learning, but also to schools, a ceiling of 50% was held to be not proper and it would be more appropriate, depending upon the level of the institution, whether it be a primary or secondary or high school or a college, professional or otherwise and on the population and educational needs of the area in which the institution is to be located, the State properly balances the interest of all by providing for such a percentage of students of the minority community to be admitted, so as to adequately serve the interest of the community for which the institution was established.

In paragraph No. 102 of the judgment rendered by the Constitution Bench of the Supreme Court in P.A. Inamdar vs. State of Maharashtra (supra) while referring to the observations in T.M.A. Pai's case, it was observed that to establish a minority institution, the institution must primarily cater to the requirements of that minority of that State, else its character of minority institution would be lost. It has to be borne in mind that the aforesaid observations was made in the context of cross border admissions as the main question for consideration in P.A. Inamdar's case was : can a Minority Institution provide cross border or inter-state educational facilities and yet retain the character of minority educational institution? Similarly, the observations made in paragraph 153 of T.M. A. Pai case (supra) with regard to the obligation of the institution to admit the bulk of the students fitting into the description of the minority community or students of that group from the State appear to have been made in the context of cross border admissions. The practice adopted by the institutions established by the religious or linguistic minorities have shown that they will make admission from across the border of the State where the concerned minority was not a minority. The State has to be the unit for determining the minority and it would be possible that a minority in Orissa may not be a minority in Andhra Pradesh or Madhya Pradesh. Surely, if the minority educational institutions are given the right to make admissions from that minority community which is a majority community in another State, it would be a fraud on the Constitution. It is in that context, the observations came to be made that bulk or majority of admission of minority community has to be from within the State where the community is a minority. Despite the observations made above, it has further been observed that there could be a sprinkling of admissions from across the border. These observations cannot at all be construed to mean that the minority institutions aided or unaided must necessarily admit a fixed percentage of their students from within the community in that State.

It needs to be highlighted that according to the Census Report 2001, Christian population in the State of Orissa was 8,97,861 and the total population of the State of Orissa was 36,804,660. Petitioner institution is situated in Cuttack and the total population of the District of Cuttack was 23,41,094 out of which, population of the Christian community was 10,657. It is stated in the affidavit of Mrs. Smruti Rekha Panda, Head Mistress of the petitioner school that

the percentage of the Christian community in Cuttack District is 0.46%. The petitioner school is a primary school. One can make a reasonable guess that the students seeking admission in educational institutions established by the Christian community in the Cuttack District would normally be commensurable to its population. In this view of the matter, the Christian community of the District, Cuttack may not be able to secure more than 0.46% admission from its own community. Similarly, if in a particular State there may be very scanty population of a particular community and number of students seeking admission may be only handful. Would such religious or linguistic minority lose its right to establish and administer educational institution of its choice? Would religious minorities like Sikhs, Buddhists and Jains have no right of establishing and administering educational institutions of their choice as guaranteed under Article 30(1) of the Constitution? Thus, the fundamental right guaranteed under Article 30(1) would be a teasing illusion or a promise of unreality for them. It is a matter of common knowledge that although the Parsi community is a notified minority community but it is also a dwindling community of our country. That being so, a microscopic minority like Parsi community cannot exercise the rights enshrined in Article 30(1) of the Constitution. This aspect was neither considered in T.M.A. Pai nor in P.A. Inamdar's case. It has to be borne in mind that Article 30(1) of the Constitution is an article of faith and the whole object of conferring the right on the minorities under Article 30(1) is to ensure that there will be equality between the majority and minority. If the minorities do not have such special protection, they will be denied equality, special rights for minorities were designed not to create inequality. Their real effect was to bring about equality by ensuring the preservation of the minority institutions and by guaranteeing to the minorities autonomy in the matter of administration of these institutions (St. Xavier's College, Ahmedabad vs. State of Gujarat 1974 (1) SCC 717). It can be said to be an index of the level of civilization and catholicity of a nation as to how far their minorities feel secure and are not subjected to any discrimination or suppression. As Hon. Venkatarama Aiyer J. observed in AIR 1958 956 at page 990, the Constitution gives the minorities two distinct rights one a positive and the other a negative one, viz,

- (i) The State is under a positive obligation to give equal treatment in the matter of aid, recognition to all educational institutions including those of minorities, religious or linguistic; and
- (ii) The State is under a negative obligation as regards those institutions not to prohibit their establishment or interfere with their administration.

Thus, the identifying criteria of fixation of a percentage of the students to be admitted in a minority educational institution does not fit in the constitutional scheme of our constitution.

It needs to be highlighted that a liberal, generous and sympathetic approach is reflected in the Constitution in the matter of the preservation of the right of the minorities so far as their educational institutions are concerned. The Supreme Court has clearly recognized that running of minority educational institution is also as fundamental and important as other rights conferred on the citizens of the country (Managing Board of Milli Talimi Mission Bihar vs. State

of Bihar 1984 SCC (4) 500). Any State action which in any way destroys, curbs or interferes with such rights would be violative of Article 30(1). We may, in this connection, usefully excerpt the following observation of their lordships of the Supreme Court in *St. Xavier's College Ahmedabad vs. State of Gujarat AIR 1974 SC 1389*.

“.....This Court has consistently upheld the rights of the minorities embodied in those Articles and has ensured that the ambit and scope of the minority rights is not narrowed down. The broad approach has been to see that nothing is done to impair the rights of the minorities in the matter of their educational institutions and that the width and scope of the provisions of the Constitution dealing with those rights are not circumscribed. The principle which can be discerned in the various decisions of this court is that the catholic approach which led to the drafting of the provisions relating to minority rights should not be set at naught by narrow judicial interpretation. The minorities are as much children of the soil as the majority and the approach has been to ensure that nothing should be done as might deprive the minorities of a sense of belonging, of a feeling of security, of a consciousness of equality and of the awareness that the conservation of their religion, culture, language and script as also the protection of their educational institutions is a fundamental right enshrined in the Constitution.”

The essence of the right guaranteed under Article 30(1) is a free exercise of their choice by minority institutions of the pattern of education as well as of the administration of their educational institutions. Both these, taken together, determine the kind or character of an educational institution in which a minority has the right to choose. The scope and object of Article 30(1) is clear and eloquent. The very back ground of providing rights to minority communities in the matter of running educational institutions of their choice and the said right being not subject to any restriction would be clearly suggestive of the fact that once a community is a minority, it would have the right guaranteed under Article 30(1) of the Constitution.

As stated earlier the petitioner institution has been established by the Christian community. In *St. Xavier's College case (Supra)*, it has been observed as under:

“As far as Catholic educational institutions are concerned, Catholics believe that education belongs pre-eminently to the church. Catholic dogma categorically denies the premise that secular general education can be isolated from religious teaching. In the 1930 encyclical ‘Christian Education of Youth’ Pope Plus XI has commended: “The only school approved by the Church is one where the catholic religion permeates the entire atmosphere and where all teaching and the whole organization of the school and its teachers, syllabus and textbooks in every branch is regulated by the Christian spirit.”

The minorities regard it as essential that the education of their children should be in

accordance with the teachings of their religion and they hold, quite honestly, that such an education cannot be obtained in ordinary schools designed for all the members of the public but can only be secured in schools conducted under the influence and guidance of people well versed in the tenets of their religion and in the tradition of their culture. They also desire that scholars of their educational institutions should go out in the world well and sufficiently equipped with the qualifications necessary for a useful career in life.

The right guaranteed under Article 30(1) of the Constitution implies the obligation and duty of the minority educational institutions to render the very best to the students. Minorities will virtually lose their right to equip their children for ordinary careers if they lose their rights to establish and administer educational institutions of their choice under Article 30(1) of the Constitution. The educational institutions set up by minorities will be robbed of their utility if their children cannot be trained in the institutions of their choice. Thus, the right to establish educational institution of their choice must, therefore, mean the right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions. It is relevant to mention that regulatory measures for ensuring educational standards and maintaining excellence thereof are no anathema to the protection conferred by Article 30(1) of the Constitution. It has been held in the case of T.M.A. Pai (supra) that “the regulations made by the authorities 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”. To regulate, be it noted, is not to restrict, but to facilitate effective exercise of the very right. Regulation which restricts is bad; but regulation which facilitates is good. Where does this fine distinction lie? No rigid formula is possible but a flexible test is feasible. However, a regulation would be deemed unreasonable only if it was totally destructive of the rights of the minorities to establish and administer educational institutions of their choice. The excellence of the institution provided by an institution would depend directly on the quality and contentment of the teaching staff. The right to administer is to be tempered with regulatory measures to facilitate smooth administration. Regulations in the interest of efficiency of teachers, discipline and fairness in administration are of paramount importance in good administration. The best administration will reveal no trace or colour of minority. A minority institution should shine in exemplary electism in the administration. The best compliment that can be paid to a minority institution is that it does not rest on or proclaim its minority character. However, the fixed formula of a percentage governing admissions in all types of educational institutions established by the minorities does not fall within the domain of academic excellence of an institution and as such it cannot be held as a reasonable restriction. What appears to the correct proposition of law can be culled out from the following observations of their lordships of the Supreme Court in the case of P.A. Inamdar (Supra): -

“In Kerala Education Bill the scope and ambit of the right conferred by Article 30(1) came up for consideration. Article 30(1) does not require that minorities

based on religion should establish educational institutions for teaching religion only or that a linguistic minority should establish educational institution for teaching its language only. 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 children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the abovesaid two objectives, the institution would remain a minority institution.

(emphasis supplied)

Thus, the said dual test would be the only test to confer the status of minority on a minority educational institution. It is relevant to mention that the right under Article 30(1) is a preferential right of a minority institution to admit students of its community. This obligation is intended to ensure that the institution retains its minority character by achieving the aforesaid twin objects of Article 30(1) enabling a minority community to conserve its religion and language and to give a thorough, good, general education to children belonging to its community. So long as the institution retains its essential character by achieving the said objectives, it would remain a minority institution. Emphasizing the need for preserving its minority character so as to enjoy the privilege of protection under Article 30(1), it is necessary that the objective of establishing the institution was not defeated. That being so, the aforesaid dual test has impliedly disowned the Identifying criteria of a minority educational institution based on bulk or majority of admission of minority community or on the basis of ratio of admission of students belonging to minority community fixed by the State Government. No such rigid formula for identifying a minority educational institution, it appears, can be imposed upon minorities under Article 30(1) of the Constitution. The emphatic point in T.M.A. Pai's case (supra) reasoning is that a minority educational institution is under an obligation to admit bulk of the students of minority group residing in the State in which the institution is located. A minority educational institution must, therefore, primarily cater to the requirements of that minority of the State in which the institution is located. If not, the very objective of the establishment of the educational institution would be defeated. In other words, the predominance of minority students hailing from the States in which the minority educational institution is established should be present. The management of such institutions cannot resort to the device of admitting bulk of the minority students of the adjoining State in which they are in majority under the façade of the constitutional protection given under Article 30(1) as

it would be a fraud on the Constitution. It follows that such admission of minority students would be violative of the minority character of the institution concerned.

It is well settled that a minority educational institution is primarily for the benefit of the minority community which has established it. In the absence of prescription of a percentage governing admissions in a minority educational institution by the State Government concerned in accordance with the directions of the Supreme Court in T.M.A. Pai's case, the students belonging to the minority community of that State seeking admission in a minority educational institution would normally be commensurate to its population in the State. Denying admission to a student of the minority community to which the educational institution belongs for the purpose of accommodating a student of the non-minority community will be violative of the minority character of a minority educational institution.

It has been held in P.A. Inamdar's case (Supra) that an aided minority educational institution 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 citizens' rights under Article 29(2) are not infringed. According to the dictum laid down by the Supreme Court in TMA Pai's case (Supra). "What would be a reasonable extent would depend upon variable factors, and it may not be advisable to fix a specific percentage. The situation would vary according to the type of the institution and the nature of education that is being imparted in the institution. Usually at the school level, although it may be possible to fill up all the seats with students of the minority group, at higher level, either in colleges or in technical institutions, it may not be possible to fill up all the seats with the students of the minority group."

Thus, the intake of students of the minority group in a minority educational institution has to be dependent upon variety of factors like what kind of institution it is, whether primary, secondary, high school or professional or otherwise, the population of that community in the State and to the educational need of the area in which the institution is located. It is by considering all these factors that the State Government may fix a minimum intake of minority and non-minority students in a minority educational institution.

At this juncture, we must make it clear that this Commission does not have power to fix a percentage governing admission of students of the minority group in a minority educational institution. This is the function of the State Government concerned. There is no complaint whatsoever against the petitioner institution to show or suggest that it had denied admission to any student of the Christian community for the purpose of accommodating a student of the non-minority community. In the absence of prescription of a workable and reasonable percentage governing admission of students of the Christian community in a minority educational institution by the State Government in the manner indicated above, we are unable to hold that the petitioner institution has lost its minority character.

The matter may be looked from another angle. If any State Government has fixed 50% or more as the identifying criteria of minority students admitted to a minority institution for conferral of minority status. Fixation of such a percentage by the State Government obliges a minority educational institution to admit not less than 50% students from within the State from the minority community to which the institution belongs. The question is: whether a fixed percentage such as 50% as the minimum limit of admission of students of the same community within the State would be unworkable, unreasonable and impractical as also against the rights of minority educational institutions conferred on them under Article 30(1) of the Constitution.

We may mention here at the cost of repetition that it has been held by the Supreme Court in TMA Pai (Supra) that the intake of minority students in the concerned institution has to be dependent upon variety of factors like what kind of institution it is, whether primary, secondary, high school or college or otherwise, the population of that community in the State and to the need of the area in which the institution is located. It is by considering these factors that the State may fix a minimum intake of minority and non-minority students. The Supreme Court has also held that “what would be a reasonable extent would depend upon variable factors, and it may not be advisable to fix any specific percentage.” From the above it is clear that a ceiling of 50% cannot be imposed against the minority institutions, requiring them to compulsorily admit the minority students upto 50%. There cannot be a common rule or regulation in respect of all 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.

As stated earlier, the population of Christians in the State of Orissa is roughly 2.439 %. It is common knowledge that educational institutions established by the Christian community, even if they make all out efforts, may not be able to secure 50% admission from their own community. In this view of the matter, Christian community of Orissa would lose its right to establish and administer educational institutions of its choice guaranteed under Article 30(1) of the Constitution. Surely, if the fixed formula of 50% is to be adhered to, said right of the Christian community of Orissa under Article 30(1) would stand forfeited. In no case, the Christian community shall be able to admit 50% of students from its community because such member of students are not available. To illustrate the impracticability of the said fixed formula we may further give an illustration. In a given academic year, say 2007-2008, an institution run by the Christian community may be able to secure 50% of admissions from its community. In that academic year, it would be a religious minority capable of exercising its right enshrined in Article 30(1). For the next academic year, 2008-2009, it may not be able to secure 50% admissions from its community and for that academic year it would lose the right guaranteed to it under Article 30(1). In the next academic year, 2009-2010, it may again be able to secure 50% admission from its community, its character as a minority educational institution shall be again restored. Would any educational institution established by the Christian community of Orissa in such a situation would be able to manage its affairs. The only answer appears to us

is an emphatic no. The aforesaid fixed formula of percentage governing admission of students in a minority educational institution virtually involves an abject surrender of the right of establishment and management of educational institutions and the same is inconsistent with the Constitutional guarantee enshrined in Article 30(1). In our considered view, the aforesaid identifying test of a minority educational institution is not only impracticable, unworkable but also an ever changing phenomena. It is also an unreasonable restriction wholly impermissible either by virtue of mandate of Article 30(1) of the Constitution or by judicial precedents governing the field. As stated by Sardar Patel as the Chairman of the Advisory Committee dealing with the rights of minority communities that “as long as the Constitution stands as it is today, no tampering with those rights can be countenanced. Any attempt to do so would be not only an act of breach of faith, it would be constitutionally impermissible and liable to be struck down by the Courts.” (Extract from the speech delivered by him on 27.2.1947). Thus, imposition of a uniform ceiling on admission of minority students in all types of educational institutions established by the minorities is virtual negation of the constitutional protection of autonomy to minorities in running educational institutions of their choice as guaranteed under Article 30(1) of the Constitution. We need not enlarge the protection but we may not reduce a protection naturally flowing from the words. Consequently, we find and hold that the identifying criteria of fixation of a percentage governing admission of a minority community in a minority educational institution cannot be included in the indicia for determining the minority status of such an institution.

Needless to add here that a minority educational institution imparting secular education in order to claim the constitutional protection 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, there would be no nexus between the institution and the minority as such. In A.P. Christian Medical Association vs. State of A.P., AIR 1986 SC 1490, the Supreme Court has observed 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”. We have already held that the petitioner school was established and administered by a minority community, viz, the Christian community which is indisputably a religious minority in the State of Orissa where the school is located. We have also held that admission of students in the said school is not violative of the minority character thereof. Consequently, the petitioner school is entitled to claim the constitutional protection of Article 30(1).

For the reasons discussed above, we find and hold that the Buckley Primary School, Mission road, P.O. Buxibazar, Distt. Cuttack, Orissa run by the Buckley Primary School is eligible for grant of minority status on religious basis. Consequently, Buckley Primary School is declared as a 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.360 of 2010

Petition to seek directions to State for establishment of Women's college by a minority institution

Petitioner: The Social Society, Morba, A/P. Morba, Tal Mangaon Distt. Raigad, Maharashtra

Respondent: The Principal Secretary, Higher & Technical Education Department, Government of Maharashtra, Mantralaya Mumbai, Maharashtra

The Social Society, Morba is a registered society constituted by the members of the Muslim community. It has been certified as a minority institution vide certificate No. 2009/949/PK/39/2009/KA.1. dated 23.7.2009 issued by the Government of Maharashtra. Pursuant to advertisement issued by the Mumbai University and published in the newspaper Lokmat (daily) on 18.8.2007, inviting proposals from trusts/societies for establishment of women's degree colleges, the petitioner submitted a proposal to the Mumbai University in the prescribed format and deposited Rs. 30,000/- with the Mumbai University. After scrutinizing the proposal, Mumbai University forwarded the petitioner's proposal to the State Government with the recommendation for grant of permission to the petitioner under Section 82(5) of the Maharashtra University Act 1994 for establishment of the proposed women's college but it did not evoke any response from the State Government. Thereafter, the petitioner on 30.10.2008 and 30.10.2009 submitted two separate proposals to the Mumbai University for establishment of the proposed women's college and these applications were also forwarded to the State Government with the recommendation to accord the requisite permission under Section 82(5) of the Maharashtra University Act 1994, but till date no response has been received from the State Government. It is alleged that the petitioner society has all the infrastructural and instructional facilities for establishment of the proposed women's college and the State Government's inaction in not granting the requisite permission under Section 82(5) of the Maharashtra University Act is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. Hence this petition.

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

The question for consideration is as to : whether the impugned inaction of the State Government in not granting permission under Section 82(5) of the Maharashtra University Act for establishment of the proposed women's degree college 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:

- (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 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 earlier 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 scholar 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 a way or abridge that right.

It has been observed by the Supreme Court in a judgment reported in AIR 1958 SC 956 at page 990, the Constitution gives minorities two distinct rights one a positive and the other a negative one, viz. (i) the State is under a positive obligation to give equal treatment in the matter of aid, recognition to all educational institutions including those of minorities, religious or linguistic; and (ii) the State is under a negative obligation as regards those institutions not to prohibit their establishment or interfere with their administration.

The issue herein can also be examined from another angle. Elaborating on the concept of development, Prof. Amartya Sen said that empowerment of women is one of the main issues of development, and one of the factors involved is women’s education. For an educationally backward community that the Muslims are, the question of women’s

education is even more pressing. That apart it has been held by the Supreme Court in Unni Krishnan J.P. Vs. State of A.P. AIR 1993 SC 2178, 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 the 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. In the instant case, the State Government has also violated Art. 21 of the Constitution by denying permission to the petitioner for establishment of women's degree college.

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.

As demonstrated earlier, for the last three years the Mumbai University has consistently been forwarding proposals of the petitioner to the State government with recommendations to accord permission under Section 82(5) of the Maharashtra University Act for establishment of the proposed degree college for women and the State Government has been maintaining a sphinx silence thereon. The affidavit filed by Dr. S.O. Dhansay, President of the Society clearly proves that the petitioner society has all the infrastructural and instructional facilities for establishment of the proposed college. In this view of the matter the impugned inaction of the State Government in not granting permission to the petitioner under Section 82(5) of the Maharashtra University Act for establishment of the proposed degree college is violative of the educational rights of the minorities enshrined under Article 30(1) of the Constitution.

For the foregoing reasons, the Commission strongly recommends to the State Government to accord permission to the petitioner under Section 82(5) of the Maharashtra University Act to establish the proposed women's degree college in accordance with the recommendations of the Mumbai University for the academic year 2010-2011.

Case No. 233 of 2008

Petition seeking directions to State for sanction of Posts etc. by a minority institution

Petitioner: Sayeed Saminary, Cuttack, Orissa

Respondent: The Principal Secretary, School & Mass Education Department, Government of Orissa, Orissa Secretariat, Bhubaneshwar.

By this Petition the Management of Sayeed Seminary High School, Cuttack seeks a directive to the State Government of Orissa for the redressal of its grievances such as restoration of 10 sanctioned posts of teachers abolished by the State Government in 2003, granting medical and house rent facilities to the staff of school, freedom to appoint Headmaster and two teachers in Urdu & Persian, and a P.E.T., declaration of petitioner institution as minority institution and grant of permission to upgrade the institution to the senior secondary level.

Briefly stated, facts of the case are that the petitioner institution was established in the year 1913 and it is administered by the members of Muslim community. The petitioner institution has been declared as a minority educational institution by the High Court of Orissa. The school is an aided school and it has about 700 students and apart from teaching Oriya and Sanskrit as classical subjects, it also caters to the need of minority students who are taught Urdu as first language and Persian as classical language from Class IV to X. The school had 24 sanctioned posts as per norms prescribed by the State Government. Surprisingly, the Government approved only 14 posts, thus abolishing 10 sanctioned posts. Having failed to secure the approval of the State Government for all sanctioned posts in spite of repeated requests, the Managing Committee appointed teachers in the hope and belief that their services would be regularized in due course of time, but to the shock and surprise of the petitioner, the Government again abolished 8 posts of teaching staff including that of Headmaster and Urdu & Persian teachers. On 16.9.2005, the Inspector of School addressed a memo to the Director of Secondary Education, Bhubaneshwar recommending approval for appointment of Urdu and Persian teachers against vacant posts. However, the competent authority of the State Government had not issued requisite orders in terms of the recommendations of the Inspector of Schools. It is alleged that the impugned action of the State Government in abolishing the sanctioned posts is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

Despite service of notice, the State Government did not file reply. On 13.6.2009, Joint Secretary, Govt. of Orissa, Deptt. of School & Mass Education wrote a letter to the Commission seeking six months time to file a reply on the ground that the State Government has to take a policy decision for according recognition and issuance of Minority Status Certificate to the Minority Educational Institutions.

The matter was taken up for hearing on 16.6.2009. The letter dated 13.6.2009 of Joint Secretary, Govt. of Orissa, Deptt. of School & Mass Education was also considered and the

Commission did not find any justification in granting such a long adjournment. However, during course of arguments, Learned Counsel for the petitioner confined his petition to relief nos. 2, 3 & 4, relating to appointment of a regular Headmaster and teachers of Urdu and Persian languages.

As the petitioner confined the reliefs as above, by order dated 16.6.2009, the Commission directed its Secretary to write a D.O. letter to the Joint Secretary, Govt. of Orissa, Deptt. of School & Mass Education, to give his views on the above three relief's claimed by the Petitioner and adjourned the case to 5.8.2009.

However, before the order could be pronounced, a reply was received from the State Government In the reply, the Respondents admitted that the petitioner is an aided educational institution administered by the Muslim Community and that the two posts of Urdu and Persian Teachers and the post of Headmaster, though sanctioned, were lying vacant before 1.4.2001. It is alleged that as a medium term fiscal reform, the Government of Orissa had taken a policy decision to abolish the vacant posts of aided educational institutions in the year 2000 and accordingly 305 posts lying vacant in aided high schools as on 1.4.2001 were abolished including the post of Headmaster and two posts of Urdu and Persian teachers in the petitioner school. It is also alleged that despite abolition of two posts of teachers, the Managing Committee of the said school had appointed teachers without obtaining prior permission from Government. It is further alleged that the Teachers Association has put-forth their demand to revive the abolished posts as their institution is facing problem in teaching due to abolition of posts and therefore, the Finance Department has been moved for revival of the abolished posts in aided educational institutions. It is further alleged that after obtaining concurrence from the Finance Department the demand for appointment of Urdu Teacher and Headmaster in the Petitioner School can be considered.

A copy of the said reply was sent to the petitioner for filing rejoinder. In the rejoinder it is alleged that the two posts of teachers fell vacant on 31.3.1982 and 31.7.2000, i.e. prior to promulgation of abolition order and the respondent deliberately failed to fill up these posts without any reason. It is also alleged that the post of Headmaster has been lying vacant since 2.6.1993, and the present incumbent Smt. Sanjukta Bhol was appointed by the Managing Committee as Headmistress on 1.2.2008 and her post was approved by the Inspector of School, Cuttack and since then she has been discharging her duties as the Headmistress in-charge but the Government has not approved her appointment and not allowed her the pay scale of the Headmaster.

It is contended that the pretext of fiscal reform by the respondent is an eye wash, and that the Government of Orissa had abolished some posts in the year 2003 on the plea of fiscal reforms, but the posts of the petitioner institution were not filled up by the Government much prior to the fiscal reforms order of 2003. It is also contended that the Inspector of Schools, Cuttack had approved the appointment of Md. Anwar Alam and Shri Dilawar Hussain Khan as the Headmaster-in-charge, and they retired from service without receiving the salary of

Headmaster, that the Petitioner institution being the only aided minority institution and Urdu and Persian languages are taught in the said school to large number of students of the Muslim Community, therefore, there is no justification abolition of the posts of Urdu and Persian teachers particularly when all the non-aided High Schools and Government High Schools were allowed to have their regular teachers during all the time, and that since the date of vacancy of the two posts of Urdu and Persian Teacher, the management has been moving the Government to fill-up the two posts or allow it to get a Urdu teacher from another institution on transfer, but in vain.

It is alleged that when the school was in crises, the Government failed to provide any assistance to the petitioner school and the Managing Committee had appointed two adhoc teachers for Urdu and Persian on the request of the Headmaster and that all relevant information regarding appointment in the school was sent to the Circle Inspector of Schools, Cuttack for approval. Thereupon, the Circle Inspector and the Director of Education recommended to the Government of Orissa to approve the said appointments made by the Management Committee. It is also alleged that the impugned action of the State government in abolishing the aforesaid sanctioned posts and also in not granting approval to the appointment of the teachers made by the Managing committee of the Managing Committee of the petitioner institution is violative of the rights of the minorities enshrined in Article 30(1) of the Constitution.

It is undisputed that the petitioner institution is a minority educational institution covered under Article 30(1) of the Constitution. It is also undisputed that the Managing Committee of the School had appointed qualified teachers to man the posts of Urdu and Persian Teachers, that the Inspector of School and Director of Secondary Education recommended to the Government of Orissa that Petitioner school is the only High School in Cuttack Circle where Urdu and Persian teaching facilities are available and some students read History, Geography & Science through Urdu medium and, therefore, Government may reconsider its decision and restore the posts of classical teachers in Urdu and Persian of the petitioner school and also permit the Managing Committee to fill up these posts on regular basis for greater benefit of the minority community.

We fail to understand as to why the Government has abolished the post of Headmaster as it is fundamental for any school to have a Headmaster to run the school properly. If the Inspector of School, Cuttack had earlier approved the appointment of the previous Headmaster, it has recognized the need for the post of a Headmaster of the petitioner school. If the number of students in the school requires appointment of an Urdu teacher and a Persian teacher, Government has to approve the appointment of teachers for Urdu & Persian.

It is relevant to mention that importance of the right to appointment of Principals/ Headmasters and teachers of their choice by minorities, as an important part of the

fundamental rights guaranteed under Article 30 (1) of the Constitution, was highlighted in St. Xavier's College v/s. State of Gujarat [1947(1) SCC 717] thus:

“It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution..... So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management. That is part of the fundamental right of the minorities to administer the educational institution established by them.”

In Frank Anthony Public School Employees' Association v/s. Union of India AIR 1987 SC 311, it was observed by the Supreme Court;

“The excellence of the instruction provided by an institution would depend directly on the excellence of the teaching staff, and in turn, that would depend on the quality and the contentment of the teachers. Conditions of service pertaining to minimum qualifications of teachers, their salaries, allowances and other conditions of service which ensure security, contentment and decent living standards to teachers and which will consequently enable them to render better service to the institution and the pupils cannot surely be said to be violative of the fundamental right guaranteed by Article 30(1) of the Constitution. The management of a minority Educational Institution cannot be permitted under the guise of the fundamental right guaranteed by Article 30(1) of the Constitution, to oppress or exploit its employees any more than any other private employee. Oppression or exploitation of the teaching staff of an educational institution is bound to lead, inevitably, to discontent and deterioration of the standard of instruction imparted in the institution affecting adversely the object of making the institution an effective vehicle of education for the minority community or other persons who resort to it. The management of minority institution cannot complain of invasion of the fundamental right to administer the institution when it denies the members of its staff the opportunity to achieve the very object of Article 30(1) which is to make the institution an effective vehicle of education.”

In N. Ammad v/s. Manager Emjay High School [1998(6) SCC 674] it was observed by the Supreme Court as under: -

“Selection and appointment of Headmaster in a school (or Principal of a college) are of prime importance in administration of that educational institution. The Headmaster is the key post in the running of the school. He is the hub

on which all the spokes of the school are set around whom they rotate to generate result. A school is personified through its Headmaster and he is the focal point on which outsiders look at the school. A bad Headmaster can spoil the entire institution, an efficient and honest Headmaster can improve it by leaps and bounds. The functional efficacy of a school very much depends upon the efficiency and dedication of its Headmaster. This pristine percept remains unchanged despite many changes taking place in the structural patterns of education over the years.”

As stated earlier, the Inspector of Schools and Director of Secondary Education had recommended to the Government of Orissa for providing Urdu and Persian teachers in the petitioner school by permitting the management of the school to appoint teachers. Surprisingly, the State did not accept the said recommendations of the competent authorities of the State. Thus, the impugned action of the State Government in abolishing the sanctioned posts of the petitioner school and also in not granting permission to the management to fill up the posts of Headmaster, Urdu and Persian teachers is violative of the rights of the minorities guaranteed under Article 30(1) of the Constitution.

For the foregoing reasons, the commission strongly recommends to the State Government to grant permission to the management of the petitioner school to fill up the posts of Headmaster, Urdu and Persian teachers.

CASE NO. 710 OF 2010

Petition seeking direction to State / University to Grant affiliation

Petitioner : Allana Institute of Management Sciences, 2390 B New Modikhana Camp, Pune, Maharashtra – 411 001.

- Respondents:**
1. Secretary, Department of Higher & Technical Education Government of Maharashtra, Mantralaya, Mumbai, Maharashtra – 400 032.
 2. Registrar, University of Pune, Ganeshkhind Road, Pune, Maharashtra – 400 001.
 3. Director, Higher & Technical Education, Government of Maharashtra, Mahanagar Palika Marg, Mumbai, Maharashtra – 400 001.

By this petition, purported to have been filed under Section 12 of the National Commission for Minority Educational Institutions Act (for short the ‘Act’), the petitioner seeks a direction to the respondent university and the State Government to grant affiliation to the petitioner institution for conducting courses in Master of Marketing Management (MMM) and Master of Personnel Management (MPM) for the academic year 2010-11. The Maharashtra Cosmopolitan Education Society, Pune (for short the ‘Society’) is a registered society, constituted by members

of the Muslim community. It is registered under the Societies Registration Act 1869 and also under the Bombay Public Trust Act 1950.

The petitioner institution has been established and is being administered by the society. The Bombay High Court has declared the petitioner institution is a minority institution vide order dated 10.09.1998 passed in Writ Petition No. 4094 of 1998. The aforesaid finding of the Bombay High Court has been upheld by the Supreme Court vide order dated 21.06.1999 passed in Civil Appeal No. 3654/ 99 arising out of SLP (Civil No. 7248/ 1999).

On 26.10.2009, the petitioner had applied to the respondent university for grant of affiliation of the aforesaid courses and deposited affiliation fee alongwith the relevant documents. On 05.01.2010, the respondent university declined to recommend to the State Government the petitioner's proposal for grant of affiliation. It is alleged that the impugned action of the respondent university in not recommending the petitioner's proposal for grant of affiliation to the State Government is violative of the educational rights of the minorities guaranteed under Article 30(1) of the Constitution. Hence this petition.

Despite service of notice, none entered appearance on behalf of the respondent no. 1 as a result whereof the case proceeded ex-parte against it.

The respondent university resisted the petition on the ground that the Board of College and the University Development of the respondent University in its meeting held on 11th and 12th December 2009 took a policy decision that the courses included in the list of approved courses of AICTE shall only be sanctioned. Since the MMM & MPM courses are courses for which approval of AICTE is required, the petitioner's application for grant of affiliation of the aforesaid courses was not recommended to the State Government in terms of the said policy decision. It is also alleged that the minority institutions are not free from any control and have to abide by the rules and regulations of the university. It is further alleged that the dispute raised by the petitioner institution is outside the cognizance of this Commission.

The respondent No. 3, Assistant Director (Non-Technical), Directorate of Technical Education, Maharashtra has resisted the petition on the ground that the Commission has no jurisdiction to set aside the order passed by the respondent university under the provisions of the Maharashtra Universities Act. It is alleged that mere minority status of the petitioner institution does not confer any fundamental right upon it to commence/ or conduct any educational course like the Master of Marketing Management and Master of Personnel Management dehors the rule and regulations governing the said courses. It is further alleged that the dispute raised by the petitioner institution does not fall within ambit of the Act.

In the rejoinder the petitioner college has asserted that it is already conducting Master Business Management course, approved by the AICTE and is affiliated to the respondent university. The petitioner institution wanted to add two more courses of MMM and MPM and

its application for grant of affiliation has been rejected by the respondent university on wholly invalid grounds.

In view of the rival contentions of the parties following issues arise for consideration:-

- (i) Whether the dispute raised by the petitioner institution is outside the cognizance of this Commission?
- (ii) Whether the impugned action of the respondent university in not recommending the petitioner's application for grant of affiliation for two courses namely, Master of Marketing Management and Master of Personnel Management to the State Government is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution?
- (iii) Relief ?

Issue No. 1

It has to be borne in mind 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 11th 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 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, an 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 NCMEI 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 with 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 with 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 can not 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.

Consequently, we find and hold that this Commission has jurisdiction to entertain the present petition as the dispute between the parties falls within the domain of Section 12 read with Section 10-A of the Act.

Issue No. II

At the outset, we must make it clear 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. (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).

It is undisputed that the petitioner college is an affiliated college of the respondent university. It is also beyond the pale of controversy that the respondent university declined to recommend the petitioner’s proposal for grant of affiliation for two courses namely MMM and MPM to the State Government. It is contended on behalf of the respondent university that in its meeting held on 11th and 12th Dec. 2009, a policy decision was taken that the courses included in the list of approved courses of AICTE shall only be sanctioned and since MMM and MPM courses are courses for which approval of AICTE is required, the petitioner’s application for grant of affiliation of the said courses was not recommended to the State Government in terms of the policy decision.

Learned counsel for the petitioner has strenuously urged that the respondent university had granted affiliation to many colleges for the aforesaid courses. Strong reliance has been placed on page No. 2 of 3 of the academic programmes of respondent university displayed on its website, in support of the said contention. The academic programmes displayed by the university website clearly shows that both these courses are on the approved list of the respondent university. In the written submissions, the respondent university has admitted that its website has not been updated and, therefore, its latest policy decision does not get reflected in the website. It is contended on behalf of the respondent university that the said defective website cannot be pressed into service to support the petitioner’s case for grant of affiliation. It is also contended that the respondent university for the academic year 2010-11 has not recommended 23 applications for grant of affiliation for these courses and if the petitioner’s application for grant of affiliation is allowed, it would be clear discrimination and the same would be against the constitutional policy. Strong reliance has been placed on para 97 of the judgment rendered by the Supreme Court in P.A. Inamdar vs. State of Maharashtra AIR 2005 SC 3226 in support of the said contention. In our considered opinion, the aforesaid submission of

the respondent university does not hold much water. It is hard to believe that the said website of the respondent university is defective. The tenor of the written submissions of the respondent university shows that it is the examining body of the courses for which the application for grant of affiliation was made by the petitioner. Admittedly, the petitioner college is an affiliated college of the respondent university for conducting MBA course approved by the AICTE. So long as the respondent university is the examining body of the courses in question, it cannot refuse affiliation on the ground of the policy decision taken by it. It is also well settled that any law or executive direction which infringes the substance of the rights guaranteed under Article 30(1) of the Constitution is void to the extent of infringement. The fundamental right guaranteed under Article 30(1) is intended to be effective and should not be whittled down by any administrative exigency. No inconvenience or difficulties, administrative and financial can justify infringement of the fundamental rights. In this view of the matter, the impugned action of the respondent university in not recommending the petitioner's application for grant of affiliation to the State Government on the sole ground of non-inclusion of these courses in the list of approved courses of AICTE is wholly arbitrary and irrational.

The respondent university also cannot reject the petitioner's application for grant of affiliation on the sole ground that it had not recommended 23 applications for grant of affiliation for these courses and if the petitioner application is allowed it would be violative of the principle of equality. It has to be borne in mind that two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case directions should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. The concept of equal treatment on the logic of Article 14 cannot be pressed into service in such cases. That being so, the respondent university cannot defeat the petitioner's claim on the basis of negative equality.

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). In the instant case, eliminating the grounds of rejection taken by the respondent university, there remains nothing on the record to show or suggest that the petitioner college does not fulfill the conditions for grant of affiliation of the courses in question. Consequently, we find and hold that the impugned action of the respondent university in not recommending the petitioner's application for grant of affiliation for the courses in question to the State Government amounts to violation of

the fundamental right of the minorities enshrined in Article 30(1) of the constitution. That being so, the petitioner college can invoke the proviso to Sub-Section (5) of Section 82 of the Maharashtra University Act , which is as under :-

“Provided, however, that in exceptional cases and for the reasons to be recorded in writing any application not recommended by the university may be approved by the State Government for starting a new college or institution of higher learning.”

In our considered opinion, this is the fit case for the State Government to exercise its discretionary powers under the said proviso by approving the petitioner’s application for starting the MMM and MPM courses.

For the foregoing reasons, the Commission in exercise of its powers under Section 11(b) read with Section 12 of the Act strongly recommends to the State Government to grant permission under proviso to Section 82(5) of the Maharashtra Universities Act 1994, to the petitioner college for starting courses in Master of Marketing Management (MMM) and Master of Personnel Management (MPM) for the academic year 2010-2011. The Commission also directs that on receipt of the permission from the State Government under Section 82 ibid, the respondent university shall grant first time affiliation under Section 83(1) of the Maharashtra Universities Act, 1994 to the petitioner college for the aforesaid courses for the academic year 2010-2011.

CASE NO. 442 OF 2008

Petition by a Minority Institution for grant of Affiliation to start BBA & BCA courses

Petitioner : Al-Saba Educational & Welfare Society

Through its Secretary, Mr. Shaikh Mansoor s/o Mr. Shaikh Mustafa, r/o Wahed Colony, Aurangabad, Maharashtra

- Respondents:**
1. The State of Maharashtra through its Principal Secretary Department of Higher and Technical Education Government of Maharashtra, |Mumbai
 2. The Director of Colleges and University Development Board, Dr. Babasaheb Ambedkar Marathwada University, Aurangabad, Maharashtra

The petitioner Al-Saba Educational and Welfare Society, Aurangabad is a registered society constituted by members of the Muslim Community to provide educational facilities to Muslim in India. It has been registered under the Bombay Societies Registration Act, 1860 and also under the Bombay Public Trust Act 1950. The petitioner society has established Vasant Kale Memorial College of Information and Technology and Management at Aurangabad. The petitioner society wanted to start Bachelor of Business Administration (BBA) and Bachelor of Computer Application (BCA) courses in the said college. On 31.10.2006, the petitioner

applied to Dr. Baba Saheb Ambedkar Marathwada University, Aurangabad (the respondent No. 2) for grant of affiliation of the said college and deposited affiliation fee alongwith the relevant documents. On inspection of the college by the Expert Committee constituted by the respondent University, it was found that the college was having sufficient infrastructural and instructional facilities for starting the course, and, accordingly recommended the proposal of the college for starting the aforesaid courses to the State Government in accordance with the procedure prescribed under Section 82 of the Maharashtra University Act 1954 (for short the University Act). Despite recommendations of the respondent University, the State Government did not grant permission for starting the courses to the petitioner in terms of Sub Section (5) of Section 82 of the University Act. It is alleged that the State Government had granted permission for several colleges including Shiva Trust for BBA Course, Aurangabad without any recommendation from the respondent University. Thus, the petitioner college has been discriminated against in this regard. It is also alleged that the impugned action of the State Government in not granting permission to the petitioner college for starting the course in question is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. Hence this petition.

The respondent No. 1 has resisted the petition on the ground that the proposals received by the State Government for the academic year 2007-08, 2008-09 from the concerned universities regarding establishment of new colleges in Arts, Science and Commerce were scrutinized by the Task Force Committee appointed by the Government. On consideration of the report of the Task Force Committee, the State Government had taken a policy decision not to grant permission for establishment of senior colleges in the academic year 2008-09. The petitioner college was denied permission for starting the BBA, BCA courses at Aurangabad on the basis of State Level priorities with regard to the requirement and availability of existing colleges in the area. It is alleged that the criteria of minority dominated district is not a part of the procedure while granting permission to the institution and that even if the university recommends the proposal, it is not obligatory for the State Government to grant permission for opening new colleges as it is the absolute discretion of the State Government to grant or not to grant permission for establishment of new colleges in terms of the Sub Section (5) of Section 8 of the University Act. It is further alleged that the State Government had rejected the proposal of the petitioner college for starting BBA and BCA courses at Aurangabad on the basis of the report of the Task Force Committee appointed by the Government.

In the rejoinder, the petitioner has contended that since the petitioner's proposal was in accordance with the procedure prescribed in Section 82 of the University Act, the petitioner is entitled to have permission for starting the courses in question. Since the petitioner college has sought permission for starting the said courses on permanent non-grant basis, the question of budgetary resources of the State Government has no relevance in the matter for grant of permission as sought by the petitioner. As regards state level priorities, with regard to location, infrastructure and finance, the respondent University recommended the petitioner's proposal to the State Government on the basis of the inspection carried out by the Inspection

Committee constituted by it. It is further alleged that not a single minority institution has been granted permission by the State Government to start new colleges at Aurangabad, and the State Government had rejected the petitioner's proposal for starting the course in question in an arbitrary manner.

In view of the rival contention of the parties, following issues arise for consideration:-

- (i) Whether the impugned action of the State Government in rejecting the petitioner's application for grant of affiliation of two courses namely, BBA and BCA is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution?
- (ii) Relief?

Issue No. 1 : At the outset we 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 11th 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, an 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;

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- (e) issuing commissions for the examination of witnesses or documents; and
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[(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 with 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 with 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 can not 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.

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. (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).

It is undisputed that Aurangabad District has been identified as a minority district. This was done to promote and improve the educational profile of the Muslim Community. It is beyond the pale of controversy that the petitioner’s proposal for starting the courses in question was scrutinized by the Expert Committee constituted by the respondent university. The Expert Committee inspected the petitioner college and found that it is having infrastructural and instructional facilities for starting the said courses and accordingly, on the basis of the report of the Inspection Committee, the respondent University recommended the proposal of the petitioner college for starting the courses in question. The State Government cannot reject the petitioner’s proposal for starting the courses in question on the ground that it has absolute discretion to do so under Sub Section (5) of Section 82 of the University Act. It needs to be highlighted that the petitioner college has not sought any financial assistance from the State Government for starting these courses. On the contrary, the petitioner college has sought permission to start these courses on permanent non grant basis. In this view of the matter, the budgetary resource of the State Government has no relevance. 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). In the instant case, eliminating the grounds of rejection taken by the respondent university, there remains nothing on the record to show or suggest that the petitioner college does not fulfill the conditions for grant of affiliation of the courses in question.

The dispute raised by the petitioner falls within the domain of affiliation. The affiliation is a statutory concept and may be obtained on the fulfillment of the conditions prescribed therefor by the statutes. Provision of Section 82 and 83 of the University Act prescribed procedure for grant of affiliation to a college.

It needs to be highlighted that the respondent No. 1 has not placed on record the impugned order of the State Government rejecting recommendations of the respondent University for grant of permission to the petitioner college for starting the courses in question. It is contended on behalf of the respondent No. 1 that the State Government has rejected the said recommendations of the respondent University on the basis of the report of the Task Force Committee appointed by the Government. It is relevant to mention that provision of Section 82 of the University Act does not contemplate appointment of a Task Force Committee by the State Government for exercising its discretion under Sub Section (5) of Section 82 of the University Act. However, the said report of the Task Force Committee was also not placed before us to show that while making the impugned order, the competent authority of the State Government was alive to the material on the basis of which the decision for rejecting recommendations of the respondent University was taken. In short, there is nothing on record to show that the impugned order of rejection was made by the competent authority after due application of mind. It has been held by the Supreme Court in Mohinder Singh Gill and Anr. Vs. the Chief Election Commissioner AIR 1978 SC 851 that : “when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.”

Reference may, in this connection, also be made to the decision of the Supreme Court in East Coast Railway vs. Mahadev Appa Rao 2010 AIR SCW 4210, where 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.”

19. Dealing with the principle governing exercise of official power Prof. De. Smith Woold & Jowell in their celebrated book on “Judicial Review of Administrative Action” emphasized how the decision maker invested with the wide discretion is expected to exercise that discretion in accordance with the general principles governing exercise of power in a constitutional democracy unless of course the statute under which such power is exercisable indicates otherwise. One of the most fundamental principles of rule of law recognized in all democratic systems is that the power vested in any competent authority shall not be exercised arbitrarily and that the power is exercised that it does not lead to any unfair discrimination. The following passage from the above is in this regard apposite:

“We have seen in a number of situations how the scope of an official power cannot be interpreted in isolation from general principles governing the exercise of power in a constitutional democracy. The courts presume that these principles apply to the exercise of all powers and that even where the decision-maker is invested with wide discretion, that discretion is to be exercised in accordance with those principles unless Parliament clearly indicates otherwise. One such principle, the rule of law, contains within it a number of requirements such as the right of the individual to access to the law and that power should not be arbitrarily exercised. The rule of law above all rests upon the principle of legal certainty, which will be considered here, along with a principle which is partly but not wholly contained within the rule of law, namely, the principle of equality, or equal treatment without unfair discrimination.”

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.”

It is significant to mention that powers under Section 85(5) of the University Act is entirely discretionary to be exercised in the particular circumstances of each case according to well established principles of reasons and justice and not fancifully or arbitrarily. According to Lord Halsbury “discretion” means when it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague and fanciful, but legal and regular. (Sharpe vs. Wakefield 1891 AC173)

It is contented by the respondent No. 1 that the petitioner's proposal was rejected by the State Government in exercise of its discretionary powers vested under Sub Section (5) of Section 82 of the University Act. As stated earlier the impugned order of the State Government has not been placed before us. The respondent No. 1 is the competent authority to pass the order under Sub Section (5) of Section 82 of the University Act. The validity of the impugned order cannot be judged by the reasons assigned therefor by the respondent No. 1 in the counter filed on its behalf. In the absence of the impugned order, it is difficult to assume that the competent authority had properly applied its mind before passing the impugned order rejecting recommendations of the respondent University for starting the courses in question in the petitioner's college.

For the foregoing reasons, we find and hold that the impugned order of the State Government rejecting the recommendations of the respondent University for grant of permission to the petitioner's college for starting the courses is violative of the fundamental rights of the minorities enshrined in Article 30(1) of the Constitution. The impugned order is also vitiated by arbitrariness.

For the foregoing reasons, the Commission in exercise of its powers under Section 11(b) read with Section 12 of the Act, strongly recommends to the State Government to grant permission under proviso to Section 82 of the Maharashtra University 1994 to the petitioner college for starting courses in BBA and BCA for the academic year 2011-12 in terms of recommendations of the respondent University. The Commission also directs that on receipt of the permission from the State Government under Section 82 *ibid*, the respondent university shall grant first time affiliation to the petitioner college under Section 83 (1) of the Maharashtra University Act 1994 for the aforesaid courses for the academic year 2011-12.

CASE NO. 1383 OF 2010

Petition seeking directions to state for increasing intake of medical students

Petitioners: Al Karim Educational Trust Through it's Chairman, Ahmad Ashfaque Karim, Resident of Opposite VAU's Automobiles Ashiana Road, P.O.B.V. College, Patna-14 Bihar Katihar Medical College Katihar Through its Chairman cum Managing Director, P.S. Mufassil katihar, District Katihar

Respondent

1. The Principal Secretary, Health, Medical Education and Family Welfare, Government of Bihar, Patna
2. B.N. Mandal University Madhepura, District Madhepura Bihar through its Registrar

Learned counsel for the petitioner is heard.

The petitioner college is a minority educational institution within the meaning of Section 2(g) of the National Commission for Minority Educational Institutions Act (for short the 'Act').

The petitioner medical college has all the infrastructural and instructional facilities including 750 bedded hospital equipped with all the modern equipments and facilities in accordance with the norms laid down by the Medical Council of India. With a view to increasing the sanctioned intake from 60 to 150 students, the petitioner college applied to the competent authority of the State Government on 20.11.2008 for grant of Essentiality Certificate. Despite repeated reminders sent by the petitioner college, the competent authority of the State Government neither rejected nor granted the said certificate as a result whereof the petitioner college could not apply to the respondent university for grant of consent to affiliation for increasing intake capacity. On these premise, the petitioner college has applied to this Commission for a declaration that the competent authority has deemed to have granted an Essentiality Certificate in terms of Sub Section (3) of Section 10 of the Act. The petitioner also seeks a direction to the respondent university to act upon the declaration so made by the Commission in terms of Sub-Section (3) of Section 10 of the Act for granting consent to affiliation for the increasing intake capacity of the petitioner college.

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

As per regulations framed under Section 10A read with Section 33 of the Indian Medical Council Act 1956 requirement of an Essentiality Certificate of the State Government is mandatory for seeking permission of the MCI for increasing intake capacity of the medical college. On 20.11.2008, the petitioner college applied to the competent authority of the State Government for issue of Essentiality Certificate for increasing intake capacity of M.B.B.S. course from 60 to 150. The petitioner has filed a xerox copy of the said application. The petitioner has also filed a copy of the reminder dated 16.07.2010 sent to the competent authority of the State Government for issue of the Essentiality Certificate as sought by it. Learned counsel for the petitioner has strenuously urged that the application dated 20.11.2008 as well as the reminder dated 16.07.2010 sent to the competent authority of the State Government did not evoke response from him. He, therefore, submitted that the petitioner college is entitled to invoke the deeming provision of the Sub-Section 3 of Section 10 of the Act. Sub-Section (3) of Section 10 reads as under: -

“ (3) Where within a period of ninety days from the receipt of the application under sub-section (1) for the grant of no objection certificate, -

the Competent authority does not grant such certificate; or

where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate, it shall be deemed that the Competent authority has granted a no objection certificate to the applicant.”

The material available on the records clearly proves that on 20.11.2008, the petitioner college had applied to the competent authority of the State Government for grant of Essentiality Certificate for increasing intake capacity of M.B.B.S. course from 60 to 150 and despite reminder issued to him, no order has been passed thereon. In this view of the matter, the petitioner college is entitled to invoke the deeming provision of Sub-Section (3) of Section 10. Sub-Section (4) of Section 10 of the Act postulates that the applicant shall on the grant of a No Objection Certificate/Essentiality Certificate or where the competent authority has deemed to have granted the NOC/Essentiality Certificate, be entitled to commence and proceed with establishment of a minority educational institution in accordance with the rules and regulations prescribed therefor.

The petitioner institution is a minority educational institution covered under Article 30(1) of the Constitution. Article 30(1) of the Constitution confers a fundamental right on minorities to establish and administer educational institutions of their choice. The right to administer means the right to manage and conduct the affairs of the institution. It includes right to choose its governing body, right to select teaching and non-teaching staff and right to admit students of its choice. The concept of administration includes the choice of increasing intake capacity of a professional college. All these rights together form the integrated concept of right to establish and administer educational institution within the meaning 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)

For the forgoing reasons, we declare that the competent authority of the State Government has deemed to have granted the Essentiality Certificate for increasing intake capacity of M.B.B.S. course from 60 to 150 as sought by the petitioner college in terms of Sub-Section (3) of Section 10 of the Act. In view of the provision of Sub-Section (4) of Section 10 of the Act, we direct the university to act upon the aforesaid declaration made by this Commission regarding the grant of Essentiality Certificate in terms of Sub-Section (3) of Section 10 of the Act and to grant consent of affiliation to the petitioner college for increasing intake capacity of M.B.B.S. course from 60 to 150 as sought by the petitioner. Copies of the order be sent to the parties.

CASE NO. 1556 OF 2010

Petition to seek direction to allow students to study Urdu in a minority institution

Petitioner: Shiksha Sewa Samiti, K-8, New Seelampur, Delhi - 110053

Respondents: 1. Dy. Director, Education, North East District, Government of NCT, Delhi
2. The Principal, C R Dass S.K.V. No. 1, New Seelampur, Delhi – 110 053

By this petition, Sh. Hashim Uddin, Shiksha Sewa Samiti, K-8, New Seelampur, Delhi seeks a direction to the Principal of CR Dass SKV No. 1, New Seelampur, Delhi to allow the

students of class XI to study Urdu in this academic session i.e. 2010-11. It is alleged that more than 70 girl students passed class X of CBSE examination with Urdu as one of the subject from the said school. About 40 students want to study Urdu as a subject in class XI and their guardians have given their consent in this regard. One Urdu PGT from Urdu Academy has been posted in this school to teach Urdu upto class X and this teacher can teach Urdu for the students of class XI.

Despite service of notices, the respondents did not contest the proceedings. Consequently, the averments made in the petition may be taken to have been admitted by the respondents in terms of Order 8 Rule 5 CPC. Since about 40 students of the said school want to study Urdu as a subject in class XI and a Urdu teacher is already posted in this school and he can teach Urdu language to the students of class XI also. Thus no extra Urdu teachers would be required for the said purpose. Article 29(1) of the Constitution confers fundamental right on linguistic and cultural minorities to conserve their language, script and culture. The impugned action of the Principal of the CR Dass SKV No. 1, New Seelampur, Delhi in not allowing 40 students to study Urdu as a subject in class XI is violative of their constitutional right enshrined in Article 29 of the Constitution.

For the foregoing reasons, the Principal of the CR Dass SKV No. 1, New Seelampur, Delhi is directed to allow students, who have opted for Urdu as optional language, to study Urdu as a subject in class XI in this academic session i.e. 2010-11. The Deputy Director (Education) North East district is directed to implement the aforesaid finding of the Commission by directing the Principal of the said school to allow students to study Urdu as a subject in class XI in this academic session.

CASE NO. 1557 OF 2010

Permission to increase intake of students in MDS Course of a Dental College

Petitioner: M.A. Rangoonwala College of Dental Sciences & Research Centre, 2390-B, K.B. Hidayatullah Road, Camp, Pune

Respondents: 1. The Joint Secretary, Ministry of Health & Family Welfare, Government of India, NirmanBhawan, New Delhi

2. The Secretary, Dental Council of India, Aiwane-e-Galib Kotla Road, New Delhi

By this petition, the petitioner seeks quashment of the order dated 6.8.2010 passed by the Ministry of Health and Family Welfare, Government of India. It also seeks a direction to the respondent No. 1 to forward the petitioner's application dated 16.6.2010 to the respondent No. 2 for appropriate action in the matter. It is alleged that the petitioner college is a minority educational institution covered under Article 30(1) of the Constitution. The petitioner college was established in 2001 and is having BDS and MDS courses. For BDS course approval/permission has been obtained in the initial years and after four years of its existence the college has been

granted recognition. In the academic year 2007-08, the petitioner college started MDS course in 7 subjects and in 8th subject the course was started in 2008-09. The Dental council of India has inspected the petitioner college and after satisfying itself of all necessary infrastructural and instructional facilities, the Central Government has granted approval. At present, the petitioner college conducts MDS courses for the following 8 subjects:-

S. No.	Name of the subject	Allowed Intake by Respondent No.1	Year of Commencement
1.	Orthodontics	4	2007-2008
2.	Oral Medicine	2	2007-2008
3.	Conservative Dentistry	4	2007-2008
4.	Periodontics	4	2007-2008
5.	Prosthodontics	3	2007-2008
6.	Oral Pathology	2	2007-2008
7.	Oral Maxillofacial Surgery	3	2007-2008
8.	Pedodontics	3	2008-2009

It is alleged that for the academic year 2011-12, the petitioner has submitted an application for increase in the intake in respect of 7 subjects under MDS course with 3 additional seats in each subject vide application dated 16.6.2010. The petitioner has also deposited the requisite fee of Rs. 21 lakhs vide Demand Draft dated 22.7.2010. On 9.7.2010, the respondent No. 1 sought additional information which was submitted by the petitioner on 22.7.2010. Instead of forwarding the petitioner's application to the respondent No. 2, respondent No. 1 wrongfully returned the application to the petitioner along with the Demand Draft of Rs. 21 lakhs vide order dated 6.8.2010. It is alleged that the impugned order dated 6.8.2010 is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

Despite service of notice none entered appearance on behalf of the respondent No. 1 as the result whereof, the case proceeded ex-parte against it. The respondent No. 2 resisted the petition on the ground that the petitioner college has failed to submit the requisite documents prescribed under the Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity in Dental Colleges) Regulations 2006 (for short the Regulations) and as such the respondent No. 1 returned application in accordance with the procedure prescribed thereunder.

In view of the rival contention of the parties, the question which arises for consideration is as to whether the impugned order dated 6.8.2010 is violative of the educational rights of the minorities?

It is undisputed that the petitioner college, being a minority educational institution is entitled to the constitutional protection under Article 30(1) of the Constitution.

It is beyond the pale of controversy that the essentiality certificate dated 15.6.2006, annexed with the petitioner's proposal was valid for 3 years only and the consent of University

affiliation dated 7.10.2008 is valid upto 30.9.2010. Admittedly, the petitioner college does not have valid essentiality certificate and the consent of university affiliation for starting MDS course in the subject of Community Dentistry. By the letter dated 9.7.2010, the petitioner college was asked to furnish the said documents. Even though the petitioner has remitted the requisite fee of Rs. 21 lakhs vide letter dated 22.7.2010, the essentiality certificate and the provisional letter of affiliation of the concerned university was not submitted before the competent authority, as a result whereof, the application was returned to the petitioner in terms of Rule 20 of the Regulations. Mr. Inamdar wants to jettison the impugned order dated 6.8.2010 on the ground that the last date of submission of essentiality certificate and the university affiliation is 30.10.2010 and as such the impugned order dated 6.8.2010 returning the petitioner's application is premature. He has invited our attention to the schedule of the regulations which was notified on 16.1.2006. According to the schedule, receipt of application by the Central Government for MDS is from 1st May to 30th June. Forwarding of application by the Central government to the Dental Council of India for technical scrutiny is up to 31st July. Last date of recommendations of the Dental Council of India to the Central Government is 28th February and the last date of issue of letter of permission by the Central Government is up to 31st March. The Circular dated 13.7.2010 prescribing the date of submission of self assessment report for increase of seats fixed by the respondent No. 2 is from 15th October to 30th October. It needs to be highlighted that the Circular dated 13.7.2010 cannot partake character of statutory rules. It is merely a guideline and guideline in absence of statutory background are advisory in nature (Poonam Verma vs. DDA 2008 AIR SCW 199). It has also been held by the Supreme Court in Narandra Kumar Maheshwari vs. Union of India and Ors. AIR 1989 SC 2138 that guidelines, by their very nature, do not fall into the category of legislature, direct, subordinate or ancillary. They have only the advisory role to play. Consequently, the circular dated 13.7.2010 issued by the respondent No. 2 cannot override the Rule 20 of the Regulations which empowers the Central Government to return an incomplete application or scheme. Consequently no exception can be taken to the impugned order dated 6.8.2010 passed by the Central Government in exercise of powers vested under Rule 20 of the Regulations. The Commission cannot issue direction to the respondent No. 1 to act in contravention of the Rule 20 as it would amount to compelling the authorities to violate the law. Such directions may result in destruction of rule of law.

For the foregoing reasons, the petition is dismissed.

CASE NO. 950 OF 2010

Request for direction to the Government of NCT Delhi and Punjabi/Urdu Academy of Delhi to provide teachers to teach Urdu and Punjabi languages

Petitioner : Lt. Col. A.S. Berar (Retd) 194, Hargovind Enclave, Delhi – 110 092

- Respondents :**
1. Secretary, Urdu Academy, CPO Building Kashmere Gate, Delhi – 110 006
 2. The Secretary, Punjabi Academy, DDA Community Centre, Sardar Thana Road, Motia Khan Pahar Ganj, New Delhi – 110055

3. The Deputy Director (East). Directorate of Education Government of NCT of Delhi, Anand Vihar, Delhi

By this petition, the petitioner Lt. Col A. S. Berar (Retd.) seeks direction to the Government of NCT Delhi and Punjabi/Urdu Academy of Delhi to provide teachers to teach Urdu and Punjabi languages in the primary schools run by the Government. He has addressed separate letters to the Secretary, Punjabi and Urdu Academy in this regard. According to the petitioner, Principals/Head Masters of the school may be directed to allow students the benefit of option for Punjabi/Urdu language. He has also listed following 18 schools in his letter addressed to the Secretary, Punjabi Academy:-

1. SKV, Surajmal Vihar
2. SKV, Kiran Vihar
3. SKV, Vishwas Nagar
4. Govt. Co-Ed Preet Vihar
5. SV, Anand Vihar
6. GGSSS, Jhilmil Colony
7. GGSSS, Vivek Vihar Phase – II
8. GBSS, Vivek Vihar Phase II
9. SKV, Bhola Nath Nagar I
10. GGSSS Bhola Nath Nagar III
11. G Co-Ed SSS, Lalita Park
12. GGSSS, Bhola Nath Nagar II
13. Govt. Co-Ed, Teliwara
14. SKV, Shakarpur 1
15. SKV, Krishan Nagar
16. SKV Rajgarh Colony
17. GGSSS, School Block, Shakarpur
18. Govt. Co-Ed, Vinod Nagar

Following 11 schools have been mentioned in his letter addressed to the Secretary, Urdu Academy, Delhi:-

1. SKV,Vishwas Nagar
2. GBSSS, Vishwas nagar
3. SKV, Kiran Vihar
4. GGSS, Vivek Vihar II
5. Govt. Co-Ed, Preet Vihar
6. GSSS School Block, Shakarpur
7. Govt. Co-Ed Vinod Nagar

8. Govt. Co-Ed, Teliwara
9. G Co-Ed SSS, Lalita park
10. SKV, shakarpur No.2
11. RPPV, Suraj Mal Vihar

In response to the notice issued by the Commission, the Dy. Director of Education, East District of NCT Delhi has stated that the petitioner's representations have been sent to the Secretary Punjabi/Urdu Academy for taking necessary action.

In the supplementary petition, the petitioner has stated that he paid several visits to all the aforesaid schools and interacted with the students and it has emerged that there is an urgent requirement of posting of Punjabi/Urdu teachers in the aforesaid schools. According to the petitioner, in the absence of Punjabi and Urdu teachers, the students would be compelled to opt for Sanskrit language.

In reply, Secretary of the Urdu Academy has stated that the Urdu Academy was established with the main objective to promote, propagate and develop the literature and composite lingual culture in Delhi. Soon after its establishment, the Academy on the basis of complaints, took up the matter with the Directorate of Education for providing facilities for teaching of Urdu language as a result whereof the norms were relaxed and Urdu language was allowed to be taught in schools, if six students for class III, IV, V, VI VII and VIII had opted for Urdu language, but a teacher could be provided only if there were minimum of 18 periods in a week. Since sanctioning one TGT in short of 18 periods per week was not possible, the Academy was appointing part time teachers. In 1991, a decision was taken by the Delhi Administration that the Urdu Academy and Punjabi Academy should not engage part time teachers until further orders. Accordingly, no teacher is being appointed by the Urdu Academy since then. The strength of Urdu teachers has been reduced to 103.

In the reply, the Secretary of the Punjabi Academy has given background of the establishment of the said Academy. It is alleged that in 1978, the Punjabi language was given the same status in the Union Territory of Delhi as was given to Urdu language in accordance with the instructions of the Home Ministry. Accordingly, a Punjabi Cell was established in 1981 as an autonomous body taking into consideration the success of Punjabi language being taught in the schools through part time Punjabi teachers appointed by the Punjabi Academy. The Planning Commission has been providing separate funds to Punjabi Academy for providing part time teachers in the schools of Directorate of Education, MCD, NDMC and aided schools. However, in 1991, a decision was taken by the State Government banning new recruitment of part time teachers of Punjabi language. The number of teachers appointed by Punjabi Academy has started decreasing since then and the present strength of Punjabi teachers is 706. During pendency of the case, the Secretary, Punjabi Academy has

appointed 7 teachers to teach Punjabi language and they have already joined their duties in the schools mentioned in the petition.

It is relevant to note here that the Government of NCT Delhi has issued official memo allowing Urdu and Punjabi language to be taught if six students for class III, IV, V, VI, VII and VIII have opted to take Urdu or Punjabi language as an optional subject. This official memo was issued subject to a rider that a teacher can be provided for teaching the said languages if there were minimum 18 periods in a week. It is contended on behalf of the Urdu Academy that since sanctioning one TGT in short of 18 periods per week was not possible, the Academy was appointing part time teachers. In 1991, the Delhi Administration took a decision banning recruitment of part time teachers by the Urdu and Punjabi Academy. It is also alleged by the Urdu Academy that after the said decision, strength of Urdu teachers has been reduced to 103. According to the Punjabi Academy at present the strength of teachers of Punjabi language is 706. As stated earlier that in 1991 the Delhi Administration took a decision banning recruitment of teachers for teaching Urdu and Punjabi languages. This is a classic example of official neglect of the Urdu and Punjabi languages. Needless to add here that Urdu and Punjabi languages have to be saved from extinction through teaching them in schools. Opportunities should be provided to any student who wishes to study either of these languages. Opportunities for teaching Urdu and Punjabi languages need to be provided in the education system controlled by the State. Urdu language and literature is an integral part of composite culture of our country shared both by Muslim and by non-Muslim. To save this language it is necessary to resist the prejudice of those who hold that the choice of Urdu language as a medium of instruction is tantamount to betraying the national identity.

It needs to be highlighted that Urdu and Punjabi languages are becoming optional subject and they are pitted against the choice of Sanskrit compelling students to choose the latter for practical reasons. It has to be borne in mind that at an early age the child does not have enough information to decide on the career. Therefore, to ask her or him to learn a language like Sanskrit as the third language is to impose an extra burden. Teaching through Sanskrit to students who wanted to study Urdu or Punjabi language at a primary level would create an artificial barrier in their learning process as they would have to struggle with the language itself, thereby wasting their energies that would have otherwise being utilized in understanding the world.

It is relevant to mention that despite the constitutional directives under Article 350A of the Constitution for primary education in mother tongue recruitment of teachers for teaching Urdu and Punjabi languages was banned by the Delhi Administration vide order dated 29.4.1991. Article 29 (1) of the Constitution obligates the Government to provide free and compulsory education to every child upto age of 14 years. Section 11 and 12 of the Right of Children to Free and Compulsory Education Act 2009 also obligates the appropriate

government to make necessary arrangement for providing free and compulsory elementary education to every child between the age group of 6 to 14 years. That being so, Urdu and Punjabi languages can be offered as medium of instruction upto age of 14 years. The Constitution also provides for use of mother tongue as the medium of instruction, atleast at the primary level and Article 29(1) of the Constitution recognizes the right of linguistic and cultural minorities to conserve their languages, culture and script. That being so, the order dated 29.4.1991 issued by the Chief Secretary of the Delhi Administration directly stares into the face of Article 29 (1), Article 350 A of the Constitution and Section 11 and 12 of the Right of Children to Free and Compulsory Education Act 2009. There is no reasons why the Urdu and Punjabi communities should be deprived of their right to have their children receive atleast primary education through the medium of mother tongue under the State Education System. Although Urdu and Punjabi languages have been accorded official status in the NCT of Delhi as languages by the State Government without integrating them with the vital institution of education, educational process and administration, but such recognition has been stymied by the poor state of Urdu and Punjabi education in Delhi, unless some positive steps are taken by the State to promote these languages nobody can save them from their extinction in Delhi.

We record our appreciation for the prompt action taken by the Secretary, Punjabi Academy for providing 7 teachers for teaching Punjabi language in the schools mentioned in the list but we are constrained to observe that the Urdu Academy has treated the Urdu language in the shabbiest manner. What is appalling is the lack of concern about academic space for Urdu in government primary schools even by the Urdu Academy. The Urdu Academy was set up for the promotion and furtherance of Urdu as functional language. Holding seminar and organizing Musharais are not the only functions of the Urdu Academy. Surprisingly no step was taken by the Urdu Academy to get the said ban removed by the Government which was imposed vide memo dated 29.4.1991. As stated above, Article 29(1) of the Constitution confers a right on the minorities to conserve their language, script and culture. Article 350A of the Constitution mandates for providing facilities for instructions through the mother tongue at the primary stage of education. Thus the impugned memo dated 29.4.1991 of the Chief Secretary of the Delhi Administration is violative of Article 29 (1) read with Article 350A of the Constitution and Section 11 and 12 of the Right of Children to Free and Compulsory Education Act 2009. We are also constrained to observe that the Secretary of the Urdu Academy did nothing in providing Urdu teachers to the schools mentioned in the list. He took the issue in a casual manner. His lackadaisical attitude towards this issue is a sad commentary on the working of the Urdu Academy.

For the foregoing reasons we strongly recommend to the State Government to withdraw the offending Memo of the Chief Secretary, Delhi Administration dated 29.4.1991 with

immediate effect. We also recommend to the State Government to direct the Punjabi and Urdu Academy, Delhi to provide teachers for teaching Punjabi and Urdu languages in the primary schools run by the State Government, MCD and NDMC.

CASE NO. 383 OF 2009

Request for starting a College to start a D.Ed. Course

- Petitioners:**
1. Matoshri Sonabai Goswami Adhyapak Vidyalaya , Gate No. 148, Taluka Saza No. 15, Code No. 453, Tehsil Goregaon, Distt. Gondia, Maharashtra
 2. Sushant Shikshan Sanskar Sanstha, Bhilewada Bhandara, Bhagyaxmi Niwas, Zilla Parishad chowk, Bhandara, Maharashtra

- Respondents:**
1. National Council for Teacher Education, Hans Bhawan, Wing II Bahadur Shah Zafar marg, New Delhi (Through its Chairman)
 2. National Council for Teacher Education Manas Bhawan, Shyamla Hills, Bhopal, Madhya Pradesh, (Through its Director)

By this petition, the Chairman of Matoshri Sonabai Goswami Adhyapak Vidyalaya, Tedha, Distt. Gondia, Maharashtra has stated that the society wanted to start a D.Ed. College and applied to the National Council for Teachers Education (NCTE). The petitioner society has been granted minority status by the Government of Maharashtra. The society submitted the application along with requisite fee to NCTE on 25.4.2007 and later on 23.7.2007 submitted additional documents required. On 9.2.2008 the petitioner received letter from NCTE about the inspection by a team of experts tentatively from 1.3.2008 to 15.3.2008 under Section 14 of the NCTE Act. The petitioner has mentioned that the team of experts, after the visit were very much satisfied about the facilities and infrastructure of the petitioner college. On 3.9.2008 the petitioner received a show cause notice from the NCTE to remove the following deficiency within 30 days from receipt of the notice:

1. Land documents not as per NCTE norms (lease deed only notarized).

The petitioner has stated that they have rectified the deficiency pointed out and wrote again to the NCTE. However, the petitioner did not get any approval. Later, the NCTE informed the petitioner that it has been decided by NCTE not to grant any further approvals taking into account the decision to regulate the growth of Teacher Training Institutions and the Maharashtra State have decided not to allow further teacher training institutions in the State. On 3.2.2009 the petitioner received another letter stating that the NCTE has decided to reopen the cases of minority educational institutions for the year 2009-10. On 8.4.2009 the petitioner received the letter mentioning that in view of the negative recommendations received from the Maharashtra State Government in respect of D.Ed. courses, it has been decided that no further processing will be done in the case

of the petitioner and proposal was treated as closed. Accordingly, FDRs deposited by the petitioner were returned to him. The petitioner has approached the Commission with the request to direct the NCTE to grant permission to the petitioner college as it is covered under Article 30(1) of the Constitution.

In the reply the respondent has stated that it has already closed the application of the petitioner as it had not removed the deficiency pointed out to it. According to the NCTE norms the land should be either owned by the institution or if leased land then the same has to be from the Government/ Govt. institutions. Since the appellant has failed to remove the deficiency, the NCTE have closed the case. In its 125th meeting, the NCTE refused to grant recognition on the ground that the institution did not have registered deed/ lease deed in the name of the society as per clause 8(7) of the NCTE Regulations 2007. The respondent has asserted that it has not violated any rights conferred under Article 30(1) of the Constitution.

In the rejoinder, the petitioner has refuted the allegations made by the respondent and stated that as per clause 8(5) of the NCTE Regulations 2005, the society had land as per registered lease deed in the name of the society from a private party. The refusal communicated to the petitioner, while issuing the show cause notice dated 3.9.2008, contained only one deficiency viz. "Land documents not as per NCTE norms (lease deed only notarized)". The petitioner immediately rectified the deficiency pointed out to it and had approached the NCTE again. The date of application under Clause 7(4) of the NCTE Regulations 2005 should be taken into account as the petitioner had submitted the application much before the coming into force of the amended regulation 8(7) of the NCTE Regulations 2007. The applicant has already established the college on a plot admeasuring 4800 sq. mtrs. and built-up area admeasuring 1519 sq. mtrs. and the land is on a 30 years registered lease. The college has fully equipped library and laboratories and has appointed qualified and experienced teaching staff. The respondent cannot bring out subsequent condition of the government lease under clause 8(7) of the NCTE Regulations 2007 as the petitioner ought to have been governed by Clause 8 (5) of NCTE Regulations 2005. The petitioner has also quoted the order passed by NCTE in some other cases where they have allowed earlier cases which were pending before them without taking into account the provisions of clause 8(7) of the NCTE Regulations 2007. The petitioner has also cited the order passed by the Commission in case No. 276 of 2009 wherein the NCTE was directed to consider the application of an existing institution for starting an additional course without insisting on fresh requirement of land.

During arguments learned counsel for the respondent submitted that the petitioner's case is governed by the provision of Clause 8(7) of the NCTE Regulations 2007 and as the lease is from a private party the impugned order cannot be faulted on any legal ground. It is contended by the petitioner that the provision of Clause 8(7) of the NCTE Regulations 2007 should operate prospectively and as the petitioner's application was already pending at the

time of coming into force of the amended provision of clause 8(7), the petitioner's application is governed by the provision of Clause 8(5) of the NCTE Regulations 2005.

In view of the rival contentions of the parties, the point which arises for consideration is : whether the amended provision of Clause 8(7) of the NCTE Regulations 2007 can be made applicable to the petitioner's application for grant of recognition under Section 14 of the NCTE Act as it was filed prior to the amending provision of said Clause. Clause 8(5) of the NCTE Regulations, 2005 reads as under:-

"8(5) No institution shall be granted recognition under these regulations unless it is in possession of required land on the date of application. The land free from all encumbrances could be either on ownership basis or on lease for a period of not less than 30 years. In cases where under relevant State/ UT laws the maximum permissible lease period is less than 30 years, the State Government/UT Administration law shall prevail."

It is beyond the pale of controversy that on 25.4.2007, the petitioner had applied to the respondent for grant of recognition of the proposed D.Ed. college under Section 14 of the NCTE Act. During pendency of the petitioner's application Clause 8(7) and the NCTE Regulations 2007 was amended, which reads as under :-

"8(7) No institution shall be granted recognition under these regulations unless it is in possession of required land on the date of application. The land free from all encumbrances could be either on ownership basis or on lease from Government/ Govt. institutions for a period of not less than 30 years. In cases where under relevant State/ UT laws the maximum permissible lease period is less than 30 years, the State Government/ UT Administration law shall prevail. However, no building could be taken on lease for running any teacher training course."

According to the amended provision of Clause 8(7), the land should be either owned by the institution or if leased land, then the same has to be from government/government institutions. In the instant case, the petitioner has taken lease from a private party. The respondent has declined to entertain the petitioner's application on the sole ground that the land in question has not been taken on lease from the Government/Government organization.

Learned counsel for the petitioner has strenuously urged that the amended Clause 8(7) of the NCTE Regulations, 2007 cannot be made applicable to application filed by the petitioner, which was filed much before coming into force of the amended Clause 8(7) of the NCTE Regulation. It is relevant to mention that prior to the amending provision of Clause 8(7) of the NCTE Regulations 2007, the land required for establishment of the college can be either on ownership basis or on lease for a period of not less than 30 years. The amended provision of Clause 8(7) of the NCTE Regulations 2007 came into force during the pendency of

the application filed by the petitioner. It is cardinal principle of law that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing right, it is deemed to be prospectively only. 'A new law ought to regulate what is to follow, not the past'. OSBORN Concise Law Dictionary page 224.

A bare reading of the amended Clause 8(7) of the NCTE Regulations of 2007 makes it clear that it creates a new obligation or imposes of a new duty on the applicant for procuring lease of the land from Government / government institutions for a period of not less than 30 years. It is well settled that the amended provision creating a new obligation or imposing a new duty must be presumed to be intended not to have a retrospective operation. (Amireddi Raja Gopala Rao vs. Amireddi Sitharamamma AIR 1965 SC 1790). As a logical corollary of the general rule, that retrospective operation is not taken to be intended unless that intention is manifested by expression of words or by necessary implication. (S.S. Gadgil vs. Lal & Co. AIR 1965 SC 171; Hitendra Vishnu Thakur vs. State of Maharashtra AIR 1994 SC 2623). Consequently, we find and hold that the amended provision of Clause 8(7) of the NCTE Regulations 2007 cannot be made applicable to the petitioner's application filed under Section 14 of the NCTE Act as it was filed before the coming into force of the said provision. The application has to be decided in accordance with the provision of Clause 8(5) of the NCTE Regulations 2005.

For the foregoing reasons, the Commission recommends to the respondent to reconsider the petitioner's application in accordance with the un-amended provision of Clause 8(5) of the NCTE Regulations 2005. It has to be borne in mind that in Metro Cities and other big cities it may not be possible for the minorities to secure lease of land from government or Government organizations. Therefore, the State Government is advised to recommend to the Chairperson of the NCTE to exercise its power under Regulation 11 for relaxation of the amended provision of Regulation 8(7) of the Regulations, which is causing hardships in establishment of B.Ed./D. Ed colleges by the minorities. The Commission is giving this direction in exercise of its jurisdiction to protect the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

CASE NO. 87 OF 2010

Request for seeking a direction to relax the Eligibility criteria in the norms and standards for elementary teachers education

Petitioner: Notre Dame Junior college of Education C/o Sophia High School 70, Palace Road, Bangalore

Respondent: National Council for Teacher Education, Hans Bhawan, 1 Bahadur Shah Zafar marg, New Delhi

By this petition, the petitioner Notre Dame Junior college of Education, Bangalore, which is a minority educational institution covered under Article 30(1) of the Constitution, seeks a direction to the respondent to relax the eligibility criteria in the norms and standards for elementary teachers education programme leading to diploma in Education (D.Ed). The petitioner college is duly recognized by the respondent to conduct teachers training courses with an intake of 50 students. The petitioner institution maintains high standards of education as evident from the results produced by it. Till the year 2006, the eligibility to TTC was senior secondary (+2) passed. Therefore, 50 per cent marks eligibility criteria was introduced by the respondent in the academic year 2007 and this reduced admissions in the petitioner college drastically. It is alleged that the petitioner college used to admit students from lower middle class families and their educational facilities being poor are not able to secure 50 per cent marks according to the eligibility criteria prescribed by the respondent. It is also alleged that in view of the eligibility criteria prescribed by the respondent, the petitioner college is not able to serve the minority community and therefore, it has approached the Commission for a direction to the respondent to reduce the eligibility criteria for general candidates from 50 per cent to 45 per cent.

The respondent resisted the petition on the ground that in order to improve the quality of teachers, the respondent has enhanced eligibility criteria for admission from 45% to 50% for teacher training courses as the competent teachers under training come from good academic background would be in a better position to impart education to the students in a better and perfect manner. It is alleged that the prescription of eligibility criteria of 50% marks is not arbitrary or unjustified and it does not infringe the fundamental rights of the minorities enshrined in Article 30(1) of the Constitution. It is also alleged that any dilution of the eligibility criteria would result in down grading the standards and quality of teachers in whose hands the future of the children and the nation is vested. It is further alleged that while framing the rules relating to the prescription of the criteria of eligibility the intention was that the teachers who are eligible to impart education after training should be of such standard to be able to transform the students' community into a knowledge society.

Bearing in mind the rival contention of the parties, the question which arises for consideration as to whether the Rules relating to fixation of 50% marks as the eligibility criteria is violative of the fundamental rights of the minorities enshrined in Article 30(1) of the Constitution. It has been held by the Eleven Judge Bench of the Supreme Court in T.M.A. Pai Foundation versus State of Karnataka [(2002) 8 SCC 481] that the fundamental rights guaranteed under Article 30(1) of the Constitution is a regulatory right. The Government may prescribe regulations for facilitating exercise of the said right. But the regulations must satisfy the dual tests – (1) that the regulations must be reasonable and (2) that is to be for academic excellence. In one of the judgments rendered by the Supreme Court, it was observed that a benignly regulated liberty which neither abridges nor exaggerate autonomy but promotes better performance is the right construction of the Article 30 of the Constitution.. Bearing in

mind the said proposition of law expounded by the Supreme Court it cannot be held that the prescription of 50% marks as the eligibility criteria is unreasonable. It has to be borne in mind that when a teacher educates children, he moulds also their character, builds up their personality and makes them fit to navigate the modern world. He as a teacher would have to be fully equipped with such intellectual attainment as will make them fit for imparting education to the children. Education is an important input both for the growth of the society as well as for the individual. In Sole Trustee, Lok Shikshana Trust vs. CIT (1976) 1 SCC 254, the Supreme Court has held that the term "Education" means "the systematic instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received ... What education connotes ... is the process of training and developing the knowledge, skill, mind and character of students by formal schooling."

Needless to add here that a minority educational institution cannot be allowed to circumvent the law or regulations prescribed for maintaining the standards of excellence expected of educational institutions, under the guise of the right enshrined in Article 30(1) of the Constitution. The prescription of 50% marks as eligibility criteria is evidently in the interest of academic excellence. We, therefore, find and hold that the regulations prescribing 50% marks of eligibility criteria is not violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

For the foregoing reasons, the petition being devoid of merits, is dismissed.

CASE NO. 1735 OF 2010

Petition seeking directions to start an engineering degree course by a minority institution

- Petitioners :
- 1 Education Research and Development Foundation (E.R.D. foundation Central I.T. College Campus, Dr. R.P. Road, Dispur, Guwahati represented by its Chairman, Shri Mahbubul Hoque
 2. Regional Institute of Science & Technology, Technocity, Killing Road, 9th Mile, Baridua, Raid Marwetm District Ribhoi,, Meghalaya
 3. Shri Mahbubul Hoque, s/o Late Ibrahim Ali, Chairman of E.R.D. Foundation r/o Nav Milan Path, Dispur, Guwahati

Respondent: All India Council for Technical Education Government of India 7th Floor, Chanderlok Building Janapath, New Delhi – 110 001

By this petition, the petitioner seeks a direction to the respondent, All India Council for Technical Education (for short the Council) to grant approval to the petitioner college for starting mechanical engineering course under B.Tech Programme for the academic session 2010-11. The petitioner college is a minority educational institution within the meaning of Section 2(g) of the NCMEI Act (for short the Act). On 24.3.2010, the petitioner college applied to the

respondent Council for grant of approval for starting mechanical engineering course in B.Tech Programme for the academic session 2010-11. Despite repeated reminders, the respondent did not pass any order on the application filed by the petitioner college for the aforesaid course. It is alleged that the impugned action of the respondent in not granting approval for mechanical engineering course in B.Tech Programme as sought by the petitioner is violative of the educational rights of the petitioner enshrined in Article 30(1) of the Constitution.

Despite service of notice, the respondent did not file any reply.

The question arises for consideration is as to whether the impugned action of the respondent in not granting approval to the petitioner college for starting mechanical engineering course in B.Tech programme is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution?

At the outset we 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 11th 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 disputes 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.

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's 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. Stephen's 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).

In the instant case following facts have been pleaded by the petitioner college in the petition:-

- (a) That by the order dated 12.6.2009, the respondent granted approval to the petitioner college for starting the course in Computer Science and Engineering, Electronics and Communication Engineering, electrical and Electronics Engineering and Information Technology;
- (b) That on 24.3.2010, the petitioner college submitted an application before the respondent for (i) grant of extension of the approval for four existing courses in B.Tech Programme; (ii) for grant of an increase in the intake of students in B.Tech Programme in Computer Science & Engineering, Electronics and Communication

engineering, and (iii) for introduction of new B.Tech courses for Civil and Mechanical Engineering (Annexure 5).

- (c) That the respondent Council displayed some self contradictory information on its web portal. On 5.7.2010, the petitioner college submitted the rectified / overcome report alongwith the certificate of rectified deficiencies to the Regional Office of the respondent Council at Kolkata. (Annexures 6 and 7).
- (d) That on being satisfied with the inspection report submitted by the inspection committee constituted by the North Eastern Hill University, Shillong, the university granted provisional affiliation to the petitioner college for imparting B. Tech course in civil engineering, mechanical engineering, electrical and electronics engineering for the academic year 2010-11 (Annexure 9).
- (e) That in response to the information available on the web portal of the respondent Council, the petitioner college requested for re-scrutiny of its application in the light of rectification report submitted by it. A copy of the application was also submitted before the Eastern Regional Office of the respondent Council at Kolkata on 19.6.2010. (Annexure 10).
- (f) That on browsing the respondent's web portal the petitioner college found confusing information with regard to introduction of new courses (civil and mechanical engineering) for the academic year 2010-11. It was found that the petitioner's request for introduction of mechanical engineering course was not considered by the respondent Council. A formal letter of approval dated 23.8.2010 was communicated to the petitioner college by the Regional Office at Kolkata on 8.9.2010 (Annexure-11).
- (g) That on 1.7.2010, the petitioner college submitted a representation to the Adviser (E&T) of the respondent Council for extension of approval, increase in the intake and introduction of new courses in mechanical engineering (Annexure 12)
- (h) That on 5.7.2010, the petitioner college filed an appeal before the Regional Office at Kolkata in the prescribed format through facsimile (fax transmission) and Overnight Courier on 23.7.2010. In addition a hard copy of the appeal was also submitted before the said office on 6.7.2010 alongwith the certificate regarding rectification of the deficiency pointed out by the respondent (Annexure 13).
- (i) That on 5.8.2010, the petitioner college addressed a letter to the Chairman of the respondent Council requesting him for disposal of its appeal within the prescribed period of 30 days (Annexure 14). That on 10.8.2010, the petitioner college again requested the Chairman of the respondent Council for grant of approval of the courses for mechanical engineering (Annexure 15).

- (j) That on 17.8.2010, the petitioner college again sent an application to the Regional Office of the respondent Council at Kolkata for grant of approval for starting Civil and Mechanical engineering Courses.
- (k) That despite repeated reminders sent to the Regional Office of the respondent council did not evoke any response from the respondent.

It needs to be highlighted that the petition filed by the petitioner has been supported by an affidavit of Sh. Mahbubul Hoque, Chairman of the sponsoring body of the petitioner college.

Despite service of notice, the respondent Council did not file any reply to controvert the factual matrix of the case. Since the aforesaid facts pleaded by the petitioner college have not been controverted by the respondent Council, it may safely be taken to have been admitted by the respondent Council, by implication. The aforesaid facts pleaded by the petitioner clearly prove that the petitioner college has all the infrastructural and instructional facilities for starting the course in Mechanical Engineering. The deficiencies pointed out by the respondent Council have been rectified by the petitioner college. In this view of the matter there was no justification for the respondent Council to sit over the request of the petitioner college for grant of approval to start course in the mechanical engineering for the academic year 2010-11. It is significant to mention that on being satisfied by the inspection report submitted by the committee constituted by the North Eastern Hills University, Shillong, the university granted provisional affiliation to the petitioner college for the courses in civil and mechanical engineering. The appeal filed by the petitioner college and the repeated reminders sent by the petitioner college to the Chairman of the respondent Council did not evoke any response from the respondent Council. On receipt of the application, the Regional Office of the respondent ought to have inspected the petitioner college to satisfy itself about availability of the infrastructural and instructional facilities in accordance with the norms laid down by the All India Council for Technical Education Act and the rules framed thereunder. For reasons best known to the said Regional Office, it did not inspect the petitioner college for the said purpose as there is nothing on record to show that after receipt of the petitioner's application, the petitioner college was ever inspected by the said Regional Office.

It is significant to mention here that the petitioner college is situated in the State of Meghalaya, which is a backward State inhabited by tribals. The Muslims of North East Region are educationally deprived and under represented and not responding adequately to contemporary educational development and expansion. The literacy rate among Muslims is far less compared to other communities and religious groups. They depend entirely on the State for action to ameliorate their educational backwardness or deprivation. If their community takes initiative for empowering them through quality education, it attracts negative approach from the controlling authorities like the respondent Council. In this view of the matter, the respondent should not have maintained a sphinx silence on the request of the petitioner college

to grant permission for starting the course of mechanical engineering. The sphinx silence of the respondent Council on the request of the petitioner college for grant of permission to start the course in mechanical engineering is virtual negation of the constitutional protection enshrined in Article 30(1) of the Constitution.

For the foregoing reasons, we find and hold that the impugned action of the respondent council in not granting permission to the petitioner college for starting the course of mechanical engineering is violative of the educational rights of the minorities enshrined in Art. 30(1) of the constitution. We, therefore, strongly recommend to the respondent to take early appropriate action on the application of the petitioner college for grant of permission to start the course of mechanical engg. in accordance with law.

CASE NO. 779 OF 2010

Request for seeking directions of the State to grant to start minority institution to teach Urdu

Petitioner : Aqsa Magaswargiya Mahila Sikshan Wa Samajik Mandal Karanja(Lad), Distt. Washim, Maharashtra Through its President Sakina Sk. Mannan

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

By this petition, the petitioner school seeks a direction to the respondents to grant permission to the petitioner society to start a girls' Urdu Primary School at Gwalipura Karanja (Lad). Karanja is a tehsil of District Washim having Muslim population more than 50%. The nearest Urdu Primary school run by the Municipal Corporation of Karanja is more than 1.5 km away from Gwalipura. It is alleged that 90% of families are illiterate in the said area and the establishment of a new Urdu Primary School will benefit the under privileged segment of the society. The petitioner society wants to start Urdu Primary School on a permanent non-grant basis.

The petitioner society had submitted application in the prescribed format with all the requisite documents to the Education Officer, Zila Parishad, Washim for grant of permission to

start Urdu Primary School at Gwalipura. The proposal submitted by the petitioner society was not recommended by the District Level Committee for want of affidavit. Thereafter, the petitioner society submitted a notarized affidavit giving further details including the bank balance of the society of Rs. 1,10,500/-. However, the respondent did not give permission to the petitioner to establish the proposed Urdu Primary School. It is alleged that the impugned action of the State in not granting permission to the petitioner for establishment of the said school is violative of the educational right of the minorities enshrined in Article 30(1) of the Constitution.

The District Education Officer (Primary), Directorate of Education, Pune resisted the petition on the ground that the District Level Committee had not recommended the petitioner's proposal for want of affidavit and the necessary particulars regarding bank balance of the society. The State Level Committee agreed with the recommendation of the District Level Committee. It is also alleged that there is Urdu Medium Primary School run by the Municipal Corporation of Karanja which caters to the need of students of Gwalipura area. The Government of Maharashtra had invited proposals for establishment of new Primary Urdu Medium Schools for the year 2008-09. 28 Proposals were submitted by various educational societies and all the applications were submitted to the District Level Committee. On evaluation of the said proposals, the Committee had rejected proposals which were not within the norms and standards prescribed by the Government. It is also alleged that since the petitioner society did not submit the affidavit and did not show the bank balance of Rs. 1,00,000, the application for establishment of the proposed school was rejected. It is further alleged that there are already four Urdu medium schools in the vicinity of the proposed primary school and as such norms and criteria do not permit establishment of another school in the same area; and therefore, the petitioner's proposal was rejected.

In view of the rival contentions of the parties the question which arises for consideration is as to whether the impugned action of the respondents in not granting permission to the petitioner society for establishment of Urdu Primary School for girls at Gwalipura is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. The petitioner has submitted an affidavit stating that Gwalipura area is having a population of about 10,000 and there is no Urdu primary school in the said area. According to the petitioner the Municipal Corporation Urdu Primary School No. 1, Municipal Corporation Urdu Primary school No. 2 and Zila parishad Urdu Primary school are all in the same area which is in the middle of the city and about 1.5 kms away from the proposed school of the petitioner. Allama Iqbal Urdu Primary School is 2 kms. away from the said area. It is alleged that there is a need for a Urdu Primary School in the area and establishment of the petitioner school will not create unhealthy competition. It is also alleged that the petitioner society has all the infrastructure and instructional facilities for establishment of the proposed Urdu primary School.

Article 21A of the Constitution read with Section 8 of the Right of Children to Free and Compulsory Education Act 2009 (for short the Act) obligates the State Government to provide free and compulsory education to every child. The model rule of the Right of Children to Free and Compulsory Education Rules also postulates that in areas with high population density, the

State Government/ local Authority may consider establishment of more than one neighborhood school, having regard to the number of children in the age group of 6-14 years in such areas. In our opinion, the proposal submitted by the petitioner society for establishment of the proposed school merits acceptance as it is intended to impart elementary education to the girls belonging to the Muslim community.

Bearing in mind mandate of Article 21A of the Constitution and Section 8 of the Right of the Children to Free and Compulsory Education Act 2009, we recommend to the State Government to reconsider the proposal submitted by the petitioner society for grant of permission to the petitioner society for establishment of Urdu Primary School at Gwalipura to be run on permanent non-grant basis.

CASE NO. 767 OF 2010

Petition to seek direction to Jai Prakash, University. Chapra to consider cases of teachers of a college for promotion

Petitioner : Z. A. Islamia College, Ahmad Ghani Nagar, Siwan, Bihar

Respondents: 1. The Principal Secretary, D/o HRD, Government of Bihar, Patna, Bihar
2. The Director, Higher Education, D/o HRD, Govt. of Bihar, Patna.
3. The Registrar, Jai Prakash University, Chapra, Bihar
4. Vice Chancellor, Jai Prakash University, Chapra, Bihar

By this petition, the petitioner school seeks a direction to the concerned authorities under the Jai Prakash University, Chapra to consider the cases of teachers working in the petitioner college for promotion in terms of the provisions contained under the Time Bound Promotion Scheme and Merit Promotion Scheme.

The relief sought by the petitioner falls within the domain of service matters which is outside the cognizance of this Commission. Consequently, the petition is dismissed for want of jurisdiction.

CASE NO. 1604 OF 2006

Petition seeking direction to grant permission for, establishment of a new Urdu Medium High School

Petitioner: Mohammadiya Multipurpose Education and Welfare Society, At PO Vasant Nagar Azad Ward, Pusad, Distt. Yavatmal, Maharashtra

Respondents : 1 The Secretary, School Education Department, Government of Maharashtra, Mumbai

2. The Director of Education Secondary & Higher Secondary Education Department Government of Maharashtra, Central Building, Pune
3. Education Officer (Secondary), Zila Parishad, Yavatmal,Tq. & Distt. Yavatmal, Maharashtra
4. The Education Officer (Secondary) Zila Parishad Nanded, Nanded, Maharashtra

By this petition, the petitioner Mohammadiya Multipurpose Education & Welfare Society, Vasant Nagar, Azad Ward, Pusad Distt. Yavatmal, Maharashtra seeks a direction to the State Government to grant permission to the petitioner society for establishment of a new Urdu Medium High School at Himayat Nagar, District Nanded. The petitioner society is a registered society under the Society Registration Act 1860 and the Bombay Public Trust Registration Act 1950 and is running two schools namely Mohammadiya Urdu Medium Pre-Primary (Balwadi) School at Azad Ward Pusad, Dist. Yavatmal, Maharashtra and K.G.N. Urdu Medium Pre-Primary (Balwadi) School at Vasant Nagar, Pusad, Dist. Yavatmal (M.S.). Pursuant to an advertisement issued by the Education Officer (Secondary), Zila Parishad, Nanded in 1998, the petitioner society submitted an application alongwith the requisite documents and fee of Rs. 5000 for opening of a new Urdu Medium High School at Himayatnagar from the academic year 1999-2000. The said application did not evoke any response from the State Government. The State Government again invited proposal for the academic session 2000-01 and the petitioner society again submitted fresh proposal for the proposed Urdu Medium High School at Himayatnagar. Thereafter, the society again submitted its proposal on 30.1.2003 for the academic session 2003-04. Despite repeated reminders the State Government did not grant permission as sought by the petitioner. It is alleged that the impugned action of the State Government in not granting permission to establish the proposed Urdu Medium High School at Himayatnagar is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

The Education Officer (Secondary) Zila Parishad, Nanded resisted the petition on the ground that the proposal submitted in 1999-2000 and 2000-01 by the petitioner for establishment of the proposed school were not recommended by the District Level Committee for want of sufficient bank balance of the society.

In view of the rival contentions of the parties the point which arises for consideration is: whether the impugned action of the respondent in not granting permission to the petitioner society for establishment of the proposed school at Himayatnagar is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution? Mr. Sheikh Mahemood, Secretary of the petitioner society has filed his affidavit stating that the petitioner society has a bank balance of Rs.1,15,591.04; that there is only one Urdu Medium Zila Parishad Secondary School within the radius of 5 kms.; and that the establishment of the proposed Urdu Medium School at Himayatnagar is necessary to cater to the needs of the local population and that the

petitioner society has all the infrastructural facilities for the establishment of the proposed school. As stated earlier the petitioner's proposals were not recommended by the District Level Committee on the basis of insufficient bank balance of the society. the petitioner society has now submitted proof showing the bank balance of more that Rs. 1,00,000 which is sufficient for establishment of the proposed school.

Article 21A of the Constitution read with Section 8 of the Right of Children to Free and Compulsory Education Act 2009 (for short the Act) makes the State Government obliged to provide free and compulsory education to every child. The model role of the Right of Children to Free and Compulsory Education Rules also postulates that in areas with high population density, the State Government/ local Authority may consider establishment of more than one neighborhood school, having regard to the number of children in the age group of 6-14 years in such areas. In our opinion, the proposal submitted by the petitioner society for establishment of the proposed school merits acceptance as it is intended to impart elementary education to the girls belonging to the Muslim community.

Bearing in mind mandate of Article 21A of the Constitution and Section 8 of the Right of the Children to Free and Compulsory Education Act 2009, we recommend to the State Government to reconsider the proposal submitted by the petitioner society for grant of permission to the petitioner society for the establishment of an Urdu Medium High School at Himayatnagar, Distt. Nanded, Maharashtra to be run on permanent non-grant basis.

CASE NO. 432 OF 2008

Petition seeking directions to State to construct a hostel for minorities in the minority institutions

Petitioner: Z. A. Islamia College Ahmad Ghani Nagar, Siwan, Bihar

Respondents: 1. The Secretary, Minority Welfare Department, Government of Bihar, Patna
2. The Secretary, D/o HRD, Govt. of Bihar, Secretariat, Patna, Bihar.
3. The District Magistrate, District Siwan, Bihar

By this petition, the Secretary, Z.A. Islamiya, Siwan, seeks a direction to the concerned authorities of the Government of Bihar to construct a hostel for minorities within the campus of the petitioner institution. It is alleged that by the letter dated 21.4.99, issued by the Minorities Welfare Department, Government of Bihar, directions were given to various authorities to construct hostel for the minorities in recognized minorities educational institutions. In response to the said letter, the petitioner college applied to the District Magistrate, Siwan for constructions of a hostel in its campus. Thereafter, the District Authorities wrote to the petitioner to provide a suitable land for the construction of the proposed hostel. On 13.2.2002, the petitioner executed the deed of donation in favour of the Government of Bihar in respect of the land for constructing the proposed hostel.

The State Government agreed to take the responsibility for maintenance of the proposed hostel. Despite repeated reminders no action was taken by the District Magistrate, Siwan for construction of the said hostel. The Government of Bihar also directed the District Magistrate, Siwan, to consider the petitioner's request for construction of the proposed hostel vide letter dated 21.8.2008.

By the letter dated 20.10.2008, the District Magistrate, Siwan imposed a condition for construction of the hostel to the effect that the maintenance, security etc. of the hostel will be done as per the rules laid down by the UGC. It is alleged that the UGC have no role to play in the matter for construction of the proposed hostel and the District Magistrate, Siwan has only been causing impediments in the construction of the proposed hostel. According to the petitioner, the impugned action of the District Magistrate, Siwan, is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

The District Magistrate, Siwan resisted the petition on the ground that the petitioner college has to follow the regulations of the UGC since it gets grants under the UGC. It is alleged that the land required for constructing the hostel has to be in the name of the petitioner college. Since the land in question is not in the name of college it will not be possible to construct the hostel on the proposed land. It is also alleged that the land has to be mortgaged in the name of the Governor and after construction of the hostel it will be handed over to the petitioner college for administration and maintenance. It is further alleged that since the land is Waqf property it will not be possible for District Magistrate to agree for the construction of the proposed hostel.

In the rejoinder, the petitioner has alleged that the State Government has already approved the proposal for construction of hostel within the campus of minority educational institutions. The District Magistrate, Siwan has to obey the directions given by the Government. It is also alleged that the UGC has no role to play in the matter.

It is beyond the pale of controversy, that the Government of Bihar had taken a policy decision to construct hostel for minorities within the campus of the minorities educational institutions and the State Government in the Minority Welfare Department, has directed the District Magistrate, Siwan to construct a hostel in the petitioner college which admittedly is a minority educational institution covered under Article 30(1) of the Constitution. The District Magistrate has resisted the petition on two grounds, firstly, the petitioner has to follow the guidelines/regulations of UGC since it gets grants under the UGC and secondly, since the land is Waqf property, it will not be possible for him to permit construction of the proposed hostel within the campus of the petitioner college. It has been submitted on behalf of the petitioner college that UGC has no role to play in the instant case of construction of a hostel within the campus of the petitioner college. In our opinion the aforesaid submission merits acceptance. Since the State Government has already taken a decision to construct hostel for minorities in minority educational institutions, the UGC has no role to play in the said policy decision of the State Government. With regard to the second objection taken

by the District Magistrate, Siwan, it has to be borne in mind that the State Government in the Minority Welfare Department has already directed the District Magistrate, Siwan to consider the request of the petitioner college for construction of the proposed hostel and he is bound to obey the said direction of the State Government. Having gone through the facts and circumstances of the case, we are of the opinion that the District Magistrate, Siwan is only causing impediments in the construction of the proposed hostel within the campus of the petitioner college. Since the District Magistrate has been flouting the directions of the State Government in the Minority Welfare Department it would be appropriate to request the Chief Minister of Bihar to intervene in the matter.

For the foregoing reasons, we recommend to the Chief Minister of the State Government of Bihar to intervene in the matter and direct the District Magistrate, Siwan to implement the decision of the State Government by constructing the proposed hostel within the campus of the petitioner college.

APPEAL NO. 1 OF 2011

An appeal against decision of State not to grant NOC to start a course by a minority institution

Petitioner: Maulana Azad Institute of Humanities, Science and Technology Railway Station road, Mahmudabad (Awadh), Sitapur (U.P.) .

Respondents: 1. The State of Uttar Pradesh, Through its Principal Secretary D/ o H.E., Govt. of U.P., Lucknow
2. The Commissioner, Lucknow Division, Lucknow
3. The Regional Higher Education Officer, Uttar Pradesh, Lucknow
4. District Inspector of Schools, Sitapur, Uttar Pradesh

The appellant college is a minority educational institution covered under Article 30(1) of the Constitution of India. On 1.8.2003, the State Government had granted NOC to the appellant for starting B.Ed. course in consequence of which it got affiliation from Chhatrapati Sahu Ji Maharaj University, Kanpur. Thereafter, the appellant also got affiliation from the said university for BA and BSc. Courses on the basis of the NOC granted by the State Government. On 21.2.2009, the appellant applied to the State Government for grant of NOC for seeking affiliation from the said university for the courses in MA (Sociology), MSC (Chemistry) and B.com to cater to the educational need of the Muslim community.

The Government of Uttar Pradesh issued a letter dated 12th May 2009 to the Registrar Chhatrapati Shahuji Maharaj University, Kanpur informing that NOC cannot be granted to the applicant due to non-fulfillment of certain conditions. The appellant in compliance of this letter submitted point-wise reply on 4.6.2009 annexing requisite papers and requested

for grant of NOC. The District Inspector of Schools, Sitapur vide letter dated 23rd July 2009 raised the following objections:-

1. Service particulars of 3 years of approved teachers not enclosed.
2. Society's bank balance details are not enclosed.

The appellant institution vide the reply dated 31.7.2009 rectified the deficiencies pointed out by enclosing details of the teachers and also the bank balance statement.

Thereafter the District Inspector of Schools, Sitapur, vide letter dated 12.8.2009 raised the following three objections: -

1. In the land deed details furnished there is a railway line passing through the property.
2. Balance Sheet for the year 2009 is not enclosed.
3. Approval of the teachers of the B. Ed. Course is not enclosed.

The appellant sent a reply on 16.8.2009 giving full details of the objection raised. Thereafter, the District Inspector of Schools vide letter dated 27.10.2009 conveyed the objections raised by the Committee in the meeting held on 22.10.2009 pointing out deficiencies. The appellant replied to this letter also giving full details about the rectification. Another letter dated 23.12.2009 was received from the District Inspector of Schools, Sitapur raising objections which was replied by the appellant on 11.1.2010. It is alleged that in about 8 months time several objections were raised in piecemeal manner for harassing the appellant. The appellant approached the Commission with a request to give a direction to the competent authority for grant of NOC to the appellant institution for starting the additional course of Education and Home Science in already existing B.A. Faculty and new courses in M.A. (Sociology), M. Sc. (Chemistry) and B.Com.

In the reply, Commissioner, Lucknow Mandal has admitted that the appellant Institute of Humanities, Science and Technology, Mahmudabad, Sitapur, Uttar Pradesh is a minority educational institution. The power to give NOC for institutions affiliated to universities is vested in a Committee headed by the Commissioner of the Mandal and the District Education Officer is also a Member. The Committee considered the request of the appellant and raised the objections in their meeting held on 23.7.2009 about the qualifications of eligibility of teachers of the college and the bank balance of the society, which were rectified by the appellant. Again the respondent pointed out three deficiencies vide letter dated 12.8.2009 which were also rectified. Thereafter, the Committee sought details regarding the land leased out to the appellant. It is alleged that only 1/3rd of the land bearing Gaata No. 705 and 709 is with the appellant for 30 years lease. Moreover, out of Gaata Nos. 790, 800 and 815 only Gaata No. 815

is in the name of the appellant. Therefore the appellant has to comply with the provisions of Sections 176 and 182 of the U.P. Zamindari Abolition and Land Reforms Act, 1950.

By the order dated 7.12.2010, the Commission directed the Committee to dispose of the appellant's application for grant of NOC. Pursuant the said direction, the committee passed the impugned order dated 10.1.2011 declining to grant NOC on the ground of non-compliance with the provisions of Sections 176 and 182 of the U.P. Zamindari Abolition and Land Reforms Act 1950. Consequently, on appellant's request, the petition was converted into an appeal under Section 12-A of the Act. Section 12-A of the Act reads as under :

“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, 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 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.

The question which arises for consideration is : whether the impugned order dated 10.1.2011 is violative of the fundamental right of the minorities enshrined in Article 30(1) of the Constitution?

Issue No. 1: At the outset we 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 11th 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 disputes 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.

In the case of *St. Xavier’s College vs. State of Gujarat* (AIR 1974 SC 1395), it has been held that “the establishment of a minority institution is not only ineffective but also unreal unless such institution is affiliated to university for the purpose of conferment of degrees on students.”

In *Managing Board of the Milli Talimi Mission Bihar and Ors. Vs. State of Bihar* 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 declines to grant recognition or a university refuses to grant affiliation to a minority educational institution without just and sufficient grounds, the direct consequence would be to destroy the very existence of the institution itself. Thus, refusal to grant recognition or affiliation by the statutory authorities without just and sufficient grounds amounts to violation of the right guaranteed under Article 30(1) of the Constitution. The State or any statutory authority cannot under the cover or garb of adopting regulatory measures destroy the fundamental right guaranteed to the minorities under Article 30(1).

In his counter affidavit the appellant has stated that in the first letter dated 12.5.2009 issued by the Government of Uttar Pradesh the objection was raised about the land included Gaata No. 705, 709, 806, 808, 809, 799 and 800 which was under lease to the institution for 30 years and the Government wanted the land to be in the name of the Society. The appellant complied with all the deficiencies pointed out in the letter dated 12.5.2009 and thereafter in subsequent letters, no objection was raised in respect of the land. Other deficiencies relating to qualification of eligibility of teachers, bank balance of the society, balance sheet, etc. were rectified by the appellant. It is alleged that Plot No. 709 and 705 are recorded in the name of the College and there is no need for partition of the land since it is under joint holding. Section 176 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 is not applicable as it relates for fixation of the liability for recovering the revenue from the agricultural land.

It is beyond the pale of controversy that NOC of the State Government is a condition precedent for grant of affiliation to a college by any university of the State. Since management of the appellant college wanted to apply to the university for grant of affiliation for the courses in MA (Sociology), MSC (Chemistry) and B.com, it applied to the State Government for grant of NOC for the said purpose. At this juncture, it is relevant to mention that as per Section 10-A of the Act, management of the appellant college has a right to seek affiliation from the university of its choice. The right to get an affiliation from a university is a vital facet of the right to establish and administer an educational institution within the meaning of Article 30(1) of the Constitution and obtaining an NOC from the State Government is an essential ingredient of the right to seek affiliation from the university concerned. That being so, the appellant's case is fully covered by the provisions of Section 10 read with Section 12A of the Act.

As stated earlier, on 21.2.2009 the appellant college applied to the State Government for grant of NOC for affiliation for the courses in MA (Sociology), MSC (Chemistry) and B.com. By the letter dated 23.7.2009, the appellant college was directed to rectify the deficiencies mentioned therein which were rectified by the appellant vide letter dated 31.7.2009. By the letter dated 12.8.2009, the appellant college was again directed to rectify the deficiencies mentioned therein, which were rectified vide letter dated 16.8.2009. Thereafter, a new set of deficiencies were pointed out vide letter dated 23.12.2009, which were also rectified vide letter dated 2.1.2010. On rectification of the deficiencies, again fresh set of deficiencies were pointed out vide letter dated 27.10.2009, which were rectified earlier. It appears that after

exhausting all imaginable deficiencies, the competent authority of the State Government maintained sphinx silence on the appellant's request for grant of NOC.

It needs to be highlighted that at the time of granting NOC for affiliation of courses in BA, BSc. And B.Ed., the competent authority did not raise any objection regarding non-compliance of the provisions of Sections 176 and 182 of the U.P. Zamindari Abolition and Land Reforms Act, 1950. Moreover, the aforesaid provisions do not have any bearing on merits of the case. Section 176 of the U.P. Zamindari Abolition and Land Reforms Act provides that a bhumindar may sue for division of his holding. Section 182 ibid lays down procedure in sale. It is an admitted position that the land in question had been leased out to the appellant college by its co-sharers. The lease is for thirty years and on the basis of the said lease NOC was granted to the appellant college for grant of affiliation of courses in BA, BSc. And B.Ed. Since the said lease was already approved and acted upon by the competent authority while granting NOC for the said courses, the competent authority is now estopped from raising the aforesaid objection under Section 115 of the Evidence Act, which embodies the doctrine of estoppel. That apart, the competent authority cannot force co-sharers of the land in question to institute a suit of partition for obtaining NOC as sought by the appellant college. In our opinion, the said condition imposed by the competent authority virtually negates the fundamental right enshrined in Article 30(1) of the Constitution. It appears that the State Government has not formulated any guidelines for grant of NOC in question. Dr. R. K. Gupta, who appeared for the respondent also pleaded ignorance about the said guidelines. In the absence of guidelines, the competent authority cannot act like Moghals. That being so, the objection raised by the respondent regarding non-compliance of the provisions of Sections 176 and 182 ibid by the appellant college cannot be sustained in law.

Thus the aforesaid questionable conduct of the authorities of the State Government in raising deficiencies after deficiencies clearly go to show that for some extraneous considerations they wanted to harass the management of the appellant college by depriving them of their constitutional right guaranteed under Article 30(1) of the Constitution. The competent authority declined to grant NOC as sought by the appellant on a ground which is unsustainable in law.

For the foregoing reasons the appeal is allowed and the impugned order dated 10.01.2011 is hereby set aside. NOC is granted to the appellant for seeking affiliation from the Chhatrapati Sahu Ji Maharaj University for the courses in M.A. (Sociology) , MSc. (Chemistry) and B.com . NOC be issued accordingly.

Case No. 1443 of 2006

Petitions for Grant of Minority Status by Jamia Millia Islamia

Petitioner: Jamia Teachers Association Through its Secretary, Jamia Millia Islamia, Maulana Mohamad Ali Jauhar Marg, Jamia Nagar, New Delhi – 110 025.

- Respondents:**
1. The Vice Chancellor Jamia Millia Islamia, Jamia Nagar, N.D. – 25
 2. The Secretary M/o HRD, D/o H.E., Govt. of India Shastri Bhavan, New Delhi
 3. The Secretary Ministry of Minority Affairs, Govt. of India Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi – 110 003
 4. Confederation of Muslim Educational Institutions of India, Through its Secretary, Mr. Kamal Faruqui, A-80, Nizamuddin East, New Delhi

..... Intervener

CASE NO. 891 OF 2006

- Petitioners :**
1. Jamia Students Union, Jamia Millia Islamia, Jamia Nagar, N.D– 25
 2. Mr. Shams Perwaiz S/o Janab Nisar Ahmed, 8-A, Sir Abdul Majid Khwaja Hostel, Jamia Millia Islamia, Jamia Nagar, N.D. – 25

- Respondents :**
1. The Vice Chancellor, Jamia Millia Islamia, Jamia Nagar, N.D. – 25
 2. The Registrar, Jamia Millia Islamia, Jamia Nagar, N.D. – 25
 3. Ministry of Human Resource and Development, Through its Secretary, Department of Education, Government of India, Shastri Bhawan, New Delhi
 4. Ministry of Minority Affairs, Through its Secretary, Govt. of India, New Delhi

CASE NO. 1824 OF 2006

- Petitioners :**
1. Jamia Old Boys Association, Through its President, Jamial Old boys Lodge, Jamia Millia Islamia, Jamia Nagar, N.D. – 25
 2. Mr. Javed Alam S/O Janab Mohammad Umar, R/o K-84, Street No. 8, Gautam Vihar, Delhi – 110 053

- Respondents :**
1. Prof. Mushirul Hassan S/o Shri Muhibbul Hassan (Vice Chancellor) Jamia Millia Islamia, Jamia Nagar, N.D. – 25
 2. Mr. S. M. Afzal S/o Shri S.H. Quadri (Registrar) Jamia Millia Islamia, Jamia Nagar, N.D. – 25

CASE NO. 1825 OF 2006

- Petitioners :**
1. Jamia Old Boys Association, Through its President Jamial Old boys Lodge, Jamia Millia Islamia, Jamia Nagar, New Delhi – 110 025

2. Mr. Javed Alam S/O Janab Mohammad Umar R/o K-84, Street No. 8, Gautam Vihar, Delhi – 110 053

- Respondents :**
1. The Vice Chancellor, Jamia Millia Islamia, Jamia Nagar, N.D. – 25
 2. The Registrar, Jamia Millia Islamia, , Jamia Nagar, N.D. – 25
 3. Ministry of Human Resource and Development, Through its Secretary, D/o Education Govt. of India, New Delhi
 4. Ministry of Minority Affairs, Through its Secretary, Government of India, New Delhi

The Jamia Teachers Association has filed the petition (Case No. 1443/2006) for declaration that the Jamia Millia Islamia (for short the Jamia) is a minority education institution covered under Article 30(1) of the Constitution of India. The Jamia Students Union and the Jamia Old Boys Association have also filed separate petitions for the said relief and these petitions have been registered as Case No. 891 of 2006, 1824 of 2006 and 1825 of 2006, respectively. By the petition (Case No. 891/2006), the Jamia Students Union seeks directions to the respondent university to admit at least 50% students from the Muslim Community; to provide religious and secular education to Muslims and to take appropriate action against the Vice Chancellor and Registrar of the University for non-implementation of mandate of the Jamia Millia Islamia Society. By the petition No. 1824/2006, the Jamia Old Boys Association seeks initiation of the disciplinary proceedings against the former Registrar and Vice-Chancellor of the respondent University for violation of the educational rights of the minorities enshrined in Article 30(1) of the Constitution of India. The Confederation of Muslim Educational Institutions of India has intervened in the case in support of the petitioners' claim regarding the minority status of the Jamia. However, we are confining ourselves to the main relief sought by the petitioners relating to the minority status of the Jamia. Since a common question of law and fact is involved in all these cases, they were taken up for hearing together and are being disposed of by this common order.

Shorn of verbiage, the petitioner's case is that in October 1920, the Jamia was founded by the national leaders, namely Maulana Mohemmad Ali Jauhar and Hakim Ajmal Khan as they wanted the Muslims to keep their education in their own hands entirely free from governmental interference. In 1925, the Jamia, being hard hit by financial crisis, moved to Delhi. However, it survived with the active support of leaders like Hakim Ajmal Khan, Dr. M.A. Ansari. Khwaja Abdul Majeed, Dr. Zakir Husain, Abid Hussain and Prof. Mohd. Mujeeb. In 1939, some Muslim teachers of the Jamia constituted a society and got it registered under the Societies Registration Act, 1860 as the Jamia Millia Islamia Society. In 1962, the UGC accorded Jamia the status of a deemed university under Section 3 of the University Grants Commission Act. On persuasion of the Muslim Community, the Jamia was given the status of a Central University under the Jamia Millia Islamia Act, 1988 (hereinafter to be referred as the Act). It is

alleged that in 1920 the Jamia was founded by the Muslim Community for empowerment of Muslims through education and since then it is being administered by the Muslim community. On these premise it is alleged that the Jamia is a minority educational institution covered under Article 30(1) of the Constitution.

Mr. S. M. Afzal, the then Registrar of the Jamia filed his affidavit on 13.10.2006 in opposition of the petition. He resisted the petition on the ground that the Jamia is not a minority educational institution. Strong reliance was placed on Sections 5 and 7 of the Act, in support of the said contention. On the contrary, the present Registrar of the Jamia, Prof. S.M. Sajid has filed his affidavit stating that in 1920, the Jamia was founded by the National Leaders like Maulana Mohd. Ali Jauhar and Hakim Ajmal Khan for the benefit of the Muslim community. He has filed certain documents including some books containing early history of the Jamia. In short, now the stand taken by the Jamia fully supports the case of the petitioners relating to its minority status.

The Ministry of Human Resource Development, Government of India has sought stay of the proceedings on the ground that in Azeez Basha vs. Union of India AIR 1968 SC 662, the Supreme Court has held that the Aligarh Muslim University is not a minority institution as it was incorporated under the Act of the Central Legislature and now the said issue has been reagitated by the Aligarh Muslim University by filing a special leave petition before the Supreme Court. According to the said Ministry, the decision of the Supreme Court will have a bearing on merits of the case in hand.

It needs to be highlighted that Shri Firoz Bakht had intervened in the proceedings by filing an application in opposition to the petitions filed by the petitioners. On 19.7.2010, he withdrew his application, which was dismissed as withdrawn vide orders dated 21.9.2010. Consequently, the issue No. .(i) framed relating to jurisdiction of this Commission was deleted. In the meantime, the Confederation of Muslim Educational Institution of India also filed an application for intervention in the proceedings.

The following issue was framed:-

Whether the Jamia Millia Islamia University is a minority educational institution covered under Article 30(1) 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 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 of Minority Educational Institutions 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 said '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 disputes relating to grant of affiliation to the colleges covered under Article 30(1) of the Constitution, to determine the minority status of educational institutions and to grant NOC etc. and rights conferred upon the minorities under the Act without being bogged down by the technicalities of the Code of Civil Procedure.

Section 11(f) of the National Commission of Minority Educational Institutions Act confers jurisdiction on the Commission to decide all questions relating to the status of any institution as a minority educational institution and declare its status as such.

Bearing in mind, the mandate of Article 30(1) of the Constitution as interpreted by various authoritative pronouncements of the Supreme Court and Section 2(g) of the National Commission for Minority Educational Institutions Act, following facts are required to be proved for grant of minority status certificate to a minority educational institution on religious basis:

- (i) that the educational institution was established by a member/members of the religious minority community;
- (ii) that the educational institution was established for the benefit of the minority community ; and
- (iii) that the educational institution is being administered by the minority community.

It has been held by the Supreme Court in Azeez Basha's case (supra) that the words 'educational institutions' are of very wide import and would include a university also. Article 30(1) of the Constitution gives linguistic and religious minorities a fundamental right to establish and administer educational institutions of their choice. These rights are protected by a prohibition against their violation. The prohibition is contained in Article 13 of the Constitution which declares that any law in breach of the fundamental rights would be void to the extent of such violation. Article 30 is a special right conferred on the religious and linguistic minorities because of their numerical handicap and to instill in them a sense of security and confidence, even though the minorities cannot be per se regarded as weaker sections or under privileged segments of the society. A stream of Supreme Court decisions commencing with the Kerala Education Bill Case AIR 1958 SC 956 and climaxed by T.M.A. Pai Foundation vs. State of Kerala (2002) 8 SCC 481 has settled the law for the present. The whole edifice of case law on Article 30(1) has been bedrocked on Kerala Education Bill case. The constitutional

estate of the minorities should not be encroached upon, neither allowed to be neglected nor maladministered. This quintessence of the decision may now be aptly borne out by pertinent excerpts from various decisions rendered by the Supreme Court.

In Azeez Basha's case (supra), the Supreme Court has held that the expression "establish and administer" employed in Article 30(1) was to be read conjunctively that is to say, two requirements have to be fulfilled under Article 30(1) namely, that institution was established by the community and its administration was vested in the community. In S.P. Mittal vs. Union of India AIR 1983 SC 1, the Supreme Court has held that in order to claim the benefit of Article 30(1), the community must show; (a) that it is a religious/linguistic minority; (b) that the institution was established by it. Without specifying these two conditions, it cannot claim the guaranteed right to administer it.

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. 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 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. In the instant case, some responsible persons and teachers of the Jamia had persuaded the Central Government to confer on the Jamia the status of a Central University under an Act of Parliament. But that does not mean that the Muslim community had either waived or bartered away the fundamental right guaranteed under Article 30 of the Constitution.

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.

The word 'establish' indicates the right to bring into existence, while the right to administer an institution means the right to effectively manage and conduct the affairs of the institution. The management must be free of control so that the founders or their nominees can mould the institution as they think fit and in accordance with their ideas of how the interest of the community in general and the institution in particular will be best served. It has been held in the case of Ahmedabad St. Xavier's case (supra) that it is difficult to subscribe to the view that the educational institutions mentioned in Article 30(1) are only those which are intended to conserve language, script or culture of the minorities. The words "of their choice" which qualify 'educational institutions' show the vast discretion and option which the minorities have in selecting the type of institutions which they want to establish. The minorities can, however, choose to establish an educational institution which is purely of general secular character and is not designed to conserve their distinct language, script and culture. The fact that the Jamia was established as a National Muslim University with the object of imparting secular education would not take it out of the ambit of Article 30(1), which is an Article of faith.

In Azeez Basha's case (supra) the challenge was mainly directed to certain amendments made in the Aligarh Muslim University Act, 1920 by the Amendment Act of 1951 and also of 1965. It was contended before the Supreme Court that by the amendments incorporated in 1965, the management was deprived of the right to administer Aligarh Muslim University and that this deprivation was in violation of Article 30(1) of the Constitution. Having regard to the contention raised, their Lordships made a detailed study of the history of the Aligarh Muslim University in the light of the provisions of the University Act, 1920. The Supreme Court observed that although the nucleus of the Aligarh Muslim University was the Mohammadan Anglo-Oriental College which was till 1920 a teaching institution, the conversion of that college into the university was not by the Muslim minority but it took place by the virtue of the Act, 1920 which was passed by the central legislature. As there was no Aligarh Muslim University existing till the Act of 1920 and since it was brought in being by the Act of Legislature, the Supreme Court refused to hold that it was established by the Muslim community. It was also held that there is no proof to justify the claim that the Aligarh Muslim University owed its establishment to the Muslim minority and they therefore, have no right to administer the University by virtue of the fundamental right guaranteed under Article 30(1) of the Constitution.

With these prefatory remarks we proceed to examine the claim of the petitioners relating to the minority status of the Jamia. It is necessary to refer to the history of Jamia previous to its incorporation under the Act in order to understand the contentions raised by the petitioners. The petitioner has filed evidence by way of affidavits of Prof. Tabrez Alam Khan, Mr. Javed Alam, Mr. Shams Pervez and Mr. Obaid-ul-Haque to prove that the Jamia was established and administered by the Muslim Community and it was not established by the Act. Prof. S.M. Sajid, Registrar of the respondent University, has filed his affidavit to prove that the Jamia was established by Nationalist Leaders like Maulana Mohd. Ali Jauhar and Hakim Ajmal Khan for the benefit of the Muslim Community. Strong reliance has been placed on certain books annexed with the affidavits and the Memorandum of Association of the Jamia Millia Islamia Society registered under the Societies Registration Act in 1939.

It appears that when Maulana Mohd. Ali Jauhar visited the Darul-Ulum Deoband in connection with the Khilafat Movement, he was shown Maulana Qasim's original writings about the objectives of establishment of the Darul Ulum, tears came out of Maulana Mohd. Ali Jauhar's eyes and impromptu he exclaimed: 'what is the relation of these principles with reasons? These are purely inspirational'. Then he said "this is strange that the conclusion we have arrived today, after wandering a hundred years aimlessly (that we should never keep our collective institutions dependent upon any help of the English Government, but with self reliance stand up keeping them in our own hands, these elders had surprisingly already reached it a hundred years ago)." (quoted from the History of the Darul Ulum Deoand, Vol I compiled by Sayyid Mahboob Rizvi translated into English by Prof., Murtaz Hussain F Quaraishi, 1980 Edn, page 33).

It was felt by Ali brothers (Maulana Shaukat Ali and Maulana Mohd. Ali Jauhar), Dr. M.A. Ansari and Hakim Azmal Khan that Islamic teaching had been neglected in MAO College, Aligarh as it became a Centre of English fashion and culture. Allama Shibli Numain also withdrew himself from the MAO College because of the same reason and in 1894 founded Nadvat-ul-Ulema at Lucknow (U.P.) for Islamic teachings. Since the MAO College was considered a pro-British institution, they aimed it turning into a national university. Accompanied by Dr. M.A. Ansari, Hakim Azmal Khan and Gandhiji, Ali brothers visited the MAO College and addressed the students to submit to the national aspiration, and join hands with them, in having run the college on independent lines in the best interests of the community and the country. On 28 October, 1920, trustees of the MAO College convened a meeting to study the situation created by Ali Brothers. They expressed their emphatic disapproval of the action of Ali Brothers addressing the students, asking them to pass a resolution in support of non-cooperation movement. The trustees sought the help of the police to get Ali brothers and their comrades evicted from the Old Boys Lodge on the ground that it was being used for sedition purposes. However, on their eviction from the lodge, they hired a few tents and pitched them at some distance of the college campus and carried out their mission.

However, on 29th October 1920, the inauguration ceremony of the National University was announced after Friday prayer in the college mosque. The object of establishment of the

National University was explained in the following presidential address delivered by the Sheikul Hindu Maulana Mahmud -ul-Hasan:

“..... to keep Muslim education in Muslim hands entirely free from external control, so that we may be perfectly immune from pernicious alien influences in our ideas and beliefs, our moral and action, our character and conduct, and also to enable the students to imbibe all that was best in western culture and science as well as to make the institution an efficient substitute for the ancient Muslim Universities of Baghdad and Cordova.”

The presidential address was followed by a speech from Maulana Mohd Ali Jauhar, who reiterated his intention of the Nationalist Muslims to convert the MAO College , Aligarh into a National institution. The MAO College, Aligarh marked the first turning point for Muslims in India, Jamia the second.

At the initial stage, Maulana Mohd. Ali Jauhar occupied few rooms of the college and started enrolling students for the Jamia. Anticipating police intervention in the said venture, Maulana Mohd. Ali Jauhar shifted location of the Jamia to an adjacent place on October 31, 1920. Maulana Mohd. Ali Jauhar became the first Principal, Tasadduq Ahmad Khan Sherwani the first Registrar, Sheikh-ul-Hind Maulana Mahmud-ul-Hasan the guiding patron and Hakim Azmal Khan, the Amir. The objects of the Jamia were spelt out by Maulana Mohd. Ali Jauhar in the following words:

“To our mind the greatest need of Muslims is that they should be Muslims in the truest sense of the word, and for the purpose it is essential that we should not tolerate the lacerating distinction between temporal and spiritual things, nor encourage any differentiation of species among the Muslims such as the clergy and the laity. The evils from which Muslim society in the country was suffering had to be clearly understood, and remedies had to be devised thereof, and incorporated in scheme of studies. The goal that was always kept in view was to turn out from these institutions not only young men of culture according to modern standards, but true Muslims imbued with the spirit of Islam, and possessing enough knowledge of their religion to be able to stand by themselves as sufficiently independent units in the army of Islam’s missionaries.”

Maulana Mohd. Ali Jauhar stressed the teaching of Islamic history and Quran in the Jamia, and the training of students for service to the nation. In his various articles published in Hamdard, he explained following basis objectives for establishment of the Jamia:

“Jamia Millia Islamia is first a Jamia i.e. a university. And then it is a Millia, a group of followers of a faith. In other words, it is a teaching institution where both religious and other, i.e., worldly, education is imparted. It does not

restrict itself to teaching only religious matters, as is the case with Deoband and Madarsa Nizamia. It also does not limit its education to that of the current English language schools. And then this Jamia is Jamia-i-Islamia, so that it teaches Islam. It must be noted, however, that its doors are open to followers of all religions. The curriculum of the Jamia includes the learning of the Arabic language, so that the students can understand both the Quran and Hadith (the sayings of the Prophet) as much as the unlettered man in the times of the Prophet could. Although one should refer to scholarly commentaries of the Quran, one should not be entirely dependent on them nor on others for following the basic tenets of Islam....

Jamia's objective is that Muslims should neither follow blindly the previous 'fixed' path, nor should they believe that the essence of religion lies in a few problems of jurisprudence.... the Jamia has instilled hatred in the heart of every student – be he a Muslim or a Hindu – against subjugation by foreign powers. It has kept its air free of transgression and prejudice. For these reasons, the Jamia is both Jamia Islamia and a national university." (quoted from Partners in Freedom Jamia Millia Islamia by Mushir ul Hasan at page 66)

In 1921, Hakim Ajmal Khan delivered the first convocation address of the Jamia. He stressed on the need of interfaith understanding through education as that would strengthen the united Indian nationalism. According to him, one of the main objectives of the Jamia was to inject in the students a deep love for mother land. Elaborating the Jamia's role in education, Dr. Zakir Hussain observed in Hamdard-i-Jamia in August 1937:

"The biggest objectives of Jamia Millia is to prepare a roadmap for the future lives of Indian Muslims with the religion of Islam at its core, and to fill the map with the colour of the civilization of India in such a way that it merges with the colours of the life of common man. The basis of this objective is the belief that a true education of their religion will imbibe in Indian Muslims a love for their country and a passion for national integration, and prepare them to take active part in seeking independence and progress for India. An independent India join hands with other countries in seeking peace and international cooperation....

To use the roadmap for the future of Indian Muslims, especially for creating a curriculum for their children. Learning for earning a living is the current trend, and learning for the sake of learning was the guiding principle in the past. The Jamia regards both these precepts as narrow and restraining. It wants to give knowledge for the sake of life, the wide circle which includes religion, wisdom, industry, politics, economics and other fields. It wants to enable its students to appreciate national civilization and values of everyday life, and work according to their disposition in a selected field so that their work

improves collective lives at least to a certain extent. It is an accepted fact that the most important question facing Indians is that of earning a living. Jamia Millia recognizes this need and wants to develop in its students a capacity to earn a living by any fair means, but its main principle is that man should regard earning a living as subservient to life itself. Similarly, recompense should be secondary to service. A man's guiding principle should be to become a useful member of society and civilization. In other words, he should find a niche for himself where his knowledge and wisdom are put to the best use in service of the society, as well as in earning a living so that his needs and those of his family are satisfied."

(quoted from Partners in Freedom Jamia Millia Islamia by Mushir ul Hasan at page 92)

Thus, the Jamia was established in Aligarh in 1920 in the wake of Khilafat and non-cooperation movement with the main object of exploring the methods by which education could be made truly national. National Leaders like Maulana Mohd. Ali Jauhar, Hakim Ajmal Khan, Dr. Mukhtar Ansari, Maulana Abul Kalam Azad, Maulana Mahmud-ul-Hasan, Dr. Zakir Hussain were among its founders. Dr. Zakir Hussain, Dr Sayed abid Hussain, Shafiq-ur-Rehman Kidwai and Prof. Mohd. Nujeeb, threw themselves with heart and soul in Jamia's work. Hakim Ajmal Khan and Dr. M.A. Ansari took the responsibility of providing funds to the Jamia. During the hard days of Jamia, Seth Jamal Mohd. of Madras donated a big amount and resuscitated the Jamia.

The financial crunch hit the Jama hard in 1928. Dr. Zakir Hussain suggested to the then Chancellor Dr. M.A. Ansari that either the trustees should take the responsibility of collecting funds or if they are unable to raise the fund, they should close down the Jamia. He further suggested that the trustees should hand over the Jamia to a group of teachers who are devoted and committed to the cause of the Jamia. At that time, the trustees were not doing anything substantial for overcoming the financial crunch. Dr. Zakir Husain felt the need of a total change in the old constitution of the Jamia and the establishment of a new Association for restructuring and reorganizing the Jamia. However, at the crucial moment, Muslim teachers of the Jamia came forward and in 1928 under the leadership of Dr, Zakir Hussain resolved to form the Anjuman-e-Talimi Milli (later to be known as Anjuman-e-Jamia Millia Islamia), whose members signed a pledge to serve the Jamia for at least 20 years on a salary of not more than Rs. 150/- per month. Dr. Zakir Hussain had gradually reduced his salary from Rs. 150/- to only Rs.40/- per month.

The aims and objects of the Anjuman-e-Talim-e-Milli founded in 1928, incorporated later in the Memorandum of Association of the Anjuman-e-Jamia Millia Islamia were more or less as under:-

1. "To promote and provide for the religious and secular education of Indians, particularly, Muslims, in conformity with sound principles of education and

in consonance with the needs of national life as well as the life of the Muslim Community in India, and to that end to establish and maintain suitable educational institutions;

2. To hold examinations and award degrees, diplomas and certificates;
3. To conduct educational experiments;
4. To conduct and aid academic research and to disseminate knowledge;
5. To enter into contracts, give or raise loans and acquire and hold property, movable and immovable;
6. To sell, purchase, lease, exchange, invest or otherwise transfer all or any of the property, movable or immovable, for the time being vested in the Anjuman;
7. To collect funds, accept, gifts, donations and subscriptions for the maintenance of the institutions and the furtherance of the objects of the Anjuman;
8. To do all the acts and things as are necessary for or conducive to the said objects.”

In 1939, Jamia became a registered society under the Societies Registration Act, 1860. In 1940, Jamia was shifted to the present campus in Okhla. In 1951, the Central Government recognized, the educational programmes of the Jamia and its degrees and teachers training courses were recognized as equivalent to B.A. and B.T.

We may mention here at the cost of repetition that in his inaugural address in 1920, Shaikh-ul-Hind Maulana Mahmud-ul-Hasan had suggested that:-

1. The Indian Muslims should keep their education in their own hands entirely free from the alien influence which had sapped imitative and independence of character;
2. The Muslims should base the education of the youth on their own cultural heritage and Islamic traditions.

The whole history of the Jamia that can be gleaned through the writings and speeches of its founders, is one of the doing things in the light of the aforesaid guidelines. From the very beginning the founders interpreting the ideals of the Jamia have emphasized the main characteristics of Islamic Culture that it aspired to bridge the gulf between worldly (Duniyavi) and the religious (Deeni) education. In the words of Mohd. Mujeeb, ‘one of the aims and objectives of the Jamia was to evolve a system of education that would be an organic fusion of faith and knowledge”.

It needs to be highlighted that one of the aims and objects of the Jamia Millia Islamia Society, Delhi mentioned in its Memorandum of Association was as under :-

- (i) to promote and provide the religious and secular education of Indians, particularly Muslims, in the Jamia Millia Islamia, in conformity with sound

principles of education and in consonance with the needs of national life and to that end, to establish and maintain suitable educational institutions within the Jamia campus and to set up and organize educational extension centres in the Union Territory of Delhi from time to time”.

In 1962, on the recommendations of the University Grants Commission, status of the deemed university was conferred on the Jamia under Section 3 of the UGC Act. On conferral of the status of a deemed university, the Jamia got all the facilities which are available to the autonomous universities. Alongwith it got the right to give degrees on its own. It has to be borne in mind that the mere fact that status of a deemed university was granted to the Jamia under Section 3 of the U.G.C. Act and it was as a matter of convention bound to follow the statutory provisions of the U.G.C. Act would not clothe the Jamia with a statutory status or character. 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 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”.

In 1988, the Jamia was granted the status of a Central University under the Act. While piloting the Bill, Mr. Shiv Shankar the then Minister of Human Resource Development, Government of India had made the following statement on the floor of the Parliament:

“it is being felt for the last few years that the status of deemed university conferred on it is not sufficient keeping in view its historical character and its service to the nation. It has been the demand of teachers and other responsible persons of Jamia and also of our society that the status of autonomous university be conferred under the law of parliament, so that it could provide facilities for higher studies. The Government has also held consultations with the University Grants Commission, the Chancellor of Jamia Millia Islamia, some personalities and experts in this field. Jamia has come into existence as a national shrine for education. Keeping its selfless service during the freedom struggle and its secular character we have reached at a conclusion that it should be granted the status of a Central Statutory University under the law passed by Parliament to enable it to achieve specialization in the field of research and educational development programmes. The aim and object of the Bill is to recognize the Jamia Millia as a statutory University and also to merge the Jamia Millia Society of Delhi in it.”

In 1940, W.C. Smith visited Jamia and described Jamia as ‘one of the most progressive and one of the best in India’. He observed:

“One admirable result of the exclusion, voluntary and enforced, of this institution from the official educational system of India, is an international breadth of vision. It has escaped the provincialism of exclusively British culture which weighs heavily on the ordinary colleges of imperialistic India. The Jamiah’s degrees have been recognized in Germany, France and the United States, while official British prestige think that it cannot afford to notice them.... The Jamiah is consequently in touch with a wider world than are most other indigenous colleges in India.”

(quoted from Partners in Freedom Jamia Millia Islamia by Mushir ul Hasan at page 102)

The aforesaid statement of W.C. Smith clearly indicates that Jamia’s degrees were recognized in Germany, France and America. It has been held in Aziz Basha’s case (supra) that before coming into force of the Constitution of India there was no law in India which prohibited any private individual or body to establish a University. There is a good deal in common between educational institutions which are not universities and those which are universities. Both teach students and both have teachers for the purpose. But what distinguishes a university from any other educational institution is that a university grants degrees of its own while other educational institutions cannot. It is this granting of degrees by a university which

distinguishes it from the ordinary run of educational institutions thus in law in India there was no prohibition against establishment of universities by private individual; or bodies and if any university was so established it must of necessity be granting degrees before it could be called; a university this position continued even after the Constitution came into force. It was only in 1956 that by Sub-s.(1) of S.22 of the University Grants Commission Act (No. 3 of 1956), it was laid down that,

“The right of conferring or granting degrees shall be exercised only by a university established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees”.

Sub-Section (2) thereof further provided that

“save as provided in sub-s (1), no person or authority shall confer, or grant, or hold himself or itself as entitled to confer or grant any degree”.

S.23 further prohibited the use of the word ‘university’ by an educational institution unless it is established by law. It was only thereafter that no private individual or body could grant a degree in India. Therefore it was possible for the Muslim minority to establish a university before the Constitution came into force, though the degrees conferred by such a university were not bound to be recognized by Government”.

It is beyond the pale of controversy that on 26th January, 1950, when the Constitution came into force, the Jamia as a university was in existence and was being administered by the ‘Jamia Millia Islamia society” which was a registered society constituted by members of the Muslim community and degrees granted by it were recognized in some foreign countries also. Even the Government of India had recognized the degrees granted by the Jamia.

From the brief history we set out above, it will be clear that yearning for the establishment of a National Muslim University first cropped up in the heart of Maulana Mohd. Ali Jauhar and from him it proliferated to his comrades as a result whereof the Jamia was founded by prominent National leaders of the Muslim community. We also find and hold that he Jamia was established with object of empowering the Muslim community through education and also of injecting nationalistic ideas in it. Needless to add here that Hakim Ajmal Khan was elected first Chancellor of the Jamia and Maulana Mohd. Ali Jauhar became its first Vice Chancellor. We further find and hold that on pursuation of the Muslim community the Act was enacted after the Governing bodies of the Jamia and the Jamia Millia Islamia Society passed resolutions to the effect that the existing properties, funds and educational institutions formed primarily for the benefit of the Muslim community be vested in the statutory university so that the pre-existing institution may be incorporated and granted the status of a central university. It is relevant to mention that when the Constitution came into force on January 26, 1950, all the

properties, movable and immovable of the Jamia were held by the Muslim minority and the Jamia was also being administered by Muslims. The degrees awarded by the Jamia were also recognized in Germany, France and America.

The Jamia Millia Islamia Act 1988, codified, declared, confirmed and encapsulated the continuous and preexisting factual and legal position of the Jamia by incorporating the existing institution formally under the Act as a central university. Reference may, in this connection be made to the provisions of Section 2 (o) of the Act (Act No. 58 of 1988) which defines university as under :-

“University” means the educational institution known as “Jamia Millia Islamia” founded in 1920 during the Khilafat and Non-Cooperation Movements in response to Gandhiji’s call for a boycott of all Government-sponsored educational institutions which was subsequently registered in 1939 as Jamia Millia Islamia Society, and declared in 1962 as an institution deemed to be a University under Section 3 of the University Grants Commission Act, 1956, and which is incorporated as a University under this Act.”

Section 4 of the Act provided for dissolution of the Jamia Millia Islamia Society. Section 4 reads as under :-

“Section 4 – on and from the commencement of this Act, --

- (i) the Society known as the Jamia Millia Islamia society, Delhi, shall be dissolved, and all property, movable or immovable, and all rights, powers and privileges of the said Society shall be transferred to and vest in the University and shall be applied to the objects and purposes for which the University is established;
- (ii) all debts, liabilities and obligations of the said Society shall be transferred to the University and shall thereafter be discharged and satisfied by it;
- (iii) all references in any enactment to the said Society shall be construed as references to the University;
- (iv) any will, deed or other documents, whether made or executed before or after the commencement of this Act, which contains any bequest, gift or trust in favour of the said society shall be construed as if the University was therein named instead of the Society;
- (v) subject to any orders which the Majlis-i-Muntazimah (Executive Council) may make, the buildings which belonged to Jamia Millia Islamia, Delhi, shall continue to be known and designated by the names and style as they were known and designated immediately before the commencement of this Act;
- (vi) subject to the provisions of this Act, every person employed immediately before the commencement of this Act in the Jamia Millia Islamia, Delhi shall hold such

employment in the University by the same tenure and on the same terms and conditions and with the same rights and privileges as to pension and gratuity as he would have held under the Jamia Millia Islamia, Delhi, if this Act had not been passed.

Sub-Section (ii) of Section 6 of the Act confers power on the Jamia to promote the study of the religions, philosophy and culture of India. Sections 19 and 20 of the Act read along with Clause 14 of the Statutes of the University clearly go to show that even after enactment of the Jamia Millia Islamia Act, the management of the Jamia is being looked after by the principal executive body of the University, namely, the Majlis-i-Muntazimah (Executive Council). Section 20 provides that the Majlis-i-Talimi (Academic Council) shall be the principal academic body of the university. It needs to be highlighted that the provisions of Sections 19 and 20 of the Act are the replica of Clauses (9) and (10) respectively of the Memorandum of Association of the Jamia Millia Islamia Society. Thus, the evidence on record clearly proves that since its inception, administration of the Jamia remained in the hands of Muslims.

It is also relevant to mention that there is a mosque in the campus of the Jamia. It has been proved from the affidavits of Prof. Tabrez Alam Khan, Mr. Javed Alam Khan, Mr. Shams Parvez and Mr. Abaid-ul-Haque that since its foundation, the Jamia bears an emblem, which has a star on the right with the inscription "Allah-o-Akbar". Beneath the said star is Holy Quran with the inscription in Arabic language "Allammal Isaana Malam Yalam" (taught the man that which he knew not). On either side of the Holy Quran are two date trees identifying the land where God's last prophet was born. At the bottom of the emblem, there is a small silver crescent with the inscription 'Jamia Millia Islamia' in Urdu. It would thus appear that since its foundation in 1920, the Jamia has apparently maintained its Muslim character and that would be evident from its very name, emblem and the establishment of a mosque. The Constitution of the Jamia consisted of Memorandum of the Society. Clause 3 of the Memorandum spelt out the aims and objects of the Society and one of the aims of the Society was "to promote and provide for the religious and secular education of Indians, particularly Muslims in the Jamia Millia Islamia, in conformity with sound principles of education and in consonance with the needs of national life and to that end, to establish and maintain suitable educational institutions within the Jamia campus and to set up and organize educational extension centres in the Union Territory of Delhi from time to time."

Clause 4 of Memorandum declares that the Jamia shall be an autonomous educational body. It further declares that the medium of instruction at all stages of education in all the institution maintained by the society shall be in Urdu. Clause 5 of Memorandum provides that following shall be the officers of the Jamia:-

- “(i) The Amir-i-Jamia (Chancellor);
- (ii) The Shaikhul Jamia (Vice Chancellor)
- (iii) The Khazin (Treasurer);
- (iv) The Musajjil (Registrar)

- (v) The Deans of Faculties;
- (vi) The Proctor;
- (vii) The Librarian; and
- (viii) Such other persons as may be declared by the Rules to be Officers of the Jamia.”

Section 9 of the Act retains almost similar designation of the officers of the Jamia as under :-

- (i) the Amir-i-Jamia (Chancellor);
- (ii) the Shaikh-ul-Jamia (Vice Chancellor);
- (iii) the Naib Shaikh-ul-jamia (Pro-Vice-Chancellor);
- (iv) the Musajjil (Registrar);
- (v) the Deans of Faculties;
- (vi) the Dean of Students’ Welfare;
- (vii) the Finance Officer; and
- (viii) such other officers as may be declared by the Statutes to be officers of the University.

Retention of designations of the authorities of the Jamia even on enactment of the Act clearly reflects to its minority character. This is in consonance of the assurance given by the then Minister for HRD, Government of India to the Parliament on 2.9.1988 that “..... we have no intention to bring any change in the character of this institution whatsoever. I want to make it clear so that there is no ambiguity. Why should there be any doubt in anybody’s mind. Its character will remain in accordance with the wishes of its founders and which was put into practice by them and we will maintain the same”.

Clause 7 of the Memorandum provided for the authorities of the Jamia which are as under:-

- (i) “The Anjuman, Jamia Millia Islamia, hereinafter called the Anjuman (Court);
- (ii) The Majlis-i-Muntazimah (Executive Council);
- (iii) The Majlis-i-Talimi (Academic Council);
- (iv) The Majlis-i-Maliyat (Finance Committee);
- (v) The Faculties; and
- (vi) Such other authorities as may be declared by the Rules to be Authorities of the ‘amla’.

Section 17 of the Jamia Millia Islamia Act also provided for the authorities of the University:-

- (i) the Anjuman (Court);
- (ii) the Majlis-i-Muntazimah (Executive Council);
- (iii) the Majlis-i-Talimi (Academic Council);
- (iv) the Majlis-i-Maliyat (Finance Committee);
- (v) the Faculties

- (vi) the Planning Board; and
- (vii) such other authorities as may be declared by the Statutes to be authorities of the University.

Clause 8 of Memorandum declares that the Anjuman shall be the highest authority of the Jamia and shall have the power to review the acts of the Majlis-i-Muntazimah and Majlis-i-Talimi. By Section 18 of the Act, the Anjuman (Court) was to be the Supreme Governing Body of the Jamia and would exercise all the powers of the Jamia, which was provided for by the Memorandum of Association. Clause 9 of Memorandum provided that Majlis-i-Muntazimah shall be the executive authority of the Jamia. Section 19(1) of the Act contains similar provisions. Clause 10 of Memorandum declares that Majlis-i-Talimi shall be the academic body of the Jamia. Section 20(1) of the Act also provided that the Majlis-i-Talimi (Academic Council) shall be the principal academic body of the University. Thus, the basic statues of the Jamia as mentioned in the Act are almost in pari materia with the provisions of the Memorandum of Association. It is relevant to mention that all the members of the Jamia Millia Islamia Society were Muslims and the Anjuman (Court) has been electing only Muslims as Chancellors and Vice Chancellors of the Jamia. These facts are beyond the pale of controversy.

Having regards to the facts and circumstances of the case, we find and hold that since its foundation in 1920 till enactment of the Jamia Millia Islamia Act, the Jamia never lost its identity. The aim and object of the Act was to recognize the Jamia as a Statutory University and also to merge the Jamia Millia Islamia's Society in it. As stated earlier, in 1962, on the recommendation of the University Grants Commission, the Central Government granted the status of a deemed university to the Jamia under Section 3 of the U.G.C. Act. Mere conferral of the status of a deemed university the Jamia was not in our opinion, sufficient to clothe it with a statutory character. In Vaish Degree College vs. Lakshmi Narain AIR 1976 SC 888, it has been held by the Supreme Court that before an institution can be a statutory body it must be created by or under the statute and own its existence to a statute. In the instant case, the Jamia did not owe its very existence to a statute. As stated earlier, since its foundation in 1920 till enactment of the Jamia Millia Islamia Act, the Jamia never lost its identity. Even prior to the enactment of the Act, the Jamia had legal existence of its own without any reference to the statute concerned. On the contrary, the evidence on record clearly proves that the Jamia owed its establishment to the Muslim Community. The Jamia had its independent existence as a university long before enactment of the Act. In the instant case that is no conversion of the Jamia into another institution created by or under a Statute. The Jamia was existing till the Act which was passed by the Parliament. It is an admitted position that prior to enactment of the Act, the degrees conferred by the Jamia were recognized by the Central Government. In Aziz Basha's case (supra) the Supreme Court observed that although the nucleus of Aligarh Muslim University was the Mohammadan Anglo-Oriental College which was till 1920 an educational institution, the conversion of that college into the University was not by the Muslim Community but it took place by virtue of the Act of 1920 which was passed by the then Central Legislature. As there was no Aligarh Muslim University existing till the Act of 1920 and since it was brought into existence by the Act of Central Legislature, the Supreme Court refused to hold that it was

established by the Muslim Community. Thus, the ratio decidendi of Aziz Basha's case (supra) does not govern a case like in hand.

It is also significant to mention that on 9.5.1997, the Executive Council of the Jamia had passed the following resolution:

"MINUTES OF THE MAJLIS-I-MUNTAZIMAH (EXECUTIVE COUNCIL) HELD ON
9TH MAY 1997

An ordinary meeting of the Majlis-i-Muntazimah (Executive Council), Jamia Millia Islamia, was held on Friday, the 9th May, 1997 at 11.00 a.m. in the Conference Hall, Administrative Block, Khayaban-e-Ajmal, New Delhi – 110 025.

The following were present:

- | | | |
|----|---|-----------------------------------|
| 1. | Prof. Mushirul Hasan | Chairman
Offg. Vice-Chancellor |
| 2. | Prof. M. Shamim Hanfi
Dean, Faculty of Humanities & Langs. | Member |
| 3. | Prof. Z. A. Taqvi
Dean, Faculty of Natural Sciences | Member |
| 4. | Prof. Anisur Rahman
Dean Students Welfare | Member |
| 5. | Dr. Z.H. Zaidi
Professor, Department of Physics | Member |
| 6. | Mrs. Pushpa Verma
Reader, Deptt. Of T.T. & NFE | Member |
| 7. | Justice Sardar Ali Khan
House No. 16-4-777/1
Malakpet, Hyderabad (A.P.) | Member |
| 8. | Mr. Hasib Ahmad
Registrar | Secretary |

The following were also present:

1. Mr. Niamat Husain, Jt. Registrar
2. Mr. N.U. Siddiqui, Offg. Finance Officer
3. Dr. Rocket Ibrahim, Secretary, JTA (invited as Observer)
4. Mr. Shoeb, President, JSU (invited as Observer)

Resolution No. 1 to Resolution 10

Resolution No. 11

The Executive Council considered in detail the demands of functions of the Jamia Millia Islamis, unanimously adopted following resolutions:

'The Majlis-i-Muntazimah (Executive Council) approves of the Ordinances I & II and endorses the background note adopted by the Academic Council at its meeting held on 3.5.1997.

The Majlis-i-Muntazimah (Executive Council) furthermore, adopted the following amendments to the existing Jamia Millia Islamia Act 1988. It calls upon the Government of India to accept them at the earliest so that the historic character of the institution can be adequately safeguarded:

- a. The Jamia Millia Islamia was founded in October 1920 by Maulana Mahmud Hasan, Hakim Ajmal Khan, Maulana Mohamed Ali, Dr. M.A. Ansari, Abdul Majid Khwaja and Dr. Zakir Hussain. They were, along with other distinguished public figures and educationists, its chief architects.
- b. The Jamia Millia Islamia embodies the liberal and secular spirit of our constitution. At the same time this institution reflects the educational and intellectual aspirations of Indian Muslims. For this reason it is important that the Jamia Millia Islamia be declared as a minority institution so that, its historical character is intact. We believe that there is complete unanimity and consensus on this issue amongst the students, teachers, administrative staff and the larger Jamia biradari.
- c. The aims and objects of the Jamia Millia Islamia shall be: "To promote and provide for the religious and secular education of Indians, particularly Muslims, in conformity with sound principles of education and in consonance with the needs of national life and to that end, to establish and maintain suitable educational institutions within the Jamia campus and to set up and organize educational extension centres in the Union Territory of Delhi from time to time.
- d. The medium of instruction at all stages of education in all the institutions of the Jamia shall be Urdu, but instruction may be imparted through the medium of other languages as well.

The above two resolutions (c and d) were part of The Memorandum of Association, Jamia Millia Islamia Society, Delhi. We believe they should be included in the amended Jamia Act.

The said resolution clearly indicates that the Jamia has apparently retained its minority character even after the enactment of the Act. It is an admitted position that the Jamia is an aided educational institution. It is well settled that mere receipt of aid does not annihilate the

right guaranteed under Article 30(1) of the Constitution. It has been held in the case of P.A. Inamdar (supra) 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.”

It needs to be highlighted that by the D.O. No. F.612006 – Desk (4) dated 3.4.2006, the Ministry of HRD issued a directive to the Jamia to take appropriate steps to admit students from Muslim minority community at least to the extent of 50%. That being so, the Central Government has fixed the minimum percentage governing admissions of students of the Muslim community in the Jamia. By issuing the said direction, which is in consonance with the aforesaid directions of the Supreme Court, the HRD Ministry has impliedly recognized the factual position relating to the minority status of the Jamia.

Needless to add here that the provisions of Sections 2(iv) and 4 (i) (ii) & (iii) of the Act read alongwith the circumstances enumerated above clearly indicate that although the Act converted the status of the existing institution (the Jamia) into a Central University but it has not impacted its earlier minority character. Section 2(o) of the Act acknowledges it in no uncertain terms that Jamia was founded by the leaders of the Khilafat movement. It is well known that the Khilafat movement was spearheaded by Maulana Shaukat Ali and Maulana Mohd. Ali Jauhar and that the Khilafat movement gave birth to the non-cooperation movement launched by Gandhiji.

It has to be borne in mind that according to Azeez Basha’s case (supra) the MAO College had lost its identity by its conversion into the AMU, which was established by the AMU Act 1920. In the instant case, the Jamia never lost its identity till enactment of the Act. we may say at the cost of repetition that, the provision of Section 2(o) read with Section 4 of the Act postulates a statutory recognition of the fact that the Jamia was founded in 1920 during the Khilafat and non-cooperation movement which was subsequently registered in 1939 as Jamia Millia Islamia Society, and declared in 1962 as a deemed university under Section 3 of the U.G.C. Act. Section 2(o) defines university as under :-

“University” means the educational institution known as “Jamia Millia Islamia” founded in 1920 during the Khilafat and Non-Coperation Movements in response to Gandhiji’s call for a boycott of all Government sponsored educational institutions which was subsequently registered in 1939 as Jamia Millia Islamia Society, and declared in 1962 as an institution deemed to be a University under Section 3 of the University Grants Commission Act, 1956, and which is incorporated as a University under this Act”

Section 2(o) of the Act drives us to peep into the history of facts and events which led to the establishment of the Jamia. We have demonstrated earlier that in 1920, the Jamia was established in the wake of Khilafat and non-cooperation movement with the main object of exploring the methods by which education of Muslims could be made truly national. Distinguished National leaders like Maulana Mohd. Ali Jauhar, Hakim Ajmal Khan, Shaikh-ul-Hind Maulana Mahamud-ul-Hasan. Maulana Abul Kalam Azad, Dr. M.A. Ansari and Dr. Zakir Hussain were among its founders. Bearing in mind the history of facts and events which led to the establishment of the Jamia, it could be held that the Jamia was founded by the Muslims. It is an admitted position that in 1951 much before the enactment of the Jamia Millia Islamia Act, the Central Government recognized degrees conferred by the Jamia. Thus the Jamia possessed one of the essential qualities of a university. Needless to add here that Ali brothers namely Maulana Mohammed Ali Jauhar and Maulana Shaukat Ali had launched the Khilafat movement which was subsequently converted into non-cooperation movement led by Mahatama Gandhi and other nationalist leaders. Thus section 2(o) of the Act encapsulates a brief history previous to the establishment of the Jamia. It was Maulana Mohd. Ali Jauhar, who conceived the idea of imparting true national education to Muslims. We may say at the cost of repetition that at that time the MAO College was considered as Pro-British institution and the Jamia Biradari extorted the students of the MAO college to submit to the national aspiration, and join hands with them in having run the college on independent lines in the best interest of the community and the country. The trustees of the college expressed their emphatic disapproval of the action of Ali Brothers addressing students asking them to pass a resolution in support of the non-cooperation movement. It is said that thereafter the idea of establishing a National Muslim University gathered strength and ultimately the Jamia was established for the purpose of keeping Muslim education in Muslim hands entirely free from external control. Thus the Muslim community brought the Jamia into existence in the only manner in which a university could be brought into existence. The Muslim community provided lands, buildings and endowments for the Jamia, and without these, the Jamia as a body corporate would be an unreal abstraction. The above history leads to one conclusion and one conclusion only, namely, that Jamia was established by Muslims, for Muslims, though non-Muslims could be admitted.

It is beyond pale of controversy that in 1928, the Jamia faced a serious financial crisis. At the crucial movement, some devoted teachers under the leadership of Dr. Zakir Hussain resolved to form the Anjuman-i-Talimi - i - Milli (later to be known as Anjuman-i-Jamia Millia Islamia), whose members signed a pledge to serve the Jamia for at least 20 years on a salary of not more than Rs. 150/- per month. Thereafter, in 1939, the Jamia Millia Islamia was registered as a society under the Societies Registration Act. One of the aims and object of the society was as under :-

- (i) To promote and provide for the religious and secular education of Indians, particularly Muslims, in the Jamia Millia Islamia in conformity with sound principles of education and in consonance with the needs of national life and to that end, to establish and maintain suitable educational institutions within the Jamia Campus

and to set up and organize educational extension centres in the Union Territory of Delhi from time to time.

The fact that the Jamia Millia Islamia was registered as Jamia Millia Islamia Society in 1939 also finds mention in Section 2(o) of the Act. Section 4 (1) of the Act provides that on and from commencement of the Act, the Jamia Millia Islamia Society shall be dissolved, and all property, movable or immovable and all rights, powers and privileges of the said society shall be transferred to and vest in the university and shall be applied to the objects and purposes for which the university is established. Sub Section (iii) of Section 4 declares that all references in any enactment to the said society shall be construed as references to the university. Thus the property and assets of the Jamia run by the said society formed for the benefit of Muslims were vested in the university.

In the Kerala Education case (supra) Chief Justice Das observed that an institution established and managed by a community did not lose its character as a minority institution because a sprinkling of members of the other communities were admitted to it. It is significant to mention that the Memorandum of Association of the said society clearly reflects that the management of the Jamia was vested in the Muslim community. The Anjuman (court) of the Jamia was the supreme governing body. The Act borrowed and engrafted similar provisions of the Memorandum of Association of the said society. On enactment of the Act, there was no conversion of an educational institution into a university as the Jamia as a university was already in existence prior to coming into force of the Act.

It is also relevant to mention that sub Section (v) of Section 4 declares that “subject to any orders which the Majlis-i-Muntazimah (Executive Council) may make, the buildings which belonged to Jamia Millia Islamia, Delhi, shall continue to be known and designated by the names and styles as they were known and designated immediately before the commencement of this Act.” Thus on a conjoint reading of Sections 2(o) and 4 of the Act alongwith the history of facts and events which led to the establishment of the Jamia, we have no hesitation in holding that the Jamia was founded by the Muslims for the benefit of Muslims and it never lost its identity as a Muslim minority educational institution.

For the foregoing reasons, we find and hold that the Jamia Millia Islamia is a minority educational institution covered under Article 30(1) of the Constitution read with Section 2(g) of the National Commission for Minority Educational Institutions Act. A certificate be issued accordingly.

CHAPTER 7: CASES REGARDING DEPRIVATION OF RIGHTS OF MINORITY EDUCATIONAL INSTITUTIONS AND AFFILIATION TO UNIVERSITIES

In the previous chapter Commission has given the analysis of the petitions and complaints received during the year. Some of the orders passed in the cases have also been detailed therein. In this chapter the cases relating to deprivation of rights of minority educational institutions and cases relating to affiliation are discussed.

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 power of the State for maintaining and facilitating the excellence of 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. The minority educational institutions need not be allowed to decline to follow the general pattern. 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:

Case no.810 of 2010

Petition against Order of State relating to non-renewal of permissions for M.D.S. Course

Petitioner: M. A. Rangoonwala College of Dental Sciences & Research Centre, Through its President Mr. P. A. Inamdar, 2390-B, K.B. Hidayatullah Road, Azam Campus, Camp Pune, Maharashtra

- Respondents:**
1. Ministry of Health & Family Welfare, Department of Health Through its Under Secretary Mr. R. Sankaran (DE Section) (146-A), Government of India, Nirman Bhawan, New Delhi-110 001
 2. Dental Council of India, Through its Secretary, Aiwan-E-Ghalib Marg, Kotla Road, N.D. - 2

Challenge in this petition is to the order dated 12.4.2010 of the Government of India, Ministry of Health and Family Welfare (Dental Education Section) relating to non-renewal of the Government's permission for admitting the 4th batch of students in MDS course in the specialty of Periodontics – 4 seats and 3rd year MDS course in the specialty of Pedodontics – 3 seats at the petitioner college of Dental Sciences & Research Centre, Pune (for short the college) for the academic session 2010-11.

It is beyond the pale of controversy that the college is affiliated to the Maharashtra University of Health Sciences, Nasik for BDS and MDS courses and it started MDS course from the academic year 2007-08 with the permission of the Central Government. It is undisputed that in the academic years 2007-08, 2008-09 and 2009-10, sanctioned strength of the college was 22,23 and 25 with number of subjects being offered 7,8 and 8 respectively in the aforesaid years. It is also undisputed that for the academic year 2010-11, the college submitted a scheme to the Central Government for renewal of permission for 25 seats in 8 subjects, which was referred to the Dental Council (for short the Council) for its recommendations. It is further admitted that the Council carried out inspection of the college on 27.1.2010 and 1.2.2010 and did not notice any deficiency in the faculty. Thereafter, on 15.2.2010, the Council again conducted a surprise inspection of the college and found the deficiency in faculty. Based upon the inspection report dated 15.2.2010, the Council recommended to the Central Government for disapproval of the scheme relating to admission in oral Pathology-2 seats, Pedodontics 3 seats and Periodontics 4 seats and directed the college to submit the compliance report by 9th March, 2010 vide letter No. DE-15(108)2009/B-3241 dated 2nd March, 2010. By the letter No. MARDC/Admn/MDS/2073/2010, dated 8th March 2010, the college submitted the compliance report to the Council. The Council accepted the compliance report in respect of oral Pathology-2 seats but kept its recommendations on the other two subjects unchanged. Based on the negative recommendations of the Council, the Central Government declined to renew the 3rd year permission in the specialties of Periodontics 4 seats and Paedodontics – 3 seats for the academic session 2010-11 vide impugned order F.No. V12017/19/2006-DE, dated 12.4.2010.

Shorn of verbiage, the petitioner's case is that the surprise inspection conducted by the Council on 15.2.2010 was illegal and as such the Council's negative recommendations based on such an illegal inspection cannot be acted upon. According to the petitioner, the compliance report was submitted by the college clearly shows that the alleged faculty deficiencies pointed out by the Council were baseless. It is alleged that the Council had submitted its negative recommendations to the Central Government without taking into consideration the said compliance report and also without affording an opportunity of being heard to the management of the college. It is also alleged that no personal hearing was also granted by the Central Government before passing the impugned order and as such the impugned order was arbitrary, illegal and in violation of the principles of natural justice. It is further alleged that the impugned order of the Central Government is also violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

Despite service of notice, the respondent No. 1, The Central Government did not contest the proceedings as a result whereof the case proceeded ex-parte against it. The Council, respondent No. 2 resisted the petition on the ground that the college is not entitled to invoke the provisions of the National Commission for Minority Educational Institutions Act (for short the Act) as it is not a minority educational institution covered under Article 30(1) of the Constitution. It is alleged that the Inspection Committee of the Council conducted inspections of the petitioner college on 27.1.2010, 1.2.2010 and on 15.2.2010 and considered the reports of the Inspection Committee on 24.2.2020. According to the respondent No. 2, on consideration of these inspection reports, it was decided not to renew 3rd year MDS course of the petitioner college in the specialty of Pedodontics – 3 seats as the faculty was found deficient on 15.2.2010. It was also decided not to renew 4th year MDS course in the specialty of Periodontics 4 seats as Dr. Sonal Tambekar, HOD and Prof. Dr. Ashwini Padhaye were found commuting between Mumbai and Pune. It is alleged that when a teaching faculty is absent on the day of the inspection the only legitimate inference that can be drawn is that the said faculty is not in service of the Dental College. It is also alleged that visiting faculty cannot be accepted as the same is not in conformity with the statutory regulations framed by the Council. It is further alleged that the compliance report dated 8.3.2010 submitted by the college was duly considered by the Council at its meeting held on 11.3.2010 and on examination of the compliance report the same was found to be incomplete. Consequently, it was decided to send negative recommendations to the Central Government. Lastly, it is alleged that the petition cannot be entertained at this stage as the relevant dates for admissions in respect of MDS course are already over.

On consideration of the rival contentions of the parties following issues arise for consideration:

- a) Whether the college is a minority educational institution covered under Article 30(1) of the Constitution and as such it is entitled to invoke the provisions of the Act?
- b) Whether the impugned order dated 12.4.2010 is arbitrary, illegal and in violation of the principles of natural justice?
- c) Whether the impugned order is also violative of Article 30(1) of the Constitution?

Issue No. 1: It has been observed by the Supreme Court in P.A. Inamdar vs. State of Maharashtra (2004) 8 SCC 139 that the college is the only minority dental college in the State. In view of the said observations of the Apex Court, we have no hesitation in holding that the college being a minority educational institution covered under Article 30(1) of the Constitution is entitled to invoke the provision of the Act. This issue is answered accordingly.

Issue No. 2 and 3: Both these issues can be conveniently decided together. Learned counsel for the petitioner has strenuously urged that the negative recommendations of the

Council based on the inspection dated 15.2.2010 are illegal and ineffective as the Council does not have power to conduct surprise inspection of the dental colleges. We are not impressed by the said submission of the learned counsel as in our considered opinion the Council has not committed any illegality in conducting a surprise inspection of the college to check the faculty. Such monitoring of the faculty is also in the interest of academic excellence and as such no exception can be taken on such a surprise inspection conducted by the Council on 15.2.2010. It needs to be highlighted that admittedly on 27.1.2010 and on 1.2.2010, the Inspection Committee of the Council carried out inspections of the college. It transpires from the record that no deficiency was found during these two inspections. However, on third inspection on 15.2.2010, the inspection committee noted the following deficiencies:-

- a) Dr. Sonal Tambekar , HOD, is not accepted since she is visiting from Mumbai;
- b) Dr. Ashwini Padhaye, Professor is not accepted since she is visiting from Mumbai;
- c) Dr. Yusuf Chunawala, Professor and HOD is not accepted since he was absent on the day of inspection;
- d) Dr. Kavina Mansukhani, Professor is not accepted since she was absent on the day of inspection;
- e) Dr. Priya Verma, Sr. Lecturer is not accepted since she was absent on the day of inspection.

The aforesaid deficiencies in faculty were duly communicated and the petitioner was directed to submit a compliance report by 9.3.2010 positively vide letter dated 2.3.2010. It is undisputed that by the letter dated 8.3.2010, the petitioner submitted compliance report to the Council. The petitioner has submitted the following chart showing compliance report in respect of the deficiencies pointed out by the Council.

1.	Dr. Sonal Tambekar HOD is not accepted since she is visited from Mumbai	She is appointed on 12.12.2006. she is not new staffer. DCI issued her faculty identity card No. PER00944 and approved her as staffer. Her address is "213, Deccan Tower, Old Pool Gate, Pune-01". Similar objection was raised last time also and above explanation was accepted and 4 seats of Periodontics were granted last time also. Only because her income tax return is filed at Bombay, that does not mean that she is visited from Bombay. She was also present at the time of routine inspection and surprise inspection. Page 13, page 58 & page 86-87 of the paperbook.
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2.	Dr.AshwiniPadhaye,Professor is not accepted since she is visited from Mumbai.	She is appointed on 8.12.2006. she is not a new staffer. DCI issued her faculty identity card No. PER00946 and approved her as staffer. Her address is "B8, Akshaya Apartment, Kawadewadi, South Koregaon Park, Pune01". Similar objection was raised last time also and above explanation was accepted and 4 seats of Periodontics were granted last time also. Only because her income tax return is filed at Bombay, that does not mean that she is visited from Bombay. She was also present at the time of routine inspection and surprise inspection. Page 14, page 58-59 and page 86-97 of paperbook.
3.	Dr. Yusuf Chunawala, Professor & HOD is not accepted since he was absent on the day of inspection.	On regular inspection, he was present. On the illegal surprise inspection conducted by DCI on 15.2.2010, he was absent as on 14.2.2010 and 15.2.2010, he was at Hyderabad as a Conductor of State Level continuing Dental Educational Program on "Minimally Invasive Dentistry and Hand-on Course on use of Fibers in Dentistry" conducted by Kamineni Institute of Dental Sciences, Shripuram, Narketpally, Hyderabad Page 51-52, page 67 to 78 of paperbook. As per point 1,3,4,9,10 at page 11 of DCI Regulations Continuing Dental Educational Program is necessary for staff.
4.	Dr. Kavina Mansukhani, Professor is not accepted since she was absent on the day of inspection.	On regular inspection, she was present. On the illegal surprise inspection conducted by DCT on 15.2.2010, she was absent on account of ill-health, duly certified by Dr. Pushpa Otiv. Page 10, page 52, page 78-80 of paperbook
5.	Dr. Priya Verma, Sr. Lecturer is not accepted since she was absent on the day of inspection.	On regular inspection, she was present. On the illegal surprise inspection conducted by DCI on 15.2.2010, she was on maternity leave on account of advance stage of pregnancy. Page11, page 53, page 81-85, page 122 to 127 of paperbook.

The aforesaid facts have also been pleaded in para No. 17, 18, 19, 20, 21, 22 and 23 of the petition. Surprisingly, the aforesaid averments have not been specifically denied by the respondent No. 2. Order VIII Rule 5 CPC provides that every allegation of fact in the plaint, if

not denied in the written statement, shall be taken to be admitted by the defendant. What this Rule says is that any allegation of fact must either be denied specifically or by necessary implication or there should be atleast a statement that the fact is not admitted. If the plea is not taken in that manner, then the allegation shall be taken to be admitted. Non traverse of the said material facts pleaded by the college would constitute an implied admission in this case. (Lohia Properties (P) Ltd. Versus Atmaram Kumar (1993) 4 SCC 6).

It is relevant to mention that similar objections were also taken earlier by the Council against Dr. Sonal Tambekar and Dr. Ashwini Padhaye and the explanation submitted by them were accepted by the Council. After electing to accept appointments of Dr. Sonal Tambekar and Dr. Ashwini Padhaye as valid, now the Council cannot be permitted to challenge validity of the same. Bearing in mind the provisions of Section 115 of the Evidence Act, the Council is now estopped from challenging their appointments on the sole ground that they were commuting between Bombay and Pune.

It is mentioned in the compliance report dated 8.3.2010 submitted by the college that on 14.2.2010 and 15.2.2010, Dr. Yusuf Chunawala was at Hyderabad as a Conductor of State Level Continuing Dental Educational Program on “Minimally Invasive Dentistry and Hand-on Course on use of Fibers in Dentistry” conducted by Kamineni Institute of Dental Sciences, Shripuram, Narketpally, Hyderabad. According to the revised MDS Course Regulations 2007 formulated by the Council and notified in the Gazettee of India dated 21.11.2007 (for short the Regulations), Dr. Yusuf Chunawala’s absence on 15.2.2010 is condonable as he was required to attend seminar and lectures to strengthen the training programmes. According to the Regulations, he was supposed to attend lecturers/seminars/symposium on topics covering multiple disciplines. That being so, the Council ought to have accepted the compliance report in respect of the absence of Dr. Yusuf Chunawala as his participation in the seminar conducted by the Kamineni Institute of Dental Sciences, Shripuram, Narketpally, Hyderabad was fully justified in accordance with the provisions of the Regulations.

As regards to the absence of Dr. Kavina Mansukhani it was stated in the compliance report that on 15.2.2010 she was absent on account of her indisposition vide medical certificate dated 9.2.2010 issued by Dr. Pushpa Otiv. As regard the absence of Dr. Priya Verma, it was stated in the compliance report that on 15.2.2010 she was on maternity leave on account of her advanced stage of pregnancy. The medical certificates submitted in support of the said contention clearly show that on 24.3.2010 Dr. Priya Verma had delivered a male child. The aforesaid medical certificates did not evoke any criticism from the learned counsel of the respondent No. 2. There is not even a whisper of any evidence on record to raise any doubt on authenticity of these medical certificates. Consequently, we find that the said medical certificates inspire confidence. Relying upon these medical certificates, we find and hold that on 15.2.2010, absence of Dr. Kavina Mansukhani and Dr. Priya Verma was beyond their control. The recommendations of the Council dated 18.3.2010 do not reflect that the compliance report submitted by the college relating to absence of Dr. Yusuf Chunawala, Dr. Kavina Mansukhani and Dr. Priya Verma was considered by the Council. The aforesaid recommendations also do

not reflect that an opportunity of personal hearing was also granted to the management of the college before sending negative recommendations to the Central Government.

At this juncture it would be useful to excerpt the relevant provisions of Section 10A of the Dentists Act 1948.

“10-A. Permission for establishment of new dental college, new courses of study, etc. – (1) notwithstanding anything contained in this Act or any other law for the time being in force,-

- a) No person shall establish an authority or institution for a course of study or training (including a post-graduate course of study or training) which would enable a student of such course or training to qualify himself for the grant of recognized dental qualification; or
- b) no authority or institution conducting a course of study or training (including a post-graduate course of study or training) for grant of recognized dental qualification shall –
 - (i) open a new or higher course of study or training (including a post-graduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognized dental qualification; or
 - (ii) increase its admission capacity in any course of study or training (including a post-graduate course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1 – for the purposes of this section “person” includes any University or a trust but does not include the Central Government.

Explanation 2 – for the purposes of this section, “admission capacity” in relation to any course of study or training (including post-graduate course of study or training) in an authority or institution granting recognized dental qualification, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course of training.

(2) (a) Every person, authority or institution granting recognized dental qualification shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of clause (b) and the Central Government shall refer the said scheme to the Council for its recommendations.

(b) The schemes referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

(3) On receipt of a scheme by the Council under sub-section (2) , the Council may obtain such other particulars as may be considered necessary by it from the person, authority or institution concerned granting recognized dental qualification and thereafter, it may,-

(a) if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person, authority or institution concerned for making a written representation and it shall be open to such person, authority or institution to rectify the defects, if any, specified by the council;

(b) consider the scheme, having regard to the factors referred to in sub-section (7), and submit the scheme together with its recommendations thereon to the Central Government.

(4) The Central Government may, after considering the scheme and the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person, authority or institution concerned, and having regard to the factors referred to in sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme and any such approval shall be a permission under sub-section (1):

Provided that no scheme shall be disapproved by the Central Government except after giving the person, authority or institution concerned granting recognized dental qualification a reasonable opportunity of being heard.

Provided further that nothing in this sub-section shall prevent any person, authority or institution whose scheme has not been approved to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme has been submitted for the first time under sub-section (2).

(5) Where within a period of one year from the date of submission of the scheme to the Central Government under sub-section (2), no order passed by the Central Government has been communicated to the person, authority or institution submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it had been submitted, and , accordingly, the permission of the Central Government required under sub-section (1) shall also be deemed to have been granted.

(6) In computing the time-limit specified in sub-section (5), the time taken by the person, authority or institution, concerned submitting the scheme in furnishing any particulars called for by the Council or by the Central Government, shall be excluded.

(7) The Council, while making its recommendations under clause (b) of sub-section (3) and the Central Government, while passing an order either approving or disapproving the scheme under sub-section (4) , shall have due regard to the following factors, namely:-

- a) Whether the proposed authority or institution for grant of recognized dental qualification or the existing authority or institution seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of dental education in conformity with the requirements referred to in Section 16-A and the regulations made under sub-Section (1) of Section 20;
- b) Whether the person seeking to establish an authority or institution or the existing authority or institution seeking to open a new or higher course of study or training or to increase its admission capacity has adequate resources;
- c) Whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the authority or institution or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;
- d) Whether adequate hospital facilities, having regard to the number of students likely to attend such authority or institution or course of study or training or as a result of the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;
- e) Whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such authority or institution or course of study or training by persons having the recognized dental qualifications;
- f) The requirement of manpower in the field of practice of dentistry; and”

It is relevant to mention that Sub Section (7) of Section 10-A of the Dentists Act obligates the Council while making its recommendations under Clause (b) of Sub -Section (3) of Section 10A consider the factors mentioned in Clause (a) to clause (g). It appears that the Council was satisfied about the availability of the aforesaid facilities in the petitioner college. The only ground on which the Council submitted its negative recommendation is that there was deficient faculty in the college. We have already demonstrated that the objections relating to the deficient faculty are wholly untenable.

It also needs to be highlighted that the impugned order dated 12.4.2010 disapproving the schemes submitted by the college does not reflect that the Central government had taken into consideration the compliance report submitted by the petitioner college before passing the impugned order. On the contrary, it appears that the Central Government had blindly accepted the negative recommendations to the Council. It is significant to mention that the provisions to sub Section (4) of Section 10A of the Dentists Act clearly postulates that no scheme shall be disapproved by the Central Government except after giving the person, authority or institution concerned granting recognized dental qualification a reasonable opportunity of being heard. In the instant case there is nothing on the record to show or suggest that the Central Government had granted to the petitioner college a reasonable opportunity of being heard before passing

the impugned order. Disapproval of the scheme by the Central Government in terms of Section 10A of the Dentists Act is a serious act involving civil consequence and cannot be taken lightly. A bare reading of Section 10-A of the Dentists Act makes it clear that a proper application of mind on the part of the competent authority is imperative before passing the appropriate order thereunder. The scheme of Section 10-A *ibid* requires that the competent authority has to form an opinion in regard to approval or disapproval of the scheme and the opinion must be premised on the material produced before him. In order to justify the action taken for disapproval of the scheme, the concerned authority has to act fairly and in complete adherence to the mandatory provisions of Sub-Section (4) of Section 10-A of the Dentists Act. It was the duty of the Central Government to ensure that the petitioner was given a reasonable opportunity of being heard in terms of the proviso of Sub-Section (4) of Section 10A of the Dentists Act. The said requirement is in accordance with the principle of natural justice and the need for fairness in the matter of disapproval of the scheme and it cannot be made an empty formality. It is now well settled that even a pure administrative act entailing civil consequences has to conform with rules of natural justice. It has been held by the Supreme Court in *Sahara India (Firm) (1) vs. CIT* (2008) 14 SCC 151 that the expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. The underlying principle of natural justice evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly i.e. fair play in action. The aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. Obviously, the principle of natural justice has been violated in the present case. Consequently, we have no hesitation in holding that the impugned order dated 12.4.2010 is violative of the principles of natural justice embodied in Proviso of Sub Section 4 of Section 10A *ibid*.

Needless to add here that the petitioner college is a minority educational institution covered under Article 30(1) of the Constitution. Article 30(1) of the Constitution of India gives linguistic and religious minorities a fundamental right to establish and administer educational institutions of their choice. It has been held by the Supreme Court in *P.A. Inamdar vs. State of Maharashtra* (2005) 6 SCC 537 that the right to admit students being the essential facet of rights of the minorities to administer educational institution of their choice as contemplated under Article 30(1) of the Constitution. Constitutional focus on Article 30(1) is with an ameliorative vision. The language of Article 30(1) is wide and must receive full meaning. We are dealing with protection of minorities and attempts to whittle down the protection cannot be allowed. We need not enlarge the protection but we may not reduce a protection naturally following from the words. Right under Article 30(1) has to be read subject to the power of the State to regulate education, educational standards and allied matters. Thus, regulatory measures for ensuring educational standards and maintaining excellence thereof are no anathema to the protection conferred by Article 30(1). To regulate, be it noted, is not to restrict, but to facilitate effective exercise of the very right.

As demonstrated earlier the management of the petitioner college has been deprived of its right to admit students in the college on wholly untenable grounds. That being so, the

respondents have also violated educational rights of the minorities enshrined in Article 30(1) of the Constitution.

It is also significant to mention that it has specifically been pleaded in para No. 24 of the petition that as per the Regulations, staffing pattern for 4 students in Periodontics subject is as under :-

Professor – 1

Reader – 3

Lecturer – 1

Whereas the college has the following staff on the subject :-

Professors – 4 – Dr. Sonal Tambekar

Dr. Ashwnin Padhaye

Dr. Rohit Sabharwal

Dr. Sanjay Jain

Reader – 1 Dr. Salika Shaikh

Lecturer – 3 Dr. Sumanth

Dr. Lilian Maria Menzes

Dr. Varsha Shouri

The aforesaid facts pleaded by the petitioner have not been denied by the respondent No. 2. Consequently, we have no hesitation in coming to the conclusion that on the day of inspection i.e. 15.2.2010, the college had excess staff of one Professor and two Senior Lecturers for 4 students in Periodontics subject. This clearly belies contention of the respondent No. 2 relating to the alleged deficiency in faculty. However, this fact was also conveniently ignored by the Council as well as by the Central Government for disapproving the scheme submitted by the College.

For the foregoing reasons, we find and hold that the impugned order dated 12.4.2010 was arbitrary, illegal and in violation of the principles of natural justice. We also find and hold that management of the college has wrongfully been deprived of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

In the result, the Commission hereby recommends to the Central Government to decide the scheme submitted by the college afresh after affording to it a reasonable opportunity of being heard in terms of the proviso to Sub-Section (4) of Section 10-A of the Dentists Act,

as early as possible, preferably within two weeks from today. In deciding the matter, the competent authority should bear in mind the justice of the situation as the last date of filling of vacancies is 31.5.2010. We direct Principal of the college to appear before the Secretary, Ministry of Health and Family Welfare (Department of Health), Government of India, Nirman Bhawan, New Delhi on 10.5.2010 at 11 a.m., who may direct the competent authority to decide the matter afresh in the light of the observations made above. Accordingly, we direct the Central Government (respondent No. 1) to implement the findings of the Commission in terms of Section 11 (b) of the Act.

Case No. 952 of 2010

Petition seeking directions to convey approval to Appoint faculty positions in a minority institution

Petitioner: Ashrafia Inter College Mahul, Azamgarh, Uttar Prade.

Respondents: 1. The Joint Director, Education, District Azamgarh, Uttar Pradesh
2. District Inspector of School District Azamgarh, Uttar Pradesh

By this petition, the petitioner Ashrafia Inter College, Azamgarh, seeks direction to the respondents to convey approval of the appointment of two Assistant teachers namely Sarva Shri Navin Kumar Singh and Shahid Akhtar duly selected and appointed by its management. The petitioner college is a minority educational institution within the meaning of Section 2(g) of the National Commission of Minority Educational Institutions Act (for short the Act). It is alleged that pursuant to the orders dated 26.2.2010 of the Respondent No. 1, the Joint Director, Education, Distt. Azamgarh, two posts of Assistant Teachers were advertised on 18.3.2010 in Hindi, English and Urdu newspapers (daily). On 4.4.2010, all the candidates were interviewed by the selection board and the successful candidates, namely Sarva Shri navin Kumar Singh and Shahid Akhtar were selected and appointed against the vacant posts of Assistant Teachers. It is alleged that on 6.4.2010, all the relevant papers relating to the selection and appointment of the said Assistant Teachers were submitted to the respondent No. 2 (DIOS) for approval in terms of Sub-Section (4) of Section 16 FF of the U.P. Intermediate Education Act, 1921 (for short the Education Act), but no approval has yet been received from him. Hence this petition.

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

The question which arises for consideration is: whether the impugned inaction of the respondents in withholding approval of the selection and appointment of the aforesaid assistant teachers is violative of the educational rights of the minorities guaranteed under Article 30(1) of the Constitution.

Few prefatory observations are necessary to understand core of the issue. In 2008, two posts of Assistant Teachers were fallen vacant on account of superannuation. Management of the petitioner college approached the respondent No. 2 Distt. Inspector of Schools seeking

approval to fill up the said posts, but in vain. Thereafter, the college filed a petition before this Commission. By the order dated 21.10.2008 passed in Case No. 516 of 2008, the Commission clarified that prior approval of the DIOS is not required to fill up the vacancies caused on superannuation and the petitioner is free to select and appoint the teachers as per the qualifications of eligibility prescribed by the State Government. Thereafter, the management of the petitioner college selected and appointed the aforesaid assistant teachers, but their appointment were not approved by the respondent No. 1, Joint Director, Education, Azamgarh on account of violation of Regulation 17(a) of the Regulations under the U.P. Intermediate Education Act, 1921 (vide orders dated 26.2.2010 passed by the respondent No. 1). The petitioner college unsuccessfully, challenged the said order by filing a petition before this Commission. By the order dated 30.3.2010 passed in Case No. 463/2009, the order dated 26.2.2010 of the respondent No. 1 was upheld and the petition was dismissed. Thereafter, on 18.3.2010, the management of the petitioner institution re-advertised these posts in Urdu, Hindi and English newspapers. After conducting interviews of all the candidates on 4.4.2010, the aforesaid teachers were selected and appointed.

It needs to be highlighted that both the Assistant Teachers namely Sarva Shri Navin Kumar Singh and Shahid Akhtar were also selected earlier by the management of the petitioner college and their selection was vetoed by the respondent No. 1 on the sole ground of its infraction with Regulation 17(a) of the Regulations under the U.P. Intermediate Education Act, 1921 vide orders dated 26.2.2010 of the Respondent No. 1. Validity of the said order was upheld by this Commission vide orders dated 30.3.2010 passed in Case No. 463/2009. It is relevant to mention that the order dated 26.2.2010 of the respondent No. 1 is conspicuous by the absence of any objection relating to the appointment of the said teachers about non-fulfillment of the qualification of eligibility prescribed by the State government. In this view of the matter it may safely be inferred that both the Assistant Teachers selected by the management of the petitioner college fulfill the minimum qualifications of eligibility prescribed by the State Government and are otherwise eligible for appointment against the sanctioned post of Assistant Teachers.

Despite service of notice, the respondents did not file any written statement resisting the petition filed by the petitioner college. Consequently, it has to be presumed that respondents have no valid objection against selection and appointment of the said teachers. Needless to add here that the petitioner college is a minority educational institution covered under Article 30(1) of the Constitution. It has been held by the Apex Court in TMA Pai Foundation v. State of Karnataka [2002 (8) SCC 481] that the right to appoint teaching and non-teaching staff is the most important facet of minority's right to administer under Article 30 (1) of the Constitution. It was also held that a minority educational institution does not cease to be so, merely on receipt of aid from the State or its agencies. In other words, receipt of aid does not alter the nature or character of the minority educational institutions receiving aid.

At this juncture, we may also refer to the judgment of the Supreme Court in Secretary, Malankara Syrian Catholic College vs. T. Jose 2007 AIR SCW 132 decided on 27.11.2006 that "Article 30 (1) clearly implies that any grant that is given by the State to the minority institution

cannot have such conditions attached to it which will in any way dilute or abridge the rights of the minorities to establish and administer educational institutions.” The State which gives aid to an educational institution can certainly impose such conditions as are necessary for the proper maintenance of the high-standards of education as the financial burden is shared by the State. In other words, the conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some facet of administration. Obviously, all conditions that have relevance to the proper utilization of the aid by an educational institution can be imposed. That is why, it has been held in *T.M.A. Pai Foundation* (supra) that there can be regulatory measures for ensuring educational character and standards and maintaining academic excellence, as such regulations do not in any manner interfere with the right guaranteed under Article 30 (1) of the Constitution. Reference may, in this connection, be made to the following observations of the Supreme Court in *T.M.A. Pai* (Supra).

“This means that the right under Article 30(1) implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution. The conditions that can normally be permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and fulfillment of the objectives of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority status of the educational institutions. Such conditions would be valid if they are also imposed on their educational institutions receiving the grant.”

In *The Secretary, Malankara Syrian Catholic College* (supra), while interpreting the judgment rendered by the Supreme Court in *T.M.A. Pai Foundation* (supra), it was held that the State can prescribe: -

- (i) the minimum qualifications, experience and other criteria bearing on merit, for making appointments,
- (ii) the service conditions of employees without interfering with the overall administrative control by the Management over the staff.
- (iii) a mechanism for redressal of the grievances of the employees.
- (iv) the conditions for the proper utilization of the aid by the educational institutions, without abridging or diluting the right to establish and administer educational institutions.

It was also held that if any regulation interferes with the overall administrative control by the management over the staff or abridges/ dilutes, in any other manner, the right to establish and administer educational institutions, such a regulation, to that extent, will be inapplicable to minority institutions.

Thus, it is well settled that the right to appoint the teaching and non-teaching staff for a minority educational institution is perhaps the most important facet of the right to administer an educational institution. The imposition of any trammel thereon, except to the extent of prescribing the requisite qualifications and experience or otherwise fostering the interests of the institution itself, cannot but be considered as a violation of the right guaranteed by Article 30(1) of the constitution. [State of Kerala v. Very Rev. Mother Provincial, 1970 (2) SCC 417, The Ahmedabad St. Xavier's College Society v. State of Gujarat. 1974 (1) SCC 717, Frank Anthony Public School Employees' Association v. Union of India, 1986 (4) SCC 707, D.A.V. College v. State of Punjab, 1971 (2) SCC 269, All saints High School v. Government of A.P., 1980 (2) SCC 478, St. Stephen's College v. University of Delhi, 1992 (1) SCC 558, Board of Secondary Education & Teaching Training v. Joint Director of Public Instructions, Sagar, 1998 (8) SCC 555].

Thus, the Management's right of a minority educational institution to choose a qualified person for its teaching and non-teaching staff is well insulated by the protective cover of Article 30(1) of the Constitution and it cannot be whittled down by any legislative act or executive fiat except for prescribing the qualifications and conditions of service for the post. Article 13 of the Constitution injuncts the State from making any act, rules or regulations that is violative of any of the fundamental rights guaranteed under Chapter III of the Constitution. It is thus clear that the freedom to appoint teaching and non-teaching staff of a minority educational institution has always been recognized as a vital facet of the right to administer the educational institutions within the meaning of Article 30 (1) of the Constitution.

The right to choose a member of the teaching and non teaching staff falls exclusively within the powers of the committee of management of a minority educational institution and which power is neither regulated nor can be regulated by the authorities as that would amount to clear inroad into the fundamental rights enshrined under Article 30 of the Constitution. (P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537). That being so, this power of choice cannot be interfered with by the respondents. The management of the petitioner school has a right to fill up its vacant posts subject to the rider that the controlling/regulatory authorities have a right to scrutinize and find out whether the person selected by the selection committee is eligible and suitable to be appointed as such keeping in view of the minimum qualification of the eligibility prescribed therefor.

Sub-Section (4) of Section 16FF commands that the Regional Deputy Director of Education or the Inspector, as the case may be, shall not withheld approval for the selection made under Section 16FF where the person selected possesses the minimum qualification prescribed and is otherwise eligible. That being so, the impugned action of the respondents in withholding approval for the selection of the Assistant Teachers, Sarva Shri Navin Kumar Singh and Shahid Akhtar, made in accordance with the procedure prescribed under 16FF of the Education Act is violative of Article 30(1) of the Constitution and Sub-Section (4) of Section 16FF of the Education Act.

It is stated in the petition that all the relevant papers relating to selection and appointment of the said Assistant Teachers were submitted to the Office of the District Inspector of Schools

on 16.4.2010 but no response has been received from the Office of the respondent No.2. Justice S.H.A. Raza, in the B.D. Tripathi's U.P. Manual 20th Edition (2008) at page 62, has quoted a decision rendered by the High Court of Allahabad in H.V.K. Nathan vs. Regional Deputy Director Education (1998) 2 UP LBEC901 (ALLD.) which appears to be an authority for the proposition that if approval under Sub-Section (4) of Section 16FF of the Education Act is not given within a month on receipt of the papers, approval would be deemed to have been made. As stated earlier, all the relevant papers relating to selection and appointment of the said teachers were submitted to the respondent No.2 on 4.4.2010 but no response has yet been received from the respondent No. 1. Sub-Section (4) of Section 16FF of the Education Act mandates that the Deputy Director of Education or the Inspector, as the case may be, shall not withhold approval for the selection made under Section 16FF where the person selected possesses the minimum qualification prescribed and is otherwise eligible. In this view of the matter, we find and hold that it will be deemed that the competent authority had granted approval of the selection of the teachers.

For the foregoing reasons, we find and hold that the Assistant Teachers, namely Sarva Shri Naveen Kumar Singh and Shahid Akhtar were duly selected by the management of the petitioner college in accordance with the procedure prescribed under Section 16FF of the Education Act and as such the impugned action of the respondent in withholding approval for their selection is violative of the educational rights of the minorities enshrined under Article 30(1) of the Constitution and the mandate of Sub-Section (4) of 16FF of the Education Act. The findings of the Commission be reported to the respondents for their due implementation in terms of Section 11(b) of the Act.

CASE NO. 942 OF 2010

Petition to seek direction to grant approval of admissions of a Minority institution

Petitioner: M. A. Rangoonwala College of Dental Sciences & Research Center Through its Principal, Dr. Mukund Kothavade 2390-B, K.B. Hidayatullah Road Azam Campus, Camp, Pune, Maharashtra

- Respondents:**
1. The Secretary, Medical Education, State of Maharashtra Mantralaya, Mumbai – 32
 2. The Secretary, pravesh Niyantaran Samiti Room No. 305, 3rd Floor Government Polytechnic Building Kherwadi, Bandra East, Mumbai – 400 051
 3. The Director of Medical Education & Research Government Dental College & Hospital Building St. Gorge's Hospital Compound Near CST, Mumbai, Maharashtra.
 4. The Registrar Maharashtra University of Health Sciences Mahasul Dindori Road.

The petitioner M.A. Rangoonwala College of Dental Sciences and Research Centre, (for short the petitioner College) is a minority educational institution covered under Article 30(1) of the Constitution. It is aggrieved by the refusal of the respondent No. 2, the Committee set up under the decision of the Supreme Court in Islamic Academy of Education vs. State of Karnataka (2003) 6 SCC 697 (for short the respondent Committee) to grant approval of admission of 12 students of the petitioner College vide minutes of the Committee dated 7.5.2010. It is alleged that by the letter dated 24.10.2008, the petitioner College submitted to the respondent Committee the brochure and timetable etc for the academic year 2009-10 (for short the prospectus). This prospectus was considered by the respondent Committee at its meeting dated 11.2.2009 and it suggested certain modifications therein vide letter dated 6.3.2009. As directed by the respondent Committee all the modifications were duly carried out by the petitioner College and the prospectus was resubmitted to the respondent Committee vide letter dated 12.3.2009. The relevant rule relating to the admission of students in the petitioner college was mentioned in the prospectus as under :-

“The College Entrance Test shall be conducted under the supervision of the Pravesh Niyantaran Samiti, Maharashtra. The admissions through College Entrance Test – 2009 shall be for Muslim Minority Quota seats. As regards admission of 25% of Non-Minority students, same will be carried out on the basis of inter-se-merit of the candidates from MHT-CET-2009 Association CET-2009 conducted by the AMUPMDC/PMT marks, who apply to the College when called upon to do so. Foreign Muslim students are included in Muslim Quota and have to appear for College Entrance Test (CET-2009) N.R.I. students need not go through CET. However admission in N.R.I. Quota shall be on of merit. College Entrance Test-2009 will be in the form of multiple – choice questions. The admission will be on the basis of merit in this Entrance Test – 2009.

ELIGIBILITY:

4.0.2.Sub-Rule (iii) 15 Percent NRI Quota:

NRI Quota means as defined by the Hon’ble Supreme Court in P.A. Inamdar v/s State of Maharashtra case or as would be defined by State Act or Court orders.

For NRI candidates, there will be no CET. However NRI quota Merit list will be prepaid on inter-se basis if sufficient candidates in one of the above category are not available then seats will be made available to other category as referred to above.

Based on above, counseling will be carried out at College Level at Pune and vacancies will be filled up from the open category students or reserve category students on the basis of College Entrance Test – 2009/MHT-CET-2009 Asso.-CET-2009 or on the basis of basic qualification marks obtained in H.S.C. or Equivalent Examination.”

(emphasis supplied)

It is alleged that entire admission procedure i.e. C.E.T., counseling and actual admission of the students were carried out by the petitioner college on the basis of the prospectus approved by the said Committee. Despite its best efforts, the petitioner college could secure admission of 73 students only from CET conducted by the State Government and the AMUPMDC/PMT against the sanctioned intake of 100. Consequently, the petitioner College selected 12 students for admission on the basis of marks obtained by them in the qualifying examination i.e. in 10+2 examination. Admission of these students was not approved by the respondent Committee. Thereafter, the petitioner college submitted 85 students' eligibility forms to the respondent university for approval. Out of 85 students, the respondent University accepted only 73 students' forms and declined to accept eligibility forms of these 12 students on the ground that their admission is illegal. It is alleged that the aforesaid impugned action of the respondent Committee and the respondent university is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

Despite service of notice, none entered appearance on behalf of the respondent No. 1 to 3 as a result whereof the case proceeded ex-parte against them.

The respondent university resisted the petition on the ground that the present petition is outside cognizance of this Commission. It is alleged that the Commission cannot set aside any decision of the respondent Committee set up under the decision of the Supreme Court in Islamic Academy of Education vs. State of Karnataka (2003) 6 SCC 697. It is also alleged that the respondent Committee had disapproved the proposal of the petitioner college as embodied in Rule No. 4.4.2 for admission of students "on the basis of basic qualification marks obtained in HSC or equivalent examination". Appearance of candidates in either MHT-CET 2009 or Asso-CET-2009 was a mandatory condition and no candidate would be admitted if not appeared in any of the above CET. It is alleged that disapproval of the aforesaid admission of these 12 students by the respondent Committee was in consonance of the decisions rendered by the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481, Islamic Academy of Education vs. State of Karnataka (2003) 6 SCC 697 and P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537. It is also alleged that there is nothing on record to show or suggest that on request of the petitioner college, the competent authority under MHTCET or Asso-CET-2009 had expressed their inability to sponsor the candidates. It is further alleged that there is nothing on record to indicate that there was not even a remote possibility of getting even a single candidate from MHTCET 2009 or Asso-CET-2009. According to the respondent university, the petitioner college has taken law in its own hand by admitting 12 students on the basis of marks obtained by them in the qualifying examination which were not permitted by the respondent Committee or even by the aforesaid judgments of the Supreme Court. Consequently, the admission of these 12 students on the basis of marks obtained by them in qualifying examination is completely illegal being in violation of the directions of the respondent Committee. As a result whereof, the respondent university declined to accept the admission forms of the aforesaid students.

Bearing in mind the rival contention of the parties, the following issues arise for consideration:-

- (i) Whether the petition is outside the cognizance of this Commission?
- (ii) Whether admission of 12 students by the petitioner college is illegal?
- (iii) Whether the impugned action of the respondent Committee refusing to grant of approval to these 12 students admitted by the petitioner college is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution?

Issue No. 1

At the outset we 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 11th 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.”

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, an authority to adjudicate upon the disputes 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.

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 with the Commission and is empowered by or under the Act to determine.

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.

The right to administer in terms of Article 30(1) of the Constitution means the right to manage and conduct the affairs of the institution. It includes right to choose its governing body, right to selection of teaching and non-teaching staff and right to admit students of its choice. All these rights together form the integrated concept of right to administer. The concept of administration within the meaning of Article 30(1) of the Constitution includes the choice in admitting the students. The right to admit the students of its choice is perhaps the most important facet of the right to administer educational institution and the imposition of any trammel thereon except to the extent of prescribing requisite qualification of eligibility is constitutionally impermissible. The right under Article 30(1) of the Constitution can neither be taken away nor abridged by the State on account of the injunction of Article 13 of the Constitution. The power of regulation of the respondent Committee cannot render these core rights a teasing illusion or a promise of unreality. The controversy in this case pertains to the deprivation of the right of the petitioner college to administer the college and it is alleged that this deprivation was in violation of Article 30(1) of the Constitution.

Learned counsel for the respondent university submitted that the respondent Committee is quasi judicial body and its order are amenable to judicial review. That being so, this

Commission cannot exercise the powers of judicial review to set aside the order passed by the respondent Committee. Strong reliance has been placed on the following observations made by their Lordships of the Supreme Court in P.A. Inamdar's case (supra)

“we make it clear that in case of individual institution, if any of the Committees is found to have exceeded its powers by unduly interfering in the administrative and financial matters of the unaided private professional institutions, the decision of the Committee being quasi-judicial in nature, would always be subject to judicial review”.

In the instant case, the petitioner has not challenged the impugned order of the respondent Committee on the ground that it has exceeded its powers by unduly interfering in the day to day administration of the petitioner college. It is the case of the petitioner that the respondent Committee had permitted the petitioner to admit the students on the basis of the marks obtained by them in the qualifying examination i.e. 10+2 examination and therefore, it had admitted 12 students on the said basis. Thereafter, the respondent Committee wrongfully refused to grant approval of the admission of these students in its meeting held on 7.5.2010. Being aggrieved by this order, the petitioner college had approached the Commission claiming that impugned action of the respondent Committee is violative of Article 30(1) of the Constitution. Thus, the question which arises for consideration is as to whether admission of these students is invalid? Thus this is not the case of judicial review.

It has to be borne in mind that through Article 13 of the Constitution it is provided that State cannot make any laws, rules and regulations that are contrary to part IIIrd of the Constitution. The framers of the Constitution have build a wall around certain parts of the fundamental rights which have to be remained forever, limiting ability of majority to intrude upon them. That wall is the basic structure adopted. In other words Article 13 declares that any law in breach of the fundamental right would be void to the extent of such violation. The impact of the impugned action shall have to be tested on the touchstone of rights and freedom guaranteed by Part IIIrd of the Constitution. We, therefore, find and hold that the Commission has the jurisdiction to entertain the present petition.

Issue No. 2 & 3

Both the issues are interlinked and can conveniently be taken up together.

It is beyond the pale of controversy, that the petitioner college being a minority educational institution is entitled to the constitutional protection of the Article 30(1) of the Constitution. It is also an admitted position that the 12 students have been admitted by the petitioner on the basis of marks obtained by them in the qualifying examination i.e. 10+2 without conducting common entrance test. The question that arises for consideration is as to whether admission of the students is valid?

Mr. Inamdar has strenuously urged that before admitting these students the petitioner college had submitted to the respondent Committee its prospectus for conducting its CET,

counseling and admission procedure on 24.12.2008 (Annexure B). It needs to be highlighted that the following rule 4.4.2 was incorporated in the said prospectus. This rule contains the liberty to regulate the admission on the basis of qualifying examinations and to permit admission on the basis of marks obtained by the candidates in the qualifying HSC.

4.4.2 : "If sufficient candidates in one of the above category are not available, then seats will be made available to other categories referred to above.

Based on above, counseling will be carried out at College level at Pune and vacancies will be filled up from the open category students or reserve category students on the basis of college entrance test 2009/MHT-CET 2009/Asso-CET-2009 or on the basis of basic qualification marks obtained in H.S.C. or Equivalent Examination."

(Emphasis supplied)

By the letter dated 6.3.2009, the respondent Committee directed the petitioner to carry out certain modifications in the prospectus. Reference may, in this connection, be made to the following directions given by respondent Committee.

"in view of the above, the Samiti directs the M.A. Rangoonwala Dental College, Pune that :

(1) CET should be conducted in a fair and transparent manner and admission process of this course should be on the basis of inter-se merit,

(2) Schedule of CET should be as per directive of the Hon'ble Supreme Court of India in case of Mridul Dhar.

(3) To provide detailed list of the notified centres along with details of seating arrangement to be made in each such notified centre.

(4) Before publishing and distributing the same to the candidates, to incorporate the following changes in its final Rules and Information Brochure of CET-2009, which are as follows:

(a) Preamble page No. 2: As regards to admission of 25% of non-minority students, first preference should be given to MHT-CET-2009 candidates on the basis of inter-se merit, after exhausting MHT-CET candidate, next preference should be given to ASSO-CET-2009 candidate on the basis of inter se merit. The candidate from other PMT examination (private/deemed university/other State Government) should not be permitted.

(b) The details of time schedule of CET are not provided by the College but it should be as per direction of Hon'ble Supreme Court of India in case of Mridul Dhar.

(c) Rule No. 4- Eligibility : The eligibility for admission in Dental Course should be at HSC/12th Science, age of candidate and CET marks as pr with guidelines laid down by Dental council of India, New Delhi.

(d) Rule No. 7.2 – Tie-Breaker : The College/Association shall have to follow the rules as per Brochure of MHT-CET-2009 to be conducted by DMER, Mumbai in case of Tie break procedure.

(e) The College has to follow/abide the directions/decision of the Pravesh Niyantaran Samiti, Shikshan Shulka Samiti, Central Council/Orders of Hon'ble High Court / Govt. of India/ Govt. of Maharashtra/Maharashtra University of Health Science Nashik.

In consideration of the above, the Samiti, subject to the incorporation of the aforesaid changes/conditions, grants it's in principle approval (and not final approval) to the draft brochure of CET-2009 of M.A. Rangoonwala Dental College, Pune for conducting the admission process for the first year BDS course for AY 2009-10."

It is significant to mention that the respondent Committee did not direct the petitioner college to delete words "on the basis of basic qualification marks obtained in HSC or equivalent examination." Pursuant to the directions given by the respondent Committee, the petitioner college carried out certain modifications and resubmitted the final prospectus containing rules, timetable for CET, counseling and admission procedure on 12.3.2009 (vide Annexure D). It was specifically mentioned in the final prospectus submitted to the respondent Committee that vacancies will be filled up from the open category students or reserve category students on the basis of college entrance test 2009/MHT-CET-2009/Asso-CET-2009 or on the basis of basic qualification marks obtained in higher secondary or equivalent examination. On resubmission of the final prospectus submitted by the petitioner college, the respondent Committee did not direct the petitioner college to delete the expressions "on the basis of basic qualification marks obtained in HSC or equivalent examination". For the first time the respondent Committee decided in its meeting held on 7.5.2010 that in view of the judgment rendered by the High Court of Bombay in Karan Hemant Asrani and Ors. vs. The Maharashtra University of Health Science and Anr. (W.P. No. 563 of 2010), admission without CET cannot be approved and no candidate can be admitted without having passed CET, except NRIs in terms of direction given by the Supreme Court in P.A. Inamdar's case(supra).

At this juncture, the learned counsel for the respondent university submitted that on a careful reading of Clause 4 (a) and 4 (c) of the Minutes of the meeting of the respondent Committee dated 11.2.2009 would show that as far as admission to non-minority seats is concerned, the respondent Committee directed that the admissions had to be made first from the State CET (MHTCET-2009) and after exhausting MHTCET candidates preference would be given to ASSO-CET-2009 candidates. According to the learned counsel for the respondent it was clearly mentioned that candidates from PMT examination (private/deemed university/ other State Governments) should not be permitted. Similarly clause 4(c) also postulates that

the qualification for admission should be on the basis of minimum marks required in 10+2 “and” CET marks as per guidelines of the Dental Council. Learned counsel further submitted that in this view of the matter, the petitioner college was not free to make admission on the basis of marks obtained by candidates in the qualifying HSC without appearing in common Entrance Test. Learned counsel for the respondent further submitted that as per the decision rendered by the Supreme Court in T.M.A. Pai Foundation case (supra), Islamic Academy of Education (supra) and P.A. Inamdar (supra), the supreme Court had not permitted admissions of the students on the basis of marks obtained in the qualifying examination. Strong reliance has been placed on the following observations of the Supreme Court in T.M.A. Pai Foundation (supra).

“Q4. Whether the admission of students to minority educational institution, whether aided or unaided can be regulated by the State Government or by the university to which the institution is affiliated?”

Ans.as regards non-minority students who are eligible to seek admission for the remaining seats, admission should normally be on the basis of the common entrance test held by the State agency followed by counseling wherever it exists.”

He has also invited our attention to the following observations made by their Lordships of the Supreme Court in Islamic Academy of Education vs. State of Karnataka (supra):-

“It must be clarified that a minority professional college can admit, in their management quota, a student or their own community/language in preference to a student of another community even though that other student is more meritorious. However, whilst selecting/admitting students of their community/language the inter-se merit of those students cannot be ignored. In other words whilst selecting/admitting students of their own community/language they cannot ignore the inter se merit amongst students of their community/language. Admission, even of members of their community/language, must strictly be on the basis of merit except that in case of their own students it has to be merit inter se those students only. Further, if the seats cannot be filled up from members of their community/language, then the other students can be admitted only on the basis of merit based on a common entrance test conducted by government agencies.

“...We thus hold that the management could select students, of their quota, either on the basis of the common entrance tests conducted by the State or on the basis of a common entrance test to be conducted by an association of all colleges of a particular type in that State e.g. medical, engineering or technical etc. The common entrance test held by the association, must be for admission to all colleges of that type in the State. The option of choosing, between either of these tests, must be exercised before issuing of prospectus

and after intimation to the concerned authority and the Committee set up hereinafter. If any professional college chooses not to admit from the common entrance test conducted by the association then that college must necessarily admit from the common entrance test conducted by the State. After holding the common entrance test and declaration of results the merit list will immediately be placed on the notice board of all colleges which have chosen to admit as per this test. A copy of the merit list will also be forthwith sent to the concerned authority and the Committee. Selection of the students must then be strictly on basis of merit as per that merit list. Of course, as indicated earlier, minority colleges will be entitled to fill up their quota with their own students on basis of inter se merit amongst those students.”

Learned counsel has also invited our attention to the following observation made by the Supreme Court in P.A. Inamdar’s case (supra)

“Whether minority or non-minority institutions, there may be more than one similarly situated institutions imparting education in any one discipline, in any State. The same aspirant seeking admission to take education in any one discipline of education shall have to purchase admission forms from several institutions and appear at several admission tests conducted at different places on the same or different dates and there may be a clash of dates. If the same candidate is required to appear in several tests, he would be subjected to unnecessary and avoidable expenditure and inconvenience. There is nothing wrong in an entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding of such test. Out of such common merit list the successful candidates can be identified and chosen for being allotted to different institutions depending on the courses of study offered, the number of seats, the kind of minority to which the institution belongs and other relevant factors. Such an agency conducting the common entrance test (“CET” for short) must be one enjoying utmost credibility and expertise in the matter. This would better ensure the fulfillment of twin objects of transparency and merit. CET is necessary in the interest of achieving the said objectives and also for saving the students community from harassment and exploitation. Holding of such common entrance test followed by centralized counseling or, in other words, single-window system regulating admission does not cause any dent in the right of minority unaided 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 order of merit inter se of the students so chosen.”

Relying on the aforesaid decisions of the Supreme Court, learned counsel for the respondent university contended that it is imperative that admission to any professional course should be made only from a common entrance test which is the only method to determine the inter-se merit of the candidates and admissions made on the basis of marks

obtained by students in the qualifying HSC without appearing in common entrance test are not permissible.

It is relevant to mention that with a view to ensuring merit based admission to professional colleges, the Apex Court in Islamic Academy of Education (supra) directed that the admission to professional colleges should be based on merit by a common entrance test conducted by the Government agencies. In T.M.A. Pai Foundation's case (supra) their Lordships have observed that excellence in professional education require that greater emphasis be laid on the merit of the students seeking admission, for that appropriate regulations can be made.

Reference may, in this connection, be also made to the following observations made by their Lordships of Supreme Court in T.M.A. Pai Foundation :-

“For admission into any professional institution, merit must play an important role. While it may not be normally possible to judge the merit of the applicant who seeks admission into a school, while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. Appropriate regulations for this purpose may be made keeping in view the other observations made in this judgment in the context of admissions to unaided institutions.

Merit is usually determined, for admission to professional and higher education colleges, by either the marks that the students obtains at the qualifying examination or school-leaving certificate stage followed by the interview, or by a common entrance test conducted by the institution, or in the case of professional colleges, by government agencies.”

It has also been held in T.M.A. Pai Foundation's case (supra) that educational institution, however, cannot grant admission on their whims and fancies and must follow some identifiable or reasonable methodology for admitting students. According to their Lordships “even when students are required to be selected on the basis of merit, the ultimate decision to grant admission to the students who have otherwise qualified for the grant of admission must be left with the educational institution concerned. However, when the students rejects such students, such rejection must not be whimsical or for extraneous reasons”.

In view of these observations made by their Lordships of the Supreme Court, appropriate directions were made in Islamic Academy Education (supra) for appointment of a committee by the State to ensure that the tests conducted by the State or association of institutions are fair, transparent and non-exploitative. The only insistence is on maintenance of transparency and fairness in the method of admission to ensure that merit is not sacrificed at the altar of favoritism. CET has been introduced to provide access to professional education even

to weaker section of the society. Thus, the respondent Committee was set up for ensuring educational standards. At this juncture, we may usefully excerpt the following observations of their Lordships of the Supreme Court in P.A Inamdar (supra) :-

“In Pai foundation, it has been very clearly held at several places that unaided professional institutions should be given greater autonomy in determination of admission procedure and fee structure. State regulations should be minimal and only with a view to maintain fairness and transparency in admission procedure and to check exploitation of the students by charging exorbitant money or capitation fees.”

The scheme evolved in Islamic Academy of Education (supra) was provided partially for the purpose of ensuring fairness and transparency in admission procedure and to check exploitation of the students by charging exorbitant money or capitation fee. In T.M.A. Pai Foundation’s case (supra) it has been held that minority unaided institution can legitimately claim unfettered fundamental right to choose the students to be allowed admission and the procedure therefor subject to its being fair, transparent and non-exploitative. It is not the case of the respondent university that the admission procedure adopted by the petitioner college failed to satisfy all or any of the triple tests indicated by the Supreme Court in T.M.A. Pai foundation case (supra).

Needless to add here that an educational institution is established to subserve or advance the purpose for 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 there must be implicit in such a fundamental right the corresponding duty to cater to the needs of the children of their own community. The beneficiary of such a fundamental right should be allowed to enjoy it in the fullest measure. Therefore, the educational institutions of their choice will necessarily cater to the needs of the minority community which had established the institution.

The right under Article 30 of the Constitution is preferential right of minority educational institution to admit students of its choice. This obligation is intended to ensure that the institution retains its minority character by achieving the twin objects of Article 30(1) enabling the minority community to conserve its religion and language and to give a thorough, good general education to children belonging to such minority community. So long as the institution retains its essential character by achieving the said objectives, it would remain a minority institution. The T.M.A. Pai Foundation and P.A. Inamdar case (supra) unanimous on the view that in order to retain its minority character, it is essential for a minority educational institution to admit sufficient number of students from the minority community which has established it. Emphasizing the need for preserving its minority character so as to enjoy the privilege of protection of Article 30(1), it is necessary that the objective of establishing the institution

was not defeated. In other words, a minority educational institution must primarily cater to the requirements of that minority else its character of minority institution is lost. That being so, bulk of majority of admission of students has to be from minority community which has established the institution. It has been held in St. Stephen College vs. University of Delhi (1992) 1 SCC 558 that the minorities have the right to admit their own candidates to maintain minority character of their institution. That is a necessary concomitant right which flows from the right to establish and administer educational institutions under Article 30(1) of the Constitution. There is also a related right to the parents in the minority communities. The parents are entitled to have their children educated in institutions having an atmosphere congenial to their own religion.

According to Sachhar Committee Report Muslims are scratching the bottom of the educational barrel of the country. If a minority educational institution fails to or is unable to secure sufficient numbers of successful students from its own community through CET, it would lose its minority character. Cross border admission in professional colleges has been frowned upon by the Supreme Court in P.A. Inamdar's case (supra). This is a peculiar situation for minorities educational institutions. Here we may give an illustration. In a given academic year, say 2007-08, a professional educational institution established by a notified religious minority community may be able to secure sufficient number of admission of successful students of its own community through CET. It would be a religious minority institution capable of exercising its right under Article 30(1) of the Constitution. For the next academic year, 2008-09, it may not be able to secure sufficient number of admission of students of its own community through CET. For that year its right under Article 30(1) would stand forfeited. In the next academic year 2009-10, it may again be able to secure sufficient number of successful students from its own community from CET, its character as a minority institution shall be restored. Would any institution in such a situation be able to work its affairs or subserve or advance the purpose of its establishment in consonance with the law declared by the Supreme Court in T.M.A. Pai and P.A. Inamdar's cases. In order to avoid such an ever-changing phenomena and also to retain its minority character, the petitioner college submitted its prospectus to the respondent Committee containing an alternative mode of selection of students for admission i.e. the vacancies would also be filled up on the basis of basic qualification marks obtained in HSC or equivalent examination. It is well settled that a judgment is not to be read as a statute. The judgment is an authority for what it decides and not what can be legally deduced therefrom. (Union of India vs. Chajjoram (2003) 5SCC 568).

The short question which arose before the Bombay High Court was: whether admission to B.D.S. College given to the petitioners on the basis of marks obtained at 12th standard without appearing in the CET is valid? The Bombay High Court answered the said question in negative. The Bombay High Court in Asrani's case (supra) was not dealing with admission in a minority educational institution. The ever changing phenomena as demonstrated above which might often be faced by a minority educational institution was not before the Bombay High Court . There is nothing in the said judgment to indicate that liberty was obtained by the college to regulate admission on the basis of qualifying examinations and to permit admission on the

basis of marks obtained by the candidates in the qualifying HSC or equivalent examination as been done in this case. That being so, the ratio decidendi of Karan Hemant Asrani's case (supra) does not govern a case like in hand.

It needs to be highlighted that alternative mode of selection of the students for admission incorporated in the prospectus etc. submitted earlier to the respondent Committee was again reiterated in the final prospectus submitted to the respondent Committee. The said mode of selection of the students for admission was not rejected expressly by the respondent Committee. Despite service of notice the respondent did not controvert the petitioner's averment that the alternative mode of selection of admission was tacitly approved by the respondent Committee. Having regard to the peculiar facts and circumstances of the case, it may safely be inferred that perhaps the respondent Committee realizing the petitioner's inability to secure admission of successful students of its own community through CET tacitly approved its alternative mode of selection of students of its own community for admission on the basis of marks obtained in the qualifying examination. But subsequently, the respondent Committee disapproved the admission of 12 students of the petitioner college on the basis of the judgment rendered by the Bombay High Court in Asrani's case (supra). Mr. Inamdar has invited our attention to the decision of the respondent Committee dated 19.9.2009, whereby it had allowed the Ayodhya Charitable Trust's College of Special Education, Pune to start admission process in BASLP for academic year 2009-10. Acting upon the direction issued by the High court of Bombay in WP 6332/2005, the respondent Committee has approved admission process of filling up on vacant seats by the college on its own level strictly in accordance with the *inter se* merit of the applicants and in a fair and transparent manner.

It is relevant to mention that the alternative mode of selection of students for admission on the basis of marks obtained by the candidates in the qualifying HSC is also a methodology to check merits of the students to be admitted in a professional college. Reference may, in this connection, be made to the following order dated 23.10.2009 made by the Supreme Court in WP (Civil) 420/2009 and WP (Civil) No. 481/2009. In that case, the petitioner college had filed an application before the Supreme Court for permitting the petitioner college for filling up 27 vacant seats for academic year 2009-10 by extending the cut off date for the following order of preference.

- i) on the basis of marks obtained in college CET 2009;
- ii) on the basis of marks obtained in Maharashtra State Government's MH-CET,2009;
- iii) on the basis of marks obtained in Association ASS- CET,2009;
- iv) on the basis of marks obtained in Govt. of India's CET, 2009;
- v) on the basis of marks obtained in CET conducted by other State
- vi) **on the basis of marks obtained in 10+2 (HSC) Science qualifying examination 2009;**

- vii) grant ad-interim ex-parte relief in terms of prayer clause (a) and confirm the same after notices to the respondents;
- viii) pass other appropriate affidavit

(emphasis supplied)

Upon hearing the purpose, the Supreme Court passed the following interim order:-

ORDER

W.P. (C) No. 420/2009:

The applicant seeks extension of the time for completing the admission process to the medical and dental colleges, which have already been granted approval, we are told that large number of seats are lying vacant despite the counseling being done. Time is granted till 5.11.2009 for completing the admission process. But this is granted only regarding fresh admissions.

I.A.s are allowed accordingly.

W.P. (C) No. 461/2009:

Heard learned counsel for both sides.

The petitioner college is permitted to complete the admission process by 5.11.2009, provided they have got affiliation from the concerned authorities.

The writ petition is disposed of accordingly.

G.V. Ramana

Veera Verma

Court Master

Court Master”

Reference may also be made to the following order dated 23 September 2005 passed by the Supreme court in WP(CIVIL) No. 350/1993

“O R D E R

I.A.No. 90

The interiocutory application is dismissed.

I.A No. 96:

This application has been filed by the All India Medical and Engineering Colleges Association but is restricted to admission to engineering colleges. According to the applicant, as of today, no student, who had taken Common Entrance Test (C.E.T.) conducted by the respective State Governments, is available for admission in the engineering colleges, which

are members of the applicant's association, and number of seats are still lying vacant. The contention is that if these vacant seats are not permitted to be filled up by admitting students on the basis of merit marks obtained on the basis of 10+2 examination conducted by the Central Board of Secondary Education (C.B.S.E.) or other equivalent examination conducted by the State Government and who are otherwise eligible and qualified except that they have not taken C.E.T. conducted by the respective State Governments, all these seats would go waste. Under these circumstances, we dispose of the application by issuing the following directions:

- (1) it would be open to the State Governments to send the list of candidates seeking admission in engineering courses, who may have taken C.E.T. conducted by the State Governments/entrance test conducted by consortium colleges and have not got admission. The said list shall be sent to the engineering colleges within one week from the State Governments being notified about the orders passed by this court. This order shall be notified by the applicant to the State Governments forthwith but, in any case, not later than seventy two hours. If any State Government has fixed higher standards, the same shall have to be complied with before granting admission.
- (2) In case the names, as mentioned in clause (1), are received, the colleges would give admission to those students in the first instance.
- (3) **All remaining vacant seats are permitted to be filled up on the basis of merit marks obtained in 10+2 examination conducted by the C.B.S.E. or other Boards.**

(Emphasis supplied)

The aforesaid directions are for the present academic year i.e. 2005-2006. “

The aforesaid orders have been passed by the Supreme Court after the decision rendered by 11 Judge Bench in T.M.A. Pai Foundation's case (supra).

It is also relevant to mention that recently the Directorate of Technical Education Maharashtra has issued a Notification No. 2A/ADM/MBA/2010/2892 dated 16.9.2010. The original order is in Marathi language and its English translation is as under:-

DIRECTORATE OF TECHNICAL EDUCATION MAHARASHTRA
3, Mahapalika Marg, P.O. Box No. 1967
Mumbai 400 001

NOTIFICATION

No. 2A/ADM/MBA/2010/2892

Date :- 16/9/2010

Sub :- Admission to the Post Graduate MBA/MMS Course

Government of Maharashtra vide letter number TEM2010/C237/10/T.E./4 Date : 15.9.2010 instructed as below:

The said circular is regarding giving opportunity to aspiring students for post-graduate management courses. These instructions are to streamline the procedure of manning the vacancies; in unaided institutes: for the academic year 2010-11

- (1) Prioritize to admit the aspiring students for MBA/MMS course for the academic year 2010-11; by giving an opportunity; to those who have passed CET Examination.
- (2) The remaining vacant positions; only after (1) above; are to be filled in ; by the candidates:
 - a. Who did not appear for CET/GDPI
 - b. But these admission should be based on the marks acquired by the student at the graduation level.

Further, the institute should ensure that; the action taken will only result in giving justice to all aspiring students.

The students are further notified that if they have any complaint/dispute/grievance; they should submit written complaint to the competent authority; of the concerned Divisional Office or Technical Education.

After instituting an inquiry; if it is noticed that the institute has committed an irregularity; necessary deterrent action will be initiated; which please note.

Signature

Dr. S.K. Mahajan
Acting Director
(Technical Education),
Mumbai, Maharashtra

Mr. Inamdar submitted that despite its best effort the petitioner college could not secure admission of 100 students and fifteen seats are still lying vacant. Keeping in view the aforesaid interim order of the Supreme Court and the latest notification issued by the Directorate of Technical Education, Maharashtra, the alternative mode of selection of the students suggested by the petitioner that in the event of seats remained unfilled after selection of successful candidates of CET they would be filled up by the students on the basis of marks obtained in the qualifying examination cannot be said to be invalid. We have already demonstrated that paragraph 59 of T.M.A. Pai Foundation's case (supra) deals with right to determine the merit by giving illustration. It does not rule out any other method of determining the merit which may also include marks obtained in qualifying examination. See para 171 of 2003 6SCC of Islamic Academy of Education (supra). The merits of the 12 students admitted by the petitioner college have been determined on the basis of marks obtained by them in the qualifying examination. Nothing has been shown which may even remotely suggest that in admitting these 12 students, meritorious candidates have been treated unfairly by the petitioner college or to

be at a disadvantage by preferences shown to less meritorious but more influential students. That being so, it may safely be inferred that admissions of these 12 students is on transparent basis and the merit is adequately taken care of. In other words admission of these students by the petitioner college satisfies the basis of merit based admission. In almost similar case, the Supreme Court in A.Sudha vs/ University of Mysore 1997 SCC 537 had allowed the student to procure her status in the MBBS course and directed that her result for the year of MBBS examination be declared within two weeks from the date. For the foregoing reasons we find and hold that the admission of these 12 students is not hit by the decision of the Bombay High Court rendered in Karan Hemant Asrani's case (supra) and have been validly admitted by the petitioner college.

In the factual situation narrated here in above, we find and hold that admission of these 12 students by the petitioner college cannot be held as invalid. We also find and hold that the impugned action of the respondent Committee in granting approval of admission of these students is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

By the interim order dated 20.5.2010, we have directed the respondent university to allow these 12 students to appear in the examination for the first year BDS course scheduled to commence from 25.5.2010 subject to the condition that their results shall not be declared until further orders. We, therefore, direct the respondent university to declare results of these students.

CASE NO. 1714 OF 2010

Petition to seek direction to accord permission to allow admission of students

Petitioner : Acharya Gyan Ayurved College Talawali Chanda,A.B. Road, Post Manglia,Indore (M.P.) Through Dr. G.C. Jain, Its Chairman, Managing Committee

- Respondents:**
1. Department of AYUSH Ministry of Health & Family Welfare Govt. of India, IRCS, New Delhi Central Council of Indian Medicine 61-65, Institutional Area, Janak Puri New Delhi
 3. The Secretary Department of Medical Education Vallabh Bhawan, Bhopal (M.P.)
 4. The Director Indian system of Medicine & Homeopathy, Satpura Bhawan, Bhopal (M.P.)
 5. The Registrar Devi Ahilya Vishwavidyalaya, Indore (M.P.)

By this petition, the petitioner Acharya Gyan Ayurved College, Talawali Chanda, A.B. Road, Manglia, Indore, (M.P.) seeks a direction to the respondent No. 1 to accord permission to the petitioner college under Section 13 C of the Indian Medicine Central Council Act 1970 (for short the Act) for the academic year 2010-11 and to allow the petitioner college to participate in the counseling scheduled to be held in the last week of September 2010 for the academic session 2010-11. The petitioner college has been granted minority status certificate by the State of Madhya Pradesh and as such it is entitled to the constitutional protection of Article 30(1) of the Constitution. The college was established in the year 2001 and was accorded requisite permission by the respondent No. 2 in the year of 2002 in accordance with the provisions of the Act. It got affiliation from Devi Ahilya Vishwavidyalaya, Indore and has continuously remained affiliated till 2009-10. The petitioner has also received renewed permission under the Act continuously till 2001-10.

The respondent No. 2, after conducting inspection of the petitioner college for the academic year 2010-11 under Section 13 A/ 13 C of the Act, has found certain deficiencies in faculty. On the basis of the said inspection report of the respondent No. 2, the respondent No. 1 (the Department of AYUSH, Ministry of Health and Family Welfare) vide their letter dated 6.8.2010 provided an opportunity of hearing to the petitioner regarding the deficiencies and shortcomings detected by the respondent No. 2. On 14.8.2010, the petitioner college submitted representation before the respondent No. 1 pointing out the rectification of the deficiencies and shortcomings noted by the respondent No. 2. It is alleged that the respondent No. 1 wrongfully declined to grant permission to the petitioner college under Section 13 C of the Act. It is alleged that the petitioner has got all the infrastructural and instructional facilities for being recognized and consequently, the impugned action of the respondent No. 1 in not granting recognition under Section 13 C of the Act is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

Despite service of notices, none appeared for respondent No. 1, 3 and 5 as a result whereof, the case proceeded ex-parte against them. The respondent No. 4 though appeared, did not file any reply. The respondent No. 2 resisted the petition on the ground that this case is outside the cognizance of this Commission as it has no power to set aside the order dated 20.9.2010 passed by the respondent No. 1. It is alleged that the Central Council of Indian Medicines (respondent No. 2) was created under the Act and it has prescribed minimum standards of education, infrastructure etc. in the field of Indian System of Medicines. New sections 13 A, 13 B and Section 13 C were engrafted to streamline the procedure for starting new colleges , PG courses and increasing intake capacity in UG and PG courses. Even existing colleges have been brought under the purview of the aforesaid amended provisions of the Act. It is also alleged that inspections of the petitioner college were carried out in 2008-09 and 2009-10 and certain deficiencies and shortcomings were

detected which were reported to the respondent No. 1. The respondent No. 2 also got inspected the petitioner college and submitted its inspection report for the academic session 2010-11. The respondent No. 2 found certain major deficiencies and shortcomings and the respondent No. 1 on the basis of the said inspection report declined to grant permission to the petitioner college vide order dated 20.9.2010.

It is beyond the pale of controversy, that the petitioner college is a minority educational institution covered under Article 30(1) of the Constitution. It is also undisputed that the inspection team constituted by the respondent No. 2 inspected the petitioner college and submitted recommendations to the respondent No. 1 in which several shortcomings and deficiencies relating to eligibility conditions and standards laid down by the Indian Medical Council Regulations framed under the Act, were found. It is further undisputed that the inspection report of the respondent No. 2 was supplied to the petitioner for its comments. The petitioner had submitted its representation against the said report. After considering the petitioner's representation and after affording an opportunity of being heard to the petitioner, the order dated 20.9.2010 was passed. The said order is self explanatory. It assigns adequate reasons regarding non-grant of permission as sought by the petitioner college. The major deficiencies found by the respondent No. 2 were that adequate teachers are not available against the standard staff of 35. The occupancy in outpatient department was also on the lower side. The IPD, radiology, pathology, laboratory were not functional. The petitioner college did not have required number of teachers having PG qualification and available teachers were not working regularly. It was also found that overall functioning of the college and hospital was below the minimum standard prescribed by the respondent No. 1. Bearing in mind the said deficiencies and shortcomings noted by the respondent No. 2, the respondent No. 1 decided not to grant permission to the petitioner college to admit under graduate students for the academic year 2010-11. It needs to be highlighted that the order dated 20.9.2010 passed by the respondent No. 1 has not been challenged by the petitioner. Moreover this Commission cannot act as an appellate authority in such matters for setting aside the order passed by the competent authority in accordance with law. It has to be borne in mind that norms and standards of education are not the part of the management of minority educational institution and they cannot be diluted under the facade of Article 30(1) of the Constitution. The norms and standards of education concern the body politic and is governed by considerations of advancement of country and academic excellence. Consequently, we find and hold that the order dated 20.9.2010 passed by the respondent No. 1 does not suffer from any legal infirmity.

The petition is sans merit and deserve dismissal which we direct. It is open for the petitioner to apply for permission after removing the deficiencies and shortcomings for getting the permission for future academic years.

CASE NO. 1733 OF 2010

Request for seeking direction to State to allow unaided Minority Institution to admit students of its choice

Petitioner: Geetanjali B.Ed. College, Borawar District Nagaur, Rajasthan managed by Geetanjali Shikshan Sansthan, Through its Secretary

- Respondents:**
1. The Vice Chancellor, MDS University, Ajmer, Rajasthan
 2. The Co-ordinator, PTET Jai Narayan Vyas University, Jodhpur, Rajasthan
 3. The Registrar, MDS University, Ajmer, Rajasthan
 4. The Principal Secretary, Education Group –I, Sachivalaya, Jaipur, Rajasthan
 5. The Co-Ordinator, BSTC, Government College, Ajmer, Rajasthan
 6. The Registrar, Education Department of Examination, Rajasthan, Bikaner
 7. Deputy Secretary, Rajasthan Government, School & Sanskrit Edu. Department Elementary Education (Planning), Jaipur, Rajasthan
 8. N.R.C, NCTE, A-46, Shanti Path Tilak Nagar, Jaipur

The petitioner college is a minority educational institution within meaning of 2(g) of the National Commission for Minority Educational Institutions Act 2004 (for short the Act). It has been recognized by NCTE for conducting B.Ed. courses with an annual intake of 200 students and B.S.T.C with an annual intake of 50 students. The petitioner institution wanted to admit atleast 50% of the students from Muslim Community. When the petitioner institution approached the competent authorities for the said purpose, they refused to accept the minority status certificate granted by this Commission and insisted that the students for the aforesaid courses have to be admitted from the list approved by the competent authority of the State. Since the admission process had started the petitioner wanted permission to advertise the number of seats inviting applications for admission from successful candidates in the Central Entrance Test conducted by the competent authority.

By the order dated 29.9.2010, the Commission directed the respondents to act upon the minority status certificate granted to the petitioner college by this Commission. The Commission also allowed the petitioner institution to issue a advertisement to the effect that the petitioner college shall select students from out of the list of successful candidates prepared at the Central Entrance Test without altering the order of merit inter-se of the students, so chosen.

Pursuant to the said directions of the Commission, the respondent university intimated the Commission about its acceptance of the minority status certificate granted by this Commission.

Despite service of notices, none entered appearance on behalf of the respondents. Hence the case proceeded ex-parte against them.

The question for consideration is: whether the petitioner college, being an unaided minority educational institution, is entitled to admit students of the Muslim Community? It has been held by the supreme court in T.M.A. Pai Foundation versus State of Karnataka [(2002) 8 SCC 481] that “minority unaided institution can legitimately claim unfettered fundamental rights to choose the students to be allowed admission and the procedure therefor subject to its being fair, transparent and non exploitative”. In a clarificatory judgment rendered by the Supreme Court in P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537 , it has been held that “single window system regulating admissions does not cause any dent in the right of minority unaided institutions to admit students of their choice. Such choice can be exercised from out of list of successful candidates prepared by the CET without altering the order of merit inter-se of the students so chosen”. At this juncture we may also usefully excerpt the following observations of the Supreme Court in P.A. Inamdar’s case (supra) :

“our answer to the first question is that neither the policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or non-minority unaided educational institution. Minority institutions are free to admit students of their own choice including students of non-minority community as also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational institution status is lost. If they do so, they lose the protection of Article 30(1).”

In view of the decision of the Supreme Court in P.A. Inamdar’s case (supra), the petitioner institution, being an unaided minority educational institution is entitled to admit students of their own choice including students of non-minority community as also members of the Muslim community from other states. Such choice can be exercised from out of list of successful candidates of Muslim Community prepared by Central Entrance Test without altering the order of merit inter-se of the students, so chosen. As directed by the Supreme Court “neither the policy of reservation can be enforced by the State Government nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or non-minority unaided educational institution”. Consequently, the respondents are directed to approve the list of candidates belonging to the Muslim Community selected by the petitioner institution for admission to B.Ed. and B.S.T.C courses from out of list of successful candidates prepared by the Central Entrance Test.

Case No.316/2010

Petitioner: The Secretary, C.M.S. St.John's High School, State of West Bengal, and others

- Respondents:**
1. Aninda Biswas, Chapra R.C.Para, P.O. Bangalji, District Nadia
 2. Pranab Kumar Mondal, Banashree Housing Society Anantheswar Road, Krishna Nagar, District-Nadia.
 3. Arup Ratan Biswas, C.M.S. Christianpara, P.O.Krishnagar, District Nadia.

The Commission have examined in detail the petition with affidavits, replies submitted by respondents, the rejoinder affidavits etc of the petitioners.

1. The Petitioners affirm that their school is a minority Educational Institution and a listed School under the special Rules. According to the petitioner, that on July 2 ,2004 the Managing committee decided to appoint teachers against the vacancies sanctioned by the Govt. The eligibility qualifications prescribed by the state Govt. in the appointment of teachers was also adhered to by the Petitioner School. Two posts of Asst. teacher in Science group and one group D staff had been advertised as per rules .The selection committee, also acting as a screening committee scrutinized the applications and found 9 applications Valid and in case of group D staff 27 applications were valid and such candidates were interviewed on Oct-18-2004 for the respective posts of Asst.teachers and group D staff and three panels seems to have been prepared according to vacant posts and respondents No.4 and 5 and 6 were at the top of the said three panels. Those three Asst. teachers namely .1. Aninda Biswas, Pranab Kumar Mondal, Arup Ratan Biswas were issued appointment orders by the secretary of the said school and they joined duty on 1st Nov.2004.

The petitioner Institution's grievance before this Commission is that on submitting the panels of names of the selection list of teachers to the State Govt (,to the District Inspector of School Education(S.E) Nadia,) for approval, instead of approving the panels the respondents declined the same on grounds not applicable to approved Minority Educational Institutions. The selection and appointment of teachers in Minority Institutions remain within the competency of the said management, as the school in question is a Minority Institution governed by Article 30 of the Constitution of India.

The appointment of teachers in sanctioned vacancies with requisite qualifications prescribed by the competent authority (state government) is within the competency of the school authority to administer educational Institutions of their choice. The Director of School Education –Respondent No.3- under Memo no.1141/gen/SE dated Nov.16,2004 communicated the school that the panels submitted to the govt. cannot be considered for according approval

as the school authority did not follow the existing rules vide Memo No.1314 (50) –SE (S)/4A-35/2002 dated sep-17-2002 in the matter of preparation of panels submitted for approval.

The petitioners complaint is that by declining approval to the panel of teachers , selected and appointed by the school authority which is a Minority Educational Institution (such status being accorded by this National Commission Vide order no.File 163 of 2007),the respondents have made an interference with the school authority's right of administering of the institution of their choice and such interference is a clear violation of the rights conferred to them by Article 30 of the Constitution of India. The petitioner's plea is that since the mandate of the Constitution is supreme and the same cannot be interfered with by the respondents.

The petitioners further plead that in view of the aid rendered by the State for running the institution, the state authority is only entitled to prescribe the norms of qualification and the eligibility and service conditions of the teaching and non-teaching staff in respect of sanctioned posts. Right of appointing teaching and non-teaching staff is part of the administrative process and as such it cannot be interfered with by the state authority as it will be contradicting the Constitution and a clear violation of the provisions of Article 30 of the same .Hence the respondents are not entitled to interfere with the right of administering the institution as it is a Minority educational institution falling within the purview of Article 30 of the constitution. The petitioner institution's contention is that appointment of teaching and non-teaching staff by a Minority institution ,provided the norms of eligibility and qualifications prescribed by the competent authority is followed, can not be interfered with. The impugned Govt. order (annexure p-7) through which the state authority directed that vacancies be filled up as per Reservation Rules made by the Govt. of West Bengal is being challenged by the petitioner institution, asserting that it is a Minority Educational Institution and hence not bound by the Reservation Rules prescribed by the State Govt. In this case, the petitioner also complains that the state Govt. directed the petitioner that the candidates selected for appointment must have registered their names with the Employment Exchange. The contention of the petitioner is that such a directive by the respondents to the petitioner is a clear attempt to control the administration of the Minority Educational Institution and the respondents are not at all entitled to do so.

The main contention of the petitioner before this Commission is that the impugned Govt. order declining approval to the teachers appointed by the School authority against the sanctioned vacancies in accordance with the eligibility norms prescribed by the state authority is ultra vires the Constitution and hence liable to be set aside as the impugned govt. order is arbitrary and illegal.

Against the said impugned order ,the petitioner did prefer a writ petition before the Hon'ble State High Court (before Hon'ble Justice J.K.Biswas) and His Lordship after hearing the parties on 6/9/2007 allowed the plea of the petitioner and set aside the referred Memo dated Nov.16 ,2004 by the respondents and directed the Inspector of schools ,Nadia to give

a fresh reasoned order in the matter.(wp no-7555 (w) of 2005 –annexed by the petitioner marked as p-8).

There after by memo No.91(3) law /SE dated 22-7-2008 the District Inspector of schools ,Nadia referred the entire matter of approval of teaching and non –teaching staff in question of the said school to the Director of School Education ,Govt. of West Bengal for final decision as he is the rule framing Authority.

Further, the District Inspector of schools Nadia vide memo No.140/Law/SE dated 9/9/2008 communicated his inability to accord approval of appointment of teaching staff of the said school on the ground that the procedure for the preparation of the panels was not done in conformity with the circular of the Govt. on the procedure for recruitment of teaching and non –teaching staff in Minority Educational Institutions in terms of the Memo No.1314 (50) SE dated 17/09/2002.

The petitioners also submit that by another Memo No.134-Lc/Lc-Ls-1444/05 dated 4-11-2008 the Director of School Education, W.Bengal rejected the claim of the said 3 teachers for approval of their appointments.

The petitioner’s contention on the basis of facts and law is that the memos issued and orders passed by the Inspector of Schools ,Nadia and the Director of School education ,Govt. of West Bengal suffer from infirmities of Law and proper reasoning and hence liable to be set aside.

The petitioner further pleads that the Govt. order relied on by the respondents in rejecting the appointments of teachers made by the petitioner School will not stand the test of law as it is not applicable to the said school since it is still governed by the special rules as per Notification No. 641-Edn (s) dated 23 rd May 1974 which is still in force whereby the Minority Institutions like that of the said school has been given power to administer which includes the right of appointing teaching and non- teaching staff- provided the appointed personnel hold to their credit minimum requisite qualifications prescribed for the post by the state authority.

In the instant case before us,

1. The petitioner School, the C.M.S. St.John’s High School,,Nadia Dist,West Bengal is a Minority Educational Institution, having been accorded Minority status by this Commission vide order dated June 13 ,2007 passed in case No.163/2007. The school comes within the purview of Article 30 of the Constitution and seems to have been established and administered by those belonging to the Christian Minority and coming under the special rules for the management of schools run by the Christian Church/Missionary society (Board /Religious society/subsidiary trust of their successor –in Law in West Bengal.)the impugned Govt order is not based on any Rule promulgated by the Governor and notified in the gazatte but based on an order only by the special secretary of the Govt. Any attempt to interfere with the special rules of 1974 will be tantamount to violating the spirit of Article 30 of

the Constitution which guarantees the rights of the minorities to establish and administer educational institutions of their choice.

It has been held by the Apex Court in TMA Pai Foundation v. State of Karnataka [2002 (8) SCC 481] that the right to appoint teaching and non-teaching staff is the most important facet of minority's right to administer under Article 30 (1) of the Constitution. It was also held that a minority educational institution does not cease to be so, merely on receipt of aid from the State or its agencies. In other words, receipt of aid does not alter the nature or character of the minority educational institutions receiving aid. It has been held by the Apex Court in a recent judgment in The Secretary, Malankara Syrian Catholic College Vs. T. Jose & Ors. (Civil Appeal No. 8599 of 2003 – decided on 27.11.2006 that "Article 30 (1) clearly implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it which will in any way dilute or abridge the rights of the minorities to establish and administer educational institutions." The State which gives aid to an educational institution can certainly impose such conditions as are necessary for the proper maintenance of the high-standards of education as the financial burden is shared by the State. In other words, the conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some facet of administration. Obviously, all conditions that have relevance to the proper utilization of the aid by an educational institution can be imposed. That is why, it has been held in T.M.A. Pai Foundation (supra) that there can be regulatory measures for ensuring educational character and standards and maintaining academic excellence, as such regulations do not in any manner interfere with the right guaranteed under Article 30 (1) of the Constitution. Reference may, in this connection be made to the following observations of the Supreme Court in T.M.A. Pai (Supra)

"This means that the right under Article 30(1) implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution. The conditions that can normally be permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and fulfillment of the objectives of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority status of the educational institutions. Such conditions would be valid if they are also imposed on their educational institutions receiving the grant."

In The Secretary, Malankara Syrian Catholic College (supra), while interpreting the judgment rendered by the Supreme Court in T.M.A. Pai Foundation (supra), it was held that the State can prescribe: -

- (i) the minimum qualifications, experience and other criteria bearing on merit, for making appointments,
- (ii) the service conditions of employees without interfering with the overall administrative control by the Management over the staff.
- (iii) a mechanism for redressal of the grievances of the employees.
- (iv) the conditions for the proper utilization of the aid by the educational institutions, without abridging or diluting the right to establish and administer educational institutions.

It was also held that if any regulation interferes with the overall administration control by the management over the staff or abridges/ dilutes, in any other manner, the right to establish and administer educational institutions, such a regulation, to that extent, will be inapplicable to minority institutions.

It has also been observed by their lordships in the Supreme Court in T.M.A. Pai Foundation case (*supra*) as under:

“While it was permissible for the State and its educational authorities to prescribe the qualifications of teachers, it was held that once the teachers possessing the requisite qualifications were selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution was regarded as one of the essential ingredients under Article 30 (1). The course attention was drawn to the fact that in Kerala Education Bill, 1957 case this Court had opined that clauses 11 and 12 made it obligatory for all aided schools to select teachers from a panel selected from each district by the Public Service Commission and that no teacher of an aided school could be dismissed, removed or reduced in rank without the previous sanction of the authorized officer. At SCR p. 245, Khanna, J., observed that in cases subsequent to the opinion in Kerala Education Bill, 1957 case this Court had held similar provisions as clause 11 and clause 12 to be violative of Article 30 (1) of the minority institution.”

In the light of the documents placed before us and the arguments made by the parties, this Commission is of the view that the selection and appointment of teachers made by petitioner school is in order as the school has its right of appointing teaching and non –teaching staff with the only condition that the candidates thus selected should have to their credit the minimum qualifications of eligibility prescribed by the state authority. Here, in the instant case that norms has fully been observed by the petitioner School.

The respondents have ,through their refusal to accord approval for the appointed teachers by the said school have gone beyond the jurisdictional frontiers of their authority

and appears to have made an overt attempt to interfere with the administering of a minority educational institution. The impugned Govt. Memos/orders to the School is a clear violation of the provisions contained in Article 30 of the constitution.

Hence this Commission ,on the basis of law and facts placed before it uphold the right of the petitioner institution to make necessary appointments of teaching and non teaching staff observing the prescribed norms of eligibility and qualifications. The petitioner school as well as the other Minority Educational institutions are exhorted to be transparent in their recruitment process and procedures. In the instant case the Commission observing the fact that the School is a Miniority Educational Institution which come under the radius of the provisions of article 30 directs the respondents to give accord to the appointments in question as the rules of reservation is also not applicable to the petitioner school. Hence the impugned Govt. order and the memos issued by the respondents does not stand ground.

The appointments made by the petitioner school of the Performa respondents-Aninda Biswas,Pranab Kumar mondal, Arup Ratan Biswas are declared legal and valid and within the norms.

Dr. Cyriac Thomas
(Member)

Dr.Mohinder Singh
(Member)

Justice M.S.A. Siddiqui (Chairman)

I have had the advantage of reading the opinion of my learned brother. I am in agreement with the conclusions arrived at in the judgment. It is categorically stated in T.M.A. Pai vs. State of Karnataka AIR 2003 SC 355 that right to appoint teaching and non-teaching staff is a vital facet of the right of administration and management of a minority educational institution. The State can regulate the method of selection and appointment of teachers after prescribing requisite qualification for the same. Freedom for the selection of teachers among the qualified candidates is fundamental to the maintenance of the academic and administrative autonomy of an aided institution. Once the teachers possessing the requisite qualifications were selected by the minorities for their educational institutions, the State would have no right to veto the selection of teachers. The minority has an inbuilt right to appoint persons, which in its opinion are better culturally and linguistically compatible to the institution.

It is relevant to mention that mere receipt of State aid does not annihilate the right guaranteed under Article 30(1) of the Constitution. (P.A. Inamdar vs. State of Maharashtra (2005) 6SCC 537). The policy of reservation in employment cannot be extended to a minority educational institution as the service in an aided minority educational institution cannot be construed as a service under the State, even with the aid of Article 12 of the Constitution. In

this view of the matter, I am fortified by a recent judgment of the Supreme Court in Sindhi Education Society vs. Chief Secretary, Government of NCT of Delhi 2010 AIR SCW 5393. In the aforecited judgment, their Lordships of the Supreme Court have held that mere receipt of grant-in-aid per se would not make an aided minority educational institution 'State' within the meaning of Article 12 of the Constitution. Reference may, in this connection be made to the following observations made by their Lordships:-

“Article 15(5) of the Constitution excludes the minority educational institutions from the power of the State to make any provision by law for the advancement of any social or backward classes of the citizens or for Scheduled Castes and Scheduled Tribes in relation to their admission to educational institutions including private educational institutions whether aided or unaided. This Article is capable of very wide interpretation and vests the State with power of wide magnitude to achieve the purpose stated in the Article. But, the framers of the Constitution have specifically excluded minority educational institutions from operation of this clause. Article 16 which ensures equality of opportunity in matters of public employment again has been worded so as to prohibit discrimination and, at the same time, vests the State with power to make provisions, laws and reservations in relation to a particular class or classes of persons. It is of some significance to notice that power of the State to exercise such power is in relation to the 'service under the State'. This expression has been used in all the clauses of the Article which relates to providing of employment and framing of laws/reservations in those categories. Upon its true construction, this expression itself is capable of a wide construction and must be construed liberally and cannot be restricted to its narrow sense. The expression 'service under the State' would obviously include service directly under the State Government or its instrumentalities and/or even the sectors which can be termed as a State within the meaning of Article 12 of the Constitution. Once an organisation or society falls outside the ambit of this circumference, in that event, it will be difficult for the courts to hold that the State has a right to frame such laws or provisions or make reservations in the field of employment of those societies.

The interpretation of the word 'State' really does not require any deliberation as this aspect is no more res-integra and has been settled by the law stated in the case of Ajay Hasia vs. Khalid Mujib Sehravardi [(1981) 1 SCC 722] : (AIR 1981 SC 487), where this court spelt out the test that would be applicable in determining whether a Corporation or a government Company or a private body is an instrumentality or agency of the State. Primarily, there are different type of controls, which can be exercised by the State over any other authority, society, organization or private body to bring it within the ambit of the expression 'State' or 'other authority' appearing in Article 12 of the Constitution. These are financial control, managerial and administrative

control and functional control. To put it differently, what is the administrative control that the Government exercises upon such a body, whether functions of that body are governmental functions or closely related thereto, quantum of State control, volume of financial assistance, character and structure of the body and cumulative effect of these factors etc. This has been followed consistently in the case of Zoroastrian Co-op. Housing Society Ltd. Vs. District Registrar, Co-op. Societies (Urban) [(2005) 5 SCC 632] : (AIR 2005 SC 2306 : 2005 AIR SCW 2317) and in a very recent judgment in the case of State of U.P. vs. Radhey Shyam Rai [(2009) 5 SCC 577] : (2009 AIR SCW 2165), wherein this Court held that Uttar Pradesh Ganna Kishan Sansthan (Sansthan) is a State because these criteria were satisfied and even the State could take over the functions of the Sansthan. Unless all these three aspects are established or they are stated to be satisfied, it will not be permissible to term that society, organization or body as a 'State'. "

Once the State lacks basic power of jurisdiction to make special provisions and reservations in relation to minority educational institutions, which do not form part of service under the State, it will be difficult to hold that policy of reservation in employment can be extended to minority educational institutions. The right of minority to establish and administer educational institution of its choice has to be construed liberally to bring it in alignment with the constitutional protection available to it under Article 30(1) of the Constitution. A minority educational institution can hardly be compelled to perform acts or deeds which per se would amount to infringement of its right to administer and control. In fact it would tantamount to imposing impermissible restriction. Thus the State may not be well within its constitutional duty to compel a minority educational institution to accept a policy decision, enforcement of which will infringe its fundamental right and/or constitutional protection. Resultantly, I have no hesitation in coming to the conclusion that policy of reservation in employment cannot be enforced against the petitioner school and the impugned action of the respondent in withholding approval of the selection and appointment of the teachers in question is violative of the constitutional right of the minorities enshrined in Article 30(1) of the Constitution.

CASE NO. 732 OF 2009

Request for seeking direction to grant permission for upgradation of minority Institution

Petitioner : MIC Orphanage UP School, Kaipamangalam, Thrissur District, Kerala

Respondents: 1. The Secretary General Education Department Government of Kerala Secretariat, Thiruvananthapuram, Kerala
The Director of Public Instructions Government of Kerala, Jagathy Thiruvananthapuram, Kerala

By this petition, the petitioner seeks a direction to the competent authority of the State Government to grant permission for its up-gradation. The petitioner school is a minority educational institution covered under Article 30(1) of the constitution. The petitioner school

has been trying to get it upgraded as a high school. After conducting survey, the Assistant Education Officer, Valappad recommended the proposal to the Education Department, Government of Kerala for up-gradation of the petitioner school. Since the petitioner is catering to the educational needs of the down trodden segment of the Muslim community, it has applied to the competent authority for its up-gradation. The Deputy Director of Education, Thrissur has also recommended the petitioner proposal for its up-gradation to the Director of Public Instructions, Government of Kerala. But the said authority declined to accept the said recommendation of the Dy. Director Education. It is alleged that the impugned action of the Director of Public Instructions in not granting up-gradation to the petitioner school is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

The Director of Public Instructions, Government of Kerala has resisted the petition on the ground that the petitioner's request for up-gradation cannot be considered as the Government has adopted a policy not to upgrade schools except under special circumstances.

The point for consideration is as to whether the refusal of the Director of Public Instructions, Government of Kerala, for up-gradation of the petitioner school is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

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 the same.

In the case of Ahmedabad St. Xavier's 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. Stephen’s 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).

Mr. M. K. Abubakar has filed his affidavit in support of the averments made in the petition. It is stated in the affidavit that the petitioner school is catering to the educational needs of the backward Muslim minority community. At present there are 523 students studying in the school out of which 361 belong to the Muslim minority community. According to the Kerala Education Rules, an area of 1.2 to 2 hectares of land is required for the High School. The petitioner has 1.5 hectares of land. There are 24 class rooms of 6 mtrs.X 6 mtrs dimension in conformity with the norms laid down in Kerala Education Rules. The building has also office room, Staff Room, Library, Laboratory and Smart Class room. For the High School there are two more rooms earmarked for Standard VIII in the existing building. The Manager of the petitioner school has also obtained approval from the local authority for the construction of three

storied building with 24 rooms and the ground floor construction has already commenced. It needs to be highlighted that the Education Department had recommended to the Director, Public Instructions for up-gradation of the petitioner school. Thus the petitioner school has all the infrastructural and instructional facilities for its up-gradation in accordance with the rules framed under Kerala Education Act 1958. In view of the Right of Children to Free and Compulsory Education Act 2009, the Government is also under constitutional obligation to provide free and compulsory elementary education to every child between the age group of 6 to 14 years.

The petitioner school is a minority educational institution and its fundamental right as a religious minority institution under Article 30 is to be kept in view. In view of the dictum laid down by the Supreme Court in Secretary, Cannanore District Muslim Educational Association, Kannur vs. State of Kerala & Ors. AIR 2010 SCC 1955, the petitioner school has legitimate expectation to get permission for its up-gradation as high school. The fundamental rights guaranteed under Article 30(1) of the Constitution cannot be sacrificed at the altar of the policy of the State Government. The parameters empirically evaluated by the Sachhar Committee in the areas of elementary and higher education have shown that among comparable groups, Muslims are scratching educational barrel of the country. The Central Government has also made some positive efforts to address various aspects of Muslim deprivation and also to enhance the inclusiveness of the Muslim Community. But the larger malice of exclusion has to be fought at the national and state levels. Education can be a liberating capability but often access to it is made difficult by some misguided elements in the State Government. Present case is a glaring example of Muslim deprivation in the field of education.

Relying upon the judgment rendered by the Supreme Court in Secretary, Cannanore District Muslim Educational Association, Kannur vs. State of Kerala & Ors (supra), we strongly recommend to the State Government for up-gradation of the petitioner school as high school in view of the fact that the petitioner school has been catering to the educational needs of the down trodden segment of the Muslim minority community of the area.

CASE NO. 327 OF 2008

Request seeking directions to State to allow Upgradation of Minority Institutions

Petitioner : Naduvannur South A.M.U.P. School Through its Manager, Mr. P. Ismail
Calicut District, Kerala

Respondents : 1. Secretary, Education Department, Government of Kerala Secretariat,
Thiruvananthapuram, Kerala

2. The Director of Public Instructions Education Department, Govt. of Kerala,
Thiruvananthapuram, Kerala

3. The District Education Officer District Education Office, Thamarassery,
Kozhikode Taluk, Kerala

By this petition, the petitioner school seeks a direction to the State Government for its up-gradation to high school. The petitioner school is a minority educational institution covered under Article 30(1) of the Constitution. The petitioner school originated in a madarsa in the year 1928 and thereafter it was upgraded to upper primary school in the year 1967-68. The majority of the students in the school are from down trodden segment of the Muslim Community. The girls from Muslim Community in the area are reluctant to go for their higher studies as the High School and Higher Secondary Schools are 1 to 3 kms away. The petitioner school had applied for up-gradation to high school from the academic year 2008 but so far the Government has not granted permission as sought by the petitioner. It is stated that the impugned action of the State Government in not granting permission for its up-gradation is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. The petitioner school has all infrastructural and instructional facilities for its up-gradation in accordance with the rules framed under the Kerala Education Act. The District Education Officer, Thamarassery has recommended up-gradation of the school after inspecting the petitioner school.

The respondent resisted the petition on the ground that the present petition is outside the cognizance of this Commission. It is alleged that the Government has constituted a Committee for formulating guidelines for opening up new school, up-gradation of existing schools, recognition of aided or unaided, grant of NOC for CBSE/ICSE schools and sanctioning of new courses in higher secondary schools. After considering the recommendations of the Committee, Government issued order dated 13.6.2007 in this regard. To overcome the educational backwardness of the Muslim Community, the State Government has decided to grant recognition to unaided schools and NOC to CBSE/ICSE schools in Malapuram, Kozhikode, Kasargod, Kannur and Wayanad Districts. It is also alleged that the State Government has adopted a policy regarding sanctioning of up-gradation of existing schools and the same has been upheld by judicial orders. If the request of the petitioner school for its up-gradation is approved it will have financial implications as salaries of teaching and non-teaching staff members are paid by the State Government.

In the rejoinder, the petitioner has submitted that the petitioner school falls within Kozhikode District which has been identified as one of the backward districts where up-gradation can be granted. Since the petitioner school is a minority educational institution, it has legitimate expectation for its up-gradation to a high school. Moreover, other high schools are more than 3 to 5 kms. away, Muslim girls students are reluctant to go to far away schools. The State Government has already passed orders upgrading other schools to high and higher secondary schools for providing better education to the minority communities. Therefore, the denial of the petitioner school's up-gradation amounts to discrimination within the meaning of Article 14 and 16 of the Constitution.

The first question to be determined is as to whether the Commission has jurisdiction to entertain the present petition? The factual matrix of the case prima facie proves that this is a case of violation of educational rights of the minorities enshrined in Article 30(1) of the Constitution and as such this Commission has jurisdiction to entertain the present petition.

The next question which arises for consideration is as to whether the impugned action of the State Government in refusing to grant up-gradation of the petitioner school is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution? It is beyond the pale of controversy that the petitioner school is a minority educational institution covered under Article 30(1) of the Constitution and it is also located in one of the backward districts of the State of Kerala. The petitioner has also prima facie proved that it has all infrastructural and instructional facilities for its up-gradation as a high school. This fact is borne out by the recommendations of the District Education Officer for up-gradation of the petitioner school. The petitioner school has been catering to the educational needs of the down trodden segment of the Muslim Community. The petitioner school is a minority educational institution and it has fundamental right as a minority institution under Article 30(1) of the Constitution, this also has to be kept in view. In view of the dictum laid down by the Supreme Court in Secretary, Cannanore District Muslim Educational Association, Kannur vs. State of Kerala & Ors. AIR 2010 SCC 1955, the petitioner school has legitimate expectation for its up-gradation. Alleging discrimination in general it was a specific conclusion of the petitioner that while managements were being granted high school simultaneously one after the other, the petitioner herein was not sanctioned up-gradation to high school. Thus, the petitioner school has also made out a case of hostile discrimination attracting the wrath of Article 14 and 16 of the Constitution.

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 the same.

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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. Stephen’s 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).

The fundamental rights guaranteed under Article 30(1) of the Constitution cannot be sacrificed at the altar of the policy of the State Government. The parameters empirically evaluated by the Sachhar Committee in the areas of elementary and higher education have shown that among comparable groups, Muslims are scratching educational barrel of the country. The Central Government has made some positive efforts to address various aspects of Muslim deprivation and also to enhance the inclusiveness of the Muslim Community. But the larger malice of exclusion has to be fought at the national and state levels. Education can be a liberating capability but often access to it is made difficult by some misguided elements in the State Government. Present case is a glaring example of Muslim deprivation in the field of education.

Since the petitioner school has all the infrastructural and instructional facilities for its up-gradation as a high school and it is also catering to the educational needs of the down trodden segment of the Muslim Community of the area, the impugned action of the State Government in not granting permission for its up-gradation is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

Relying upon the judgment rendered by the Supreme Court in Secretary, Cannanore District Muslim Educational Association, Kannur vs. State of Kerala & Ors (supra), we strongly recommend to the State Government for up-gradation of the petitioner school as high school in view of the fact that the petitioner school has been catering to the educational needs of the down trodden segment of the Muslim minority community of the area.

APPEAL NO. 07 OF 2010

Appeal against the order of refusal to grant NOC for setting up a B.Ed College, a minority institution

Petitioner : The Kalgidhar Trust, Baru Sahib, Distt. Sirmour via Rajgarh, Himachal Pradesh.

Respondent : The Director, Directorate of Higher Education Government of Himachal Pradesh, Shimla,

The Challenge in this appeal filed under Section 12A of the National Commission for Minority Educational Institutions Act, 2004, (for short the Act), is to the order of refusal to grant NOC to the appellant for setting up a B.Ed. college at Baru Sahib Distt. Sirmour, via Rajgarh, Himachal Pradesh as a minority institution. On 12.2.2010, the appellant applied to the respondent for grant of NOC to establish a B.Ed. College at Baru Sahib which was refused by the competent authority of the State Government vide letter dated 30.4.2010 received by the appellant on 14.5.2010. According to the appellant the impugned order dated 30.4.2010 is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

The respondent resisted the petition on the ground that there is a large number of existing private B.Ed. colleges in Himachal Pradesh and there is no need to grant permission/recognition for any other B.Ed. college in the State of Himachal Pradesh. According to the respondent it is alleged that there are at present more than 70 B.Ed. colleges in the State with an annual intake of 8700 students. It is also alleged that under batch-wise system of recruitment, the trained graduate teachers of different categories having obtained their degrees in the years of 1988, 1995 and 1997 are awaiting appointments. Moreover, Himachal Pradesh University is also running B.Ed. under ICDEOL with annual intake of 450 students. Further, a large number of candidates are also doing B.Ed. from IGNOU. Reliance has also been placed on the Public Notice issued by the NCTE in consultation with the State Government that no further recognition/permission would be granted to the institutions of the State of H.P. for conducting B.Ed. course for the academic year 2010-11. Lastly, it is alleged that in view

of the policy decision taken by the State Government there is no need to grant permission/ recognition for B.Ed. course in the State of H.P. due to large number of existing private B.Ed. institutions in the State.

In view of the rival contention of the parties issue which arises for consideration is : whether the impugned order dated 30.4.2010 is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution?

At the outset, we must make it clear 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. (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).

Thus, the appellant has a right to establish a B.Ed. college of its choice at Baru Sahib. It is well settled that any law or executive direction which infringes the substance of the right guaranteed in Article 30(1) of the Constitution is void to the extent of infringement. The fundamental right guaranteed in Article 30(1) of the Constitution, is intended to be effective and should not be whittled by any administrative exigency. No inconvenience or difficulty, administrative or financial, can justify infringement of the fundamental rights. That being so, the appellant’s fundamental rights enshrined in Article 30(1) of the Constitution can not be sacrificed at the altar of the policy decision of the State Government. It has been specifically mentioned in the Public Notice issued by the NCTE relied upon by the respondent that the ban imposed by the NCTE does not apply to minority educational institutions. It is contended on behalf of the appellant that there is no single B.Ed. college in State of H.P. belonging to the Sikh Community. Thus, the number of existing B.Ed. colleges in the State cannot justify violation of fundamental rights enshrined in Article 30(1) of the Constitution. It is also contended that those persons who have cleared B.Ed. course from the B.Ed. colleges situated in the State have not confined themselves in the State of H.P. for seeking employment. Most of them may have got employment elsewhere. Required information about it may not be available with the authorities of the State Government. Further, it is contended that the implementation of the Right of the Children to Free and Compulsory Education Act, 2009, may further increase the demand for trained graduate teachers and the NCTE/State Government may have to reconsider their policy for not allowing establishment of more B.Ed. colleges in the State on that count. It is also contended that the Kalgidhar Society has already established about 70 schools in rural areas of Punjab, Haryana, U.P., Rajasthan and Himachal Pradesh. Besides imparting modern scientific education, these academies give ample opportunity to the students to know about ethos of Sikh religion including Sikh culture, customs and traditions considered to be essential for the proper grooming of the children belonging to the Sikh community. Parents

of this community also get an opportunity to educate their children in institutions having an environment and atmosphere conducive to learning Sikh religion, culture and traditions. It is also alleged that Akal Academies have a target of setting up of about 500 academies in the near future and to meet this demand, the Akal Academy need trained teachers and thus it has become necessary for the appellant to set up a B.Ed. college of its own.

The impugned order dated 30.4.2010 does not mention that the appellant's application for grant of NOC was rejected on the ground of any policy decision taken by the State Government. It simply says "at present the State Government is not granting NOC for opening new B.Ed. colleges". Thus the impugned order directly stares into the face of Article 30(1) of the Constitution and as such the impugned order cannot be legally sustained in law.

For the foregoing reasons, the appeal is allowed under Section 12A of the Act and the impugned order dated 30.4.2010 is hereby set aside. NOC is granted to the appellant for establishment of the proposed B.Ed. college at Baru Sahib, Himachal Pradesh.

Case No. 838 of 2010

Request to seek directions to State for granting approval for appointment of Assistant Teachers

Petitioner: Azad Memorial Inter College
P.O. Dasna Town, Ghaziabad, Uttar Pradesh

Respondents:1. The District Inspector of Schools
Government of Uttar Pradesh, Nandigram
Ghaziabad, Uttar Pradesh

2. The Joint Director,
Education, Government of Uttar Pradesh
Meerut, Uttar Pradesh

The petitioner college has been declared as a minority educational institution covered under Article 30(1) of the Constitution vide order dated 16.7.1976 of the District Education Officer, Meerut. The petitioner college originated as a junior high school and was granted recognition up to intermediate standard in the year 1969. The recognition of Literary Group and Science Group for intermediate classes was granted vide Government Order dated 01.03.1983. The subject of Biology was introduced in Science Group in High School classes and was granted recognition by the Education Department vide order dated 23.3.1983. The salaries of the teachers were paid by the Government. Consequent to the retirement of two Assistant teachers namely Shri Yusuf Ali and Shri J.D. Ray on 30.6.2009, the management decided to fill up the vacancies in accordance with the procedure prescribed in Section 16FF to the U.P. Intermediate Education Act 1921 (for short the Act). The management of the petitioner college selected Sh. Shakeel and Ms. Shama Parveen to the posts of Assistant Teachers and

appointed them vide letter dated 10.7.2009. The requisite papers relating to the selection and appointment of the said Assistant Teachers were sent to the respondent with a request to release their salaries. After the lapse of 4 months, the petitioner received letter dated 2.1.2010 from the District Inspector of Schools, Ghaziabad whereby the petitioner was directed to fill up the vacancies in accordance with the directions contained in the Government Order dated 20.6.1976. The petitioner replied to the letter giving details of vacancies and the appointments made against the vacant posts. Since no approval has been received from the respondent, the petitioner filed the present petition for direction to the respondent to grant approval of the selection and release the salaries of the said Assistant Teachers.

Despite service of notice, the respondent did not enter appearance. Hence the case proceeded ex-parte against them.

The point which arises for determination is whether the impugned action of the respondents in not granting approval to the selection and appointment of the Assistant Teachers made by the management of the petitioner college is violative of the educational rights of the minorities enshrined in Article 30(1) of the constitution.

The petitioner college is a minority educational institution covered under Article 30(1) of the Constitution. It has been held by the Apex Court in TMA Pai Foundation v. State of Karnataka [2002 (8) SCC 481] that the right to appoint teaching and non-teaching staff is the most important facet of minority's right to administer under Article 30 (1) of the Constitution. It was also held that a minority educational institution does not cease to be so, merely on receipt of aid from the State or its agencies. In other words, receipt of aid does not alter the nature or character of the minority educational institutions.

At this juncture, we may also refer to the judgment of the Supreme Court in Secretary, Malankara Syrian Catholic College vs. T. Jose 2007 AIR SCW 132 which is an authority for the proposition that "Article 30 (1) clearly implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it which will in any way dilute or abridge the rights of the minorities to establish and administer educational institutions." The State which gives aid to an educational institution can certainly impose such conditions as are necessary for the proper maintenance of the high-standards of education as the financial burden is shared by the State. In other words, the conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some facet of administration. Obviously, all conditions that have relevance to the proper utilization of the aid by an educational institution can be imposed. That is why, it has been held in T.M.A. Pai Foundation (supra) that there can be regulatory measures for ensuring educational character and standards and maintaining academic excellence, as such regulations do not in any manner interfere with the right guaranteed under Article 30 (1) of the Constitution. Reference may, in this connection, be made to the following observations of the Supreme Court in T.M.A. Pai (Supra)

“This means that the right under Article 30(1) implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution. The conditions that can normally be permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and fulfillment of the objectives of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority status of the educational institutions. Such conditions would be valid if they are also imposed on their educational institutions receiving the grant.”

In The Secretary, Malankara Syrian Catholic College (supra), while interpreting the judgment rendered by the Supreme Court in T.M.A. Pai Foundation (supra), it was held that the State can prescribe: -

- (i) the minimum qualifications, experience and other criteria bearing on merit, for making appointments,
- (ii) the service conditions of employees without interfering with the overall administrative control by the Management over the staff.
- (iii) a mechanism for redressal of the grievances of the employees.
- (iv) the conditions for the proper utilization of the aid by the educational institutions, without abridging or diluting the right to establish and administer educational institutions.

It was also held that if any regulation interferes with the overall administrative control by the management over the staff or abridges/ dilutes, in any other manner, the right to establish and administer educational institutions, such a regulation, to that extent, will be inapplicable to minority institutions.

Thus, it is well settled that the right to appoint the teaching and non-teaching staff for a minority educational institution is perhaps the most important facet of the right to administer an educational institution. The imposition of any trammel thereon, except to the extent of prescribing the requisite qualifications and experience or otherwise fostering the interests of the institution itself, cannot but be considered as a violation of the right guaranteed by Article 30(1) of the constitution. [State of Kerala v. Very Rev. Mother Provincial, 1970 (2) SCC 417, The Ahmedabad St. Xavier’s College Society v. State of Gujarat. 1974 (1) SCC 717, Frank Anthony Public School Employees’ Association v. Union of India, 1986 (4) SCC 707, D.A.V. College v. State of Punjab, 1971 (2) SCC 269, All saints High School v. Government of A.P., 1980 (2) SCC 478, St. Stephen’s College v. University of Delhi, 1992 (1) SCC 558, Board of Secondary Education & Teaching Training v. Joint Director of Public Instructions, Sagar, 1998 (8) SCC 555].

Thus, the Management's right of a minority educational institution to choose a qualified person for its teaching and non-teaching staff is well insulated by the protective cover of Article 30(1) of the Constitution and it cannot be whittled down by any legislative Act or executive fiat except for prescribing the qualifications and conditions of service for the post. Article 13 of the Constitution injuncts the State from making any act, rules or regulations that is violative of any of the fundamental rights guaranteed under Chapter III of the Constitution. It is thus clear that the freedom to appoint teaching and non-teaching staff of a minority educational institution has always been recognized as a vital facet of the right to administer the educational institutions within the meaning of Article 30 (1) of the Constitution.

The right to choose a member of the teaching and/or non- teaching staff falls exclusively within the powers of the committee of the management of a minority educational institution and which power is neither regulated nor can be regulated by the authorities as that would amount to clear inroad into the fundamental rights enshrined under Article 30 of the Constitution. (P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537). That being so, this power of choice cannot be interfered with by the respondents. The management of the petitioner school has a right to fill up its vacant posts subject to the rider that the controlling/regulatory authorities have a right to scrutinize and find out whether the person selected by the selection committee is eligible, qualified and suitable to be appointed as such keeping in view of the minimum qualification of the eligibility prescribed therefor.

Mr. Shamshad Ali Khan, Manager of the petitioner college has filed an affidavit affirming that the two posts of Assistant Teachers fell vacant on superannuation of the 2 Assistant Teachers. The petitioner published advertisement in times of India (English) on 14.6.2009 and Amar Ujala (Hindi) on 11.6.2009. Thus, the petitioner has complied with the requirement of Regulation 17 of the Regulations framed under the Act. Mr. Shamshad Ali Khan further stated that a selection committee was duly constituted and Sh. Shakeel and Ms. Shama Parveen were selected and appointed as Assistant Teachers against the existing vacancies of the sanctioned posts. It is also alleged that relevant papers relating to the selection and appointment of the said Assistant Teachers were sent to the respondents but that did not evoke any response from them. Sub Section (4) of Section 16FF of the Act commands that the Regional Deputy Director of Education or the Inspector, as the case may be, shall not withhold approval for the selection made under Section 16FF where the person selected possess minimum qualification prescribed and is otherwise eligible. That being so, the impugned action of the respondent in withholding approval for the selection of Assistant Teachers namely Sh. Shakeel and Ms. Shama Parveen, made in accordance with the procedure prescribed under Section 16FF of the Education Act is violative of the Article 30(1) of the Constitution and Sub Section (4) of Section 16FF of the Act. It needs to be highlighted that in a recent judgment rendered by the Supreme Court in Sindhi Education Society & Anr. vs. Chief Secretary, Government of NCT of Delhi & Ors. 2010 AIR SCW 5393, the Supreme Court has held that policy of reservation in employment cannot be made applicable to a minority educational institution. It is stated in the petition that all the relevant papers relating to selection and appointment of the said Assistant Teachers were submitted to the respondents on 10.7.2009 but no response has been received

from them. Regulation 17(G) of the Regulations framed under the U.P. Intermediate Education Act 1921 clearly lays down that if approval under Sub Section (4) of Section 16FF of the Act has not been given by the competent authority within a month of receipt of papers, approval would be deemed to have been made. In view of the said deeming provisions, we find and hold that it would be deemed that the respondents have granted approval of the selection of the aforesaid Assistant Teachers.

For the foregoing reasons, we find and hold that the Assistant Teachers namely Sh. Shakeel and Ms. Shama Parveen were duly selected and appointed by the management of the petitioner college in accordance with the procedure prescribed under Section 16FF of the Education Act and as such impugned action of the respondents in withholding approval of the selection is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution and the mandate of Sub Section (4) of Section 16FF of the Act. We find and hold that the said Assistant Teachers are also entitled to get their salaries from the State Government from the date of their joining. The said findings be reported to the respondents for the due implementation of the same in terms of Section 11(b) of the Act.

Case No. 839 of 2010

Request for seeking directions of State for granting approval for appointment of Teachers in a minority institution

Petitioner: Azad Memorial Inter College, Dasna, Town, Ghaziabad, U. P

Respondents :1. The District Inspector of Schools
Government of Uttar Pradesh, Nandigram
Ghaziabad, Uttar Pradesh
2. The Joint Director,
Education, Government of Uttar Pradesh
Meerut, Uttar Pradesh

The petitioner college has been declared as a minority educational institution covered under Article 30(1) of the Constitution vide order dated 16.7.1976 of the District Education Officer, Meerut. By the letter No. Steno/17578/1968-69 dated 28.8.1969, the respondent sanctioned 8 posts of lecturers in Hindi, English, Sociology, Urdu, Arts, Civics, Economics and History. In addition, there is a post of Principal. One Shri Riyaz Khan who was working against the post of Lecturer and Principal retired on 30.6.1999, where after only 7 posts of Lecturers were available. With the retirement of Shri Mohd Shafeeq on 30.6.2009, the post of Lecturer in Economics also fell vacant. The petitioner college duly advertised the post of Lecturer in Economics and selected Shri Javed Khan as the Lecturer in accordance with the procedure prescribed under Section 16FF of the U.P. Intermediate Education Act 1921 (for short the Act). Thereafter, the requisite documents were sent to the respondents for approval vide letter dated 10.7.2009. Despite repeated reminders no approval was received from the respondents.

However, the petitioner received a letter dated 2.1.2010 from the respondents asking them to send proposals for filling up all the posts as per Government rules. The petitioner replied giving details of the vacant posts including selection and appointment of Shri Javed Khan against the vacant sanctioned post of Lecturer. Since the petitioner's reply did not evoke any response, the petitioner has come to this Commission with the request to give a direction to the respondents to approve the selection and appointment of Shri Javed Khan and release his salary.

Despite service of notices, none entered appearance on behalf of the respondents. Hence the case proceeded ex-parte against them.

The point which arises for determination is whether the impugned action of the respondent in not granting approval to the selection and appointment of the Assistant Teachers made by the management of the petitioner college is violative of the educational rights of the minorities enshrined in Article 30(1) of the constitution.

The petitioner college is a minority educational institution covered under Article 30(1) of the Constitution. It has been held by the Apex Court in TMA Pai Foundation v. State of Karnataka [2002 (8) SCC 481] that the right to appoint teaching and non-teaching staff is the most important facet of minority's right to administer under Article 30 (1) of the Constitution. It was also held that a minority educational institution does not cease to be so, merely on receipt of aid from the State or its agencies. In other words, receipt of aid does not alter the nature or character of the minority educational institutions receiving aid.

At this juncture, we may also refer to the judgment of the Supreme Court in Secretary, Malankara Syrian Catholic College vs. T.Jose 2007 AIR SCW 132 which is an authority for the proposition that "Article 30 (1) clearly implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it which will in any way dilute or abridge the rights of the minorities to establish and administer educational institutions." The State which gives aid to an educational institution can certainly impose such conditions as are necessary for the proper maintenance of the high-standards of education as the financial burden is shared by the State. In other words, the conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some facet of administration. Obviously, all conditions that have relevance to the proper utilization of the aid by an educational institution can be imposed. That is why, it has been held in T.M.A. Pai Foundation (supra) that there can be regulatory measures for ensuring educational character and standards and maintaining academic excellence, as such regulations do not in any manner interfere with the right guaranteed under Article 30 (1) of the Constitution. Reference may, in this connection, be made to the following observations of the Supreme Court in T.M.A. Pai (Supra)

"This means that the right under Article 30(1) implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution. The conditions that can

normally be permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and fulfillment of the objectives of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority status of the educational institutions. Such conditions would be valid if they are also imposed on their educational institutions receiving the grant.”

In The Secretary, Malankara Syrian Catholic College (supra), while interpreting the judgment rendered by the Supreme Court in T.M.A. Pai Foundation (supra), it was held that the State can prescribe: -

- (i) the minimum qualifications, experience and other criteria bearing on merit, for making appointments,
- (ii) the service conditions of employees without interfering with the overall administrative control by the Management over the staff.
- (iii) a mechanism for redressal of the grievances of the employees.
- (iv) the conditions for the proper utilization of the aid by the educational institutions, without abridging or diluting the right to establish and administer educational institutions.

It was also held that if any regulation interferes with the overall administrative control by the management over the staff or abridges/ dilutes, in any other manner, the right to establish and administer educational institutions, such a regulation, to that extent, will be inapplicable to minority institutions.

Thus, it is well settled that the right to appoint the teaching and non-teaching staff for a minority educational institution is perhaps the most important facet of the right to administer an educational institution. The imposition of any trammel thereon, except to the extent of prescribing the requisite qualifications and experience or otherwise fostering the interests of the institution itself, cannot but be considered as a violation of the right guaranteed by Article 30(1) of the constitution. [State of Kerala v. Very Rev. Mother Provincial, 1970 (2) SCC 417, The Ahmedabad St. Xavier’s College Society v. State of Gujarat. 1974 (1) SCC 717, Frank Anthony Public School Employees’ Association v. Union of India, 1986 (4) SCC 707, D.A.V. College v. State of Punjab, 1971 (2) SCC 269, All saints High School v. Government of A.P., 1980 (2) SCC 478, St. Stephen’s College v. University of Delhi, 1992 (1) SCC 558, Board of Secondary Education & Teaching Training v. Joint Director of Public Instructions, Sagar, 1998 (8) SCC 555].

Thus, the Management’s right of a minority educational institution to choose a qualified person for its teaching and non-teaching staff is well insulated by the protective cover of Article 30(1) of the Constitution and it cannot be whittled down by any legislative act or executive fiat

except for prescribing the qualifications and conditions of service for the post. Article 13 of the Constitution injuncts the State from making any act, rules or regulations that is violative of any of the fundamental rights guaranteed under Chapter III of the Constitution. It is thus clear that the freedom to appoint teaching and non-teaching staff of a minority educational institution has always been recognized as a vital facet of the right to administer the educational institutions within the meaning of Article 30 (1) of the Constitution.

The right to choose a member of the teaching and non teaching staff falls exclusively within the powers of the committee of management of a minority educational institution and which power is neither regulated nor can be regulated by the authorities as that would amount to a clear inroad into the fundamental rights enshrined under Article 30 of the Constitution, (P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537). That being so, this power of choice cannot be interfered with by the respondents. The management of the petitioner school has a right to fill up its vacant posts subject to the rider that the controlling/regulatory authorities have a right to scrutinize and find out whether the person selected by the selection committee is eligible and suitable to be appointed as such keeping in view of the minimum qualification of the eligibility prescribed therefor.

Mr. Shamshad Ali Khan, Manager of the petitioner college has filed an affidavit affirming that the post of Lecturer in Economics fell vacant on superannuation of Shri Mohd. Shafeeq. The petitioner published advertisement in Times of India (English) on 14.6.2009 and Amar Ujala (Hindi) on 11.6.2009 in accordance with the procedure prescribed under Regulation 17 of the Regulations framed under the Act. Thus, the petitioner has complied with the requirement of Regulation 17 of the Regulations under the Act. The petitioner further testified that a selection committee was duly constituted and Sh. Javed Khan was selected and appointed as Lecturer in Economics against the existing vacancy of the sanctioned post. It is also alleged that relevant papers relating to the selection and appointment of the Shri Javed Khan were sent to the respondents but that did not evoke any response from them. Sub Section (4) of Section 16FF of the Act commands that the Regional Deputy Director of Education or the Inspector, as the case may be, shall not withhold approval for the selection made under Section 16FF where the person selected possess minimum qualification prescribed and is otherwise eligible. That being so, the impugned action of the respondent in withholding approval for the selection of Lecturer in Economics namely Sh. Javed Khan made in accordance with the procedure prescribed under Section 16FF of the Education Act is violative of the Article 30(1) of the Constitution and Sub Section (4) of Section 16FF of the Act. It needs to be highlighted that in a recent judgment rendered by the Supreme Court in Sindhi Education Society & Anr. vs. Chief Secretary, Government of NCT of Delhi & Ors. 2010 AIR SCW 5393, the Supreme Court has already held that policy of reservation in employment cannot be made applicable to a minority educational institution. It is stated in the petition that all the relevant papers relating to selection and appointment of the said Lecturer in Economics were submitted to the respondents on 10.7.2009 but no response has been received from them. Regulation 17(G) of the Regulations under the U.P. Intermediate Education Act 1921 clearly lays down that if approval under Sub Section (4) of Section 16FF of the Act has not been given by the competent

authority within a month of receipt of papers, approval would be deemed to have been made. In view of the said deeming provisions of Regulation 17(G), we find and hold that it would be deemed that the respondents have granted approval of the selection of Shri Javed Khan as Lecturer in Economics.

For the foregoing reasons, we find and hold that Sh. Javed Khan was duly selected and appointed by the management of the petitioner college in accordance with the procedure prescribed under Section 16FF of the Act read with Regulation 17 of the Regulations framed under the Act, and as such impugned action of the respondents in withholding approval of the selection is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution and the mandate of Sub Section (4) of Section 16FF of the Act. We also find and hold that Shri Javed Khan is entitled to get his salary also from the State Government from the date of his joining. The said findings be reported to the respondents for the due implementation of the same in terms of Section 11(b) of the Act.

CASE NO. 1665 OF 2010

The request to seek directions to allow Minority institution to fill up faculty position

Petitioner: Nirmala Girls' High School, Kainsara, Sundergarh, Orissa

Respondents:1. The Principal Secretary,
School and Education Department,
Government of Orissa, Bhubaneswar, Orissa
2. The Inspector of School
Sundergarh, At/PO/PS/Dist. Sundergarh, Orissa

The petitioner high school is a minority educational institution covered under Article 30(1) of the Constitution. Consequent to superannuation of Smt. Shanti Dumdung, Headmistress of the School, the management of the petitioner school promoted Ms. Mary Suchita Tirkey as the Headmistress of the school vide order dated 30.4.2010. The promotion and appointment of Ms. Mary Suchita Tirkey as Headmistress of the school was disapproved and cancelled by the Inspector of Schools, Sundergarh Circle, Sundergarh vide letter dated 6.7.2010. By the letter dated 17.7.2010, the Inspector of Schools directed the petitioner school to hand over the charge of the Headmistress of school to a senior most trained graduate teacher with a warning that non-compliance would entail withholding of salary from the month of July, 2010 onwards. It is alleged that Section 2 of the Orissa Education Act 1969, exempts minority educational institution covered under Article 30(1) of the Constitution from the operation of the said Act. It is also alleged that the impugned action of the Inspector of Schools, Sundergarh Circle, Sundergarh in disapproving appointment of Ms. Mary Suchita Tirkey as Headmistress of the school violates educational rights of the minorities enshrined in Article 30(1) of the Constitution.

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

Following issues arise for consideration:-

1. To what extent the State can regulate the right of minorities to administer their educational institutions when such institutions receive aid from the State?
2. Whether the right to choose the Headmistress is part of the right of the minorities under Article 30(1) of the Constitution to establish and administer educational institutions of their choice? If so, whether the impugned action of the respondent in disapproving the promotion and appointment of Ms. Mary Suchita Tirkey is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution?

Issue No. 1

Similar issues arose before the Supreme Court in Secretary, Malankara Syrian Catholic College vs. T. Jose 2007 AIR SCW 132. It has been held by the Supreme Court that all laws made by the State to regulate the administration of educational institutions, and grant of aid, will apply to minority institutions also. But if any such regulation interferes with the overall administrative control by the management over the staff, or abridges/dilutes, in any other manner, the right to establish and administer educational institutions, such regulations, to that extent, will be inapplicable to minority institutions. At this juncture we may usefully excerpt the following observations of their Lordships of the Supreme Court in the case of Secretary, Malankara Syrian Catholic College vs. T. Jose. (supra):

“Article 30(1) gives minorities the right to establish and administer educational institutions of their choice. In State of Kerala vs. Very Rev. Mother Provincial [1970(2) SCC417], a Constitution Bench of this Court explained ‘right to administer’ thus:

“Administration means ‘management of the affairs’ of the institution. This management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right.”

“There is, however, an exception to this and it is that the standards of education are not a part of management as such. These standards concern the body politic and are dictated by considerations of the advancement of the country and its people. Therefore, if universities establish the syllabi for examinations they must be followed, subject however to special subjects which the institutions may seek to reach, and to a certain extent the State may also regulate the conditions of employment of teachers and the health and hygiene of students. Such regulations do not bear directly upon management as such although they may indirectly affect it. Yet the right of

the State to regulate education, educational standards and allied matters cannot be denied. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. While the management must be left to them, they may be compelled to keep in step with others.”

In The Ahmedabad St. Xavier’s College Society vs. State of Gujarat [1974(1) SCC 717], a nine Judge Bench of the Supreme Court considered the scope and ambit of minority’s right to administer educational institutions established by them. The majority were of the view that prescription of conditions of services would attract better and competent teachers and would not jeopardize the right of the management of minority institutions to appoint teachers of their choice. It was also observed:

“Autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institutions. The distinction is between a restriction on the right of administration and a regulation prescribing the manner of administration. The right of administration is day to day administration. The choice in the personnel of management is a part of the administration. The university will always have a right to see that there is no maladministration. If there is maladministration, the university will take steps to cure the same. There may be control and check on administration in order to find out whether the minority institutions are engaged in activities which are not conducive to the interest of the minority or to the requirements of the teachers and the students”.

The ultimate goal of a minority institution too 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.

In the field of administration it is not reasonable to claim that minority institutions will have complete autonomy. Checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institution. The right of a minority to administer its educational institution involves as part of it, a correlative duty of good administration.

In Frank Anthony Public School Employees’ Association vs. Union of India [1986 (4) SCC 707] the Supreme Court observed:

“The excellence of the instruction provided by an institution would depend directly on the excellence of the teaching staff, and in turn, that would depend

on the quality and the contentment of the teachers. Conditions of service pertaining to minimum qualifications of teachers, their salaries, allowances and other conditions of service which ensure security, contentment and decent living standards to teachers and which will consequently enable them to render better service to the institution and the pupils cannot surely be said to be violative of the fundamental right guaranteed by Article 30(1) of the Constitution. The management of a minority educational institution cannot be permitted under the guise of the fundamental right guaranteed by Article 30(1) of the Constitution, to oppress or exploit its employees any more than any other private employee. Oppression or exploitation of the teaching staff of an educational institution is bound to lead, inevitably, to discontent and deterioration of the standard of instruction imparted in the institution, affecting adversely the object of making the institution an effective vehicle of education for the minority community or other persons who resort to it. The management of a minority institution cannot complain of invasion of the fundamental right to administer the institution when it denies the members of its staff the opportunity to achieve the very object of Article 30(1) which is to make the institution an effective vehicle of education.”

In T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481, the Supreme Court made it clear that a minority institution does not cease to be so, merely on receipt of aid from the State or its agencies. In other words, receipt of aid does not alter the nature or character of the minority educational institution receiving aid. Article 30(1) clearly implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it which will in any way dilute or abridge the rights of the minorities to establish and administer educational institutions. But all conditions that have relevance to the proper utilization of the aid by an educational institution can be imposed.

The observation of the Eleven Judge Bench in T.M.A. Pai (supra) in respect of the extent to which the right of administration of aided minority educational institutions could be regulated, are extracted below:

“..... the State cannot, when it chooses to grant aid to educational institutions deny aid to a religious or linguistic minority institution only on the ground that the management of that institution is with the minority. We would, however, like to clarify that if an abject surrender of the right to management is made a condition of aid, the denial of aid would be violative of Article 30(2). However, conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some facet of administration.

It cannot be argued that no conditions can be imposed while giving aid to a minority institution. Whether it is an institution run by the majority or the minority, all conditions that

have relevance to the proper utilization of the grant-in-aid by an educational institution can be imposed. The conditions for grant or non grant of aid to educational institutions have to be uniformly applied, whether it is a majority run institution or a minority run institution. As in the case of a majority run institution, the moment a minority institution obtains a grant of aid, Article 28 of the Constitution comes into play. When an educational institution is maintained out of State funds, no religious instruction can be provided therein.

Among the questions formulated and answered by the majority while summarizing conclusions, Question 5(C) and answer thereto has a bearing on the issue on hand: Question 5 (c) is extracted below:

“Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees etc. would interfere with the right of administration of minorities?

The first part of the answer to Question 5(c) related to unaided minority institutions. With reference to statutory provisions regulating the facets of administration this court expressed the view that in case of an unaided minority educational institutions, the regulatory measure of control should be minimal; and in the matter of day to day management, like the appointment of staff (both teaching and non-teaching) and administrative control over them, the management should have the freedom and there should not be any external controlling agency. But such institutions should have to comply with the conditions of recognition and conditions of affiliation to a university or board; and a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself. This Court also held that fees to be charged by unaided institutions cannot be regulated but no institution should charge any capitation fee whatsoever.

The second part of the answer to question 5 (c) applicable to aided minority institutions, is extracted below:-

“For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a judicial officer of the rank of District Judge”.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

“Regulation can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff.”

Issue No. 2

The post of Principal or Headmistress of a college or a school is of pivotal importance in the life of an education institution. Around him wheels the tone and temper of an institution; on him depends the continuity of its traditions, the maintenance of discipline and the efficiency of its teaching. The right to choose the Principal is perhaps the most important facet of the right to administer a educational institution and the imposition of any trammel thereon, except to the extent of prescribing the requisite qualifications and experience or otherwise fostering the interests of the institution itself, cannot but be considered as a violation of the rights of the minorities enshrined in Article 30(1) of the Constitution. It has been held by the Supreme Court in State of Kerala v. Very Rev. Mother Provincial, 1970 (2) SCC 417, “therefore, so far as the post of Principal is concerned, we think it should be left to the management to secure the services of the best person available. This, it seems to us, is of paramount importance, and the prospects of advancement of the staff must yield to it”. The aforesaid authorities have been quoted with the approval in the case of Secretary, Malankara Syrian Catholic College vs. T. Jose. (supra). It has also been held by the Supreme Court in the Malankara Syrian Catholic College vs. T. Jose. (supra) that “the importance of the right to appointment of Principals/Headmasters and teachers of their choice by minorities, as an important part of their fundamental rights under Article 30 was highlighted in the Ahmedabad St. Xavier’s College society vs. State of Gujarat 1974(1) SCC 717 , ““it is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution.... So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management. That is part of the fundamental right of the minorities to administer the educational institution established by them.”

In N. Ammad vs. Manager, Emjay High School [1998(6) SCC 674], the appellant contended that he being the senior-most graduate teacher of an aided minority school, he should be appointed as the Headmaster and none else. He relied on Rule 44A of the Kerala Education Rules which provided that appointment of Headmaster shall ordinarily be according to seniority, from the seniority list prepared and maintained under Clauses(a) and (b) of Rule 34. This Court held:

“selection and appointment of Headmaster in a school (or Principal of a college) are of prime importance in administration of that educational institution. The Headmaster is the key post in the running of the school. He is the hub on which all the spokes of the school are set around whom they rotate to generate result. A school is personified through its Headmaster and he is the focal point on which outsiders look at the school. A bad Headmaster can spoil the entire institution, an efficient and honest Headmaster can improve it by

leaps and bounds. The functional efficacy of a school very much depends upon the efficiency and dedication of its Headmaster. This pristine precept remains unchanged despite many changes taking place in the structural patterns of education over the years”.

How important is the post of Headmaster of a school has been pithily stated by a Full Bench of the Kerala High Court in Aldo Maria Patroni vs. E.C. Kesavam (AIR 1965 Ker 75). Chief Justice M.S. Menon has, in style which is inimitable, stated thus:

“The post of the 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, the maintenance of discipline and the efficiency of its teaching. The right to choose the headmaster is perhaps the most important facet of the right to administer a school, and we must hold that the imposition of any trammel thereon except to the extent of prescribing the requisite qualifications and experience cannot but be considered as a violation of the right guaranteed by Article 30(1) of the Constitution. To hold otherwise will be to make the right ‘a teasing illusion, a promise of unreality’ “

Thereafter, the Supreme Court concluded that the management of minority institution is free to find out a qualified person either from the staff of the same institution or from outside, to fill up the vacancy; and that the management’s right to choose a qualified person as the Headmaster of the School is well insulated by the protective cover of Article 30(1) of the Constitution and it cannot be chiseled out through any legislative act or executive rule except for fixing up the qualifications and conditions of service for the post; and that any such statutory or executive fiat would be violative of the fundamental right enshrined to Article 30(1) and would therefore be void. The Supreme Court further observed that if the management of the school is not given the wide freedom to choose the person for holding the key-post of Principal subject, of course, to the restriction regarding qualifications to be prescribed by the State, the right to administer the school would get much diminished.

In Board of Secondary Education and Teachers Training vs. Joint Director of Public Instructions, Sagar [1998 (8) SCC 555], the Supreme Court held:

“The decisions of this Court make it clear that in the matter of appointment of the Principal, the management of a minority educational institution has a choice. It has been held that one of the incidents of the right to administer a minority educational institution is the selection of the Principal. Any rule which takes away this right of the management have been held to be interfering with the right guaranteed by Article 30 of the Constitution. In this case, both Julius Prasad selected by the management and the third respondent are qualified and eligible for appointment as Principal according to rules. The question is whether the management is not entitled to select a person of their choice. The decisions of this Court including the decision in State of Kerala vs. Very

Rev. Mother Provincial (1970 (2) SCC 417 and Ahmedabad St Xavier's College Society vs. State of Gujarat (supra) make it clear that this right of the minority educational institution cannot be taken away by any rules or regulations or by any enactment made by the State. We are, therefore, of the opinion that the High Court was not right in holding otherwise. "The State has undoubtedly the power to regulate the affairs of the minority educational institutions also in the interest of discipline and excellence. But in that process the aforesaid right of the management cannot be taken away even if the Government is giving hundred per cent grant"

It is thus clear that the freedom to choose the person to be appointed as principal has always been recognized as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by TMA Pai. Having regard to the key role played by the Principal/Headmaster in the management and administration of the educational institution, there can be no doubt that the right to choose the Principal/Headmaster is an important part of the right of administration and even if the institution is aided, there can be no interference with the said right. The fact that the post of the Principal/Headmaster is also covered by State aid, will make no difference.

It was contended before the Supreme Court in Secretary, Malankara Syrian Catholic college (supra) that the protection extended by the Article 30(1) cannot be used against a member of the teaching staff who belongs to the same minority community. It was also contended that a minority institution cannot ignore the rights of eligible Lecturers belonging to the same community, senior to the person proposed to be selected, merely because the institution has the right to select a Principal of its choice. But their Lordships observed that this contention ignores the position that the right of the minority to select a Principal of its choice is with reference to the assessment of the person's outlook and philosophy and ability to implement its objects. The management is entitled to appoint the person, who according to them is most suited, to head the institution, provided he possesses the qualifications prescribed for the posts. The career advancement prospects of the teaching staff even those belonging to the same community should have to yield to the right of the management under Article 30(1) to establish and administer educational institutions.

It is alleged by the petitioner that Ms. Mary Suchita Tirkey, present Headmistress of the school is well qualified and trained graduate teacher and has been working as Assistant teacher in the school. She has completed her Bachelor of Education in November 1990. She possesses all qualifications for the post of headmistress and on considering her commitment, efficiency and the qualification, the management has appointed her as the Headmistress. In other words Ms. Mary Suchita Tirkey possesses the qualification and eligibility prescribed for the post of Headmistress. The career advancement prospect of the teaching staff, even those belonging to the same community, should have to yield to the right of the management under Article 30(1) of the Constitution. Relying on the decision rendered by the Supreme Court in Malankara Syrian Catholic College vs. T.Jose. (supra), we find and hold that the impugned

action of the District Inspector of Schools, Sundergarh Circle, Sundergarh in disapproving the promotion and appointment of Ms. Mary Suchita Tirkey as Headmistress of the petitioner school is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

For the foregoing reasons, we find and hold that the impugned order dated 6.7.2010 of the District Inspector of Schools, Sundergarh Circle, Sundergarh arbitrarily cancelling the appointment of Ms. Mary Suchita Tirkey as the Headmistress is illegal and ineffective being violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. The District Inspector of School had no power to direct the petitioner school to hand over the charge of the Headmistress to a senior most trained graduate teacher. Promotion and appointment of Ms. Mary Suchita Tirkey as the Headmistress of the petitioner school is valid and effective. She is entitled to receive the salary of the Headmistress of the petitioner school from the date of her joining the duties.

CHAPTER – 8 : REFERENCES FROM CENTRAL GOVERNMENT AND STATE GOVERNMENTS AND COMMISSION'S RECOMMENDATIONS

During the course of the year, there has been correspondence with the State Governments and other authorities concerning the rights of minorities which include the issue of grant of minority status; providing quality education in Madarasas; posting of Urdu teachers in some government schools in Delhi. The work done by the National NCMEI for Minority Educational Institutions has been appreciated by different quarters.

Consequent to the interaction of Hon'ble Chairman, NCMEI, the Government of Uttar Pradesh took a laudable decision to issue an order to all concerned instructing them to treat an educational institution as a minority institution certified as such by the NCMEI and also to ensure prompt implementation of the orders issued by the Commission. Government of Madhya Pradesh was requested to consider issuing similar orders and directions to the concerned authorities of the State.

At the initiative of the NCMEI, the Govt. of NCT of Delhi has issued necessary orders to all Principals of schools directing them to allow the District Coordinator appointed by the Commission to be present in school, when minority students are asked to opt language at the time of admission. It was at the intervention of the Commission that the Government of Bihar decided to pay the salary of teachers of unaided madrasas and to bring the salaries of the madrasa teachers at par with teachers of government schools. Government of Bihar also sanctioned two science teachers and one language teacher in each of 1127 Madrasas in Bihar involving an expenditure of Rs. 43 crores per annum. The infrastructural and instructional facilities like library, laboratory and practical kits will also be provided by the Government of Bihar in these Madrasas.

The Government of Rajasthan has set up the Competent Authority in the State under section 2(ca) of the National Commission for Minority Educational Institutions Act, 2004 to follow the guidelines issued by the Commission and with the objective to facilitate the establishment of minority educational institutions in the State.

Some letters and correspondence from the State Governments and other authorities in the context of rights of minorities as enshrined in Articles 29 and 30 of the Constitution of India are appended as annexures to this report.

CHAPTER 9 – STUDIES UNDERTAKEN BY THE COMMISSION

The Commission is mandated to take up specific issues concerning protection of the educational rights of the minority communities under sub-sections (d) and (g) of Section 11 of the National Commission for Minority Educational Institutions Act, 2004. These sub-sections are reproduced below :

11(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 ;

11(g) make recommendations to the appropriate Government for the effective, implementation of programmes and schemes relating to the Minority Educational Institutions.

A large number of petitions were received during the year and the Commission gave priority for disposal of these cases. After making analysis of complaints/petitions received and on the basis of examination of various rules and regulations notified by the State Governments, the Commission has issued guidelines for determination of Minority Status, Recognition, Affiliation and related matters in respect of Minority Educational Institutions under the Constitution of India. Copies of these guidelines are available on the website of the Commission.

During the interactions that Commission had at various places, it was found that girls have proved themselves to be no less capable and talented than boys. However, the education of girl child continues to suffer neglect. This situation is prominent in the case of Muslim girls and those belonging to the backward castes and classes of Indian society. The Commission also found that the dismal state of affairs of educational facilities available for the poorer sections of the entire minority communities has to be addressed properly. Education of girl child has been found to be one of the priority areas especially with the backwardness and social taboos attached. The girl child in the Muslim community has become worst sufferer. For addressing the disturbing scenario, the Commission had constituted a Committee in January 2010 to study the inadequacies in girl's education especially belonging to the Muslim Community and recommend ways and means to ameliorate their position. The Committee on Girls' Education comprises of the following eminent women in different fields:

- 1) Dr. Shabistan Gaffar, Honorary Chairperson
- 2) Mrs. Abeda P. Inamdar, Honorary Member
- 3) Mrs. Atiya Mushtaque, Honorary Member
- 4) Dr. Seema Wahab, Honorary Member
- 5) Dr. Sheeba Aslam, Honorary Member
- 6) Dr. Karan Gabriel, Honorary Member

Later on the Commission added following 4 Members to the Committee :-

- 1) Dr. Sumayaa, Honorary Member
- 2) Prof. Najma Akhtar, Honorary Member
- 3) Dr. P.A. Fathima, Honorary Member
- 4) Dr. Qamar Rehman, Honorary Member
- 5) Mrs. Lovina Khan

The Commission has asked the Committee to study the subject thoroughly and submit its report at the earliest. The Committee on Girls' Education held the following regional seminars:

Sl. No.	Name of Place	Date
1.	Mumbai	28 th November 2010
2.	Chennai	2 nd February 2011
3.	Lucknow	15 th February 2011

The Chairperson of the Committee has visited quite a few places where she had interacted with the stakeholders to ascertain the ground reality on the subject. The Committee has been asked to submit its report by 31.12.2011 positively.

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

Constitution of India recognizes the pluralistic nature of Indian society and the need for each segment for self-development. Article 29(1) gives a very general right “to conserve” the language, script or culture to all sections of society; be it majority or minority. Article 30(1) enshrines a fundamental right of the minority communities to manage and administer their educational institutions which are completely in consonance with the secular nature of Indian democracy and the directives contained in the Constitution itself. Article 30 of the Constitution confers a special right on the religious and linguistic minorities to mitigate their numerical handicap and to instill in them a sense of security and belonging, even though the minorities are neither weaker sections nor an underprivileged segment of the Society.

Muslims among the Minority communities have lagged behind in educational fields. Large part of Muslim population in the age group of 6-13 is out of school as compared even to SC/ST children. Due to poverty the percentage of Muslim students in higher Education falls at a faster rate than for any other community. As per the Census of 2001, only 55% of Muslim men and 41% of Muslim women in India are literate; whereas the corresponding figures for non-Muslims are 64.5% and 45.6%. Only one in 101 Muslim women is a graduate, whereas one out of 37 women in the general population is a graduate. What is even more worrisome is the fact the drop-out rate for Muslims rises steeply as they move up the pyramid of education. Muslims are 53% worse off as compared to the national average in respect of higher education. Muslim women at the graduate level are fewer by 63%. For the Muslim community to be brought on par with the rest of the society educationally, 31 million more Muslims have to be educated by 2011. Particularly alarming is the anomaly that the greatest concentration of the educationally un-empowered and unemployable Muslim youth is in the urban and semi-urban areas. If the current state of affairs continues, a large proportion of Muslims could vanish from the map of India’s educated workforce. Needless to add here that for an enlightened and inclusive democracy, it is necessary that all sections and classes of people are well educated and intellectually equipped to shoulder the responsibility of a free nation. As the Muslim community has lagged behind educationally over the decades, it is necessary to advance, foster and promote the education of the community at a quicker pace.

Commission, to its dismay, found that the Muslim minority community does not have enough educational institutions unlike the Christian community which has, for a long period of time, been in the forefront of establishing educational institutions. Unfortunately not many persons have come forward from Muslim community to establish educational institutions. This is particularly relevant in some States. While madarasas have been set up in many States, these do not provide formal education. In the field of higher education very few educational institutions have been set up by the Muslim community. This is a sorry state of affairs. One of the major hurdles for establishing educational institutions is the non-availability as also the prohibitive prices of land. The members of the minority community especially from the Muslim community at many places have complained that they are not able to afford purchase of land

for establishing educational institutions. Requirement of land for the educational institution in many States has not been changed for a long period of time, resulting in the requirement of highly priced land out of reach of the minority communities. Commission feels that a review of the land requirement is urgently required, taking into account the high price of urban land. Commission would also suggest that State Governments should come forward to allot land to enterprising individuals / societies at concessional/ affordable rates for establishment of educational institutions especially for the Muslim community.

The existing minority educational institutions are absolutely inadequate to meet the requirements of minority children and youth for admission at various levels of education. It should be the constant endeavour to see that students from minority communities are welcomed into all institutions and helped to grow academically and overcome their learning disabilities and achieve success in personality development, self-confidence, high academic achievement and employability in later life. They should also be assisted to acquire entrepreneurial skills and competence and capacity for self employment.

The index of the educational development of a community is, perhaps, the most significant factor in shaping public perceptions about its participation in nation building which, in turn, defines its image and respectability in public life. The obverse of participation is alienation. To fail to promote integration and empowerment is to effect, albeit unwittingly, developmental paralysis and emotional alienation. Education has been widely recognized as a powerful tool for unity and integration, especially in a religiously, culturally and linguistically plural society like ours. The current educational backwardness of Muslims portends a double loss. Members of the community lose out in terms of the emerging, unprecedented opportunities of a globalizing world. The country loses in terms of the inability of a substantial segment of its population to involve and participate gainfully in its forward march to greater prosperity and quality of life.

Madarsas are centers of free education. They are also bastions of social service, where knowledge of humanism and universal brotherhood, which is one of the basic tenets of ISLAM, is being imparted and human values are taught. They are still regarded as a nucleus of the cultural and educational life of Muslims. These Madarsas, as an invaluable institution of traditional education, have played a vital role in spreading literacy among the down trodden segments of Muslim society. They are found even in the remotest rural areas, where often no other educational facilities exist. Thus the contribution of these Madarsas has been so important that one cannot think of the educational development of Muslim community by neglecting or overlooking their services to the community. Needless to add here that only the poor segment of Muslim community is resigned to send their children to Madrsas which not only offer them free education but also free boarding and lodging. Those who establish Madrsas, or with whose financial help these Madarsas run, seldom educate their children in them. On the contrary, they prefer convent schools for their children.

As the Madrasas are presently outdated and out of sync with the present times, there is a need to standardize the system of Madrasa education suitable to the emerging global

scenario without compromising with the basic principles of Madrasa education. Madrasas could provide the basic modern education and yet retain their essential character. They may safeguard their autonomy and may remain free from interference by the Government. Standardization of Madrasa system and mainstreaming of the Madarsa education has its relevance in India which is fast emerging as a super power of the 21st century. Madarsas can create an inclusive environment to promote the concept of social justice as a step towards a fair and just society respecting non-discrimination. Every educational institution irrespective of community to which it belongs to is a melting pot in everybody's national life. Secularism is one of the basic features of the Constitution of India which obligates the policy makers to design a sound system of education for an inclusive society in which all religious values are reflected. India, with its multi-religious and multi-cultural society needs secularism for its sustenance. This is essential for survival of inclusive democracy. Inclusion is a junction of equity, human rights and socio-economic justice. There is a need to sensitize managers of Madarsas about the role of education in resolving conflicts and evolving a peaceful 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, 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. Gandhiji once said, "If we are to teach real peace in the world, we shall have to begin with children".

Realizing the present position of Madarsas the Sachar Committee in their report, had observed that the upgradation of the Madarsas and reformed standardization of education in them should not be taken as an alternative or substitute for, the duty of the State to make modern, quality, affordable education available to Muslim children. The Committee had further observed that it was the Constitutional obligation of the Government under Article 21 A to provide education to the masses.

Commission has already recommended to the Central Government to establish a Central Madarsa Board as an autonomous body through an Act of Parliament, duly insulated against Governmental interference. The recommendations of the Commission for the establishment of a Central Madarsa Board include provisions and safeguards against any governmental interference, guaranteeing the autonomy of the Central Madarsa Board. Affiliation of the madarsas to the Central Madarsa Board is purely voluntary. The Central Madarsa Board will not have the power to dictate the theological contents of madarsa education. Commission reiterates its recommendations for setting up of the statutory Central Madarsa Board at the earliest.

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.

It has been observed by the Supreme Court in Kerala Education Bill (supra) that the Constitution gives minorities two distinct rights, one a positive and the other a negative one, viz. (i) the State is under a positive obligation to give equal treatment in the matter of aid, recognition to all educational institutions including those of minorities, religious or linguistic, and (ii) the State is under a negative obligation as regards those institutions not to prohibit their establishment or interfere with their administration. Article 30(1) leaves it to their choice to establish such educational institutions as will serve the purpose of conserving their religion, language or culture and also the purpose of giving a thorough general education to their children. Minorities are, however, not entitled to have educational institutions exclusively for their own benefit.

The right to administer in terms of Article 30(1) of the Constitution means the right to manage and conduct the affairs of the institution. It includes the right to choose its governing body and the right to selection of teaching and non-teaching staff and the right to admit students of its choice. All these rights together form the integrated concept of right to administer. The concept of administration within the meaning of Article 30(1) of the Constitution includes the choice in admitting the students. The right to admit the students of its choice is perhaps the most important facet of the right to administer educational institution and the imposition of any trammel thereon except to the extent of prescribing requisite qualification of eligibility is constitutionally impermissible. The right under Article 30(1) of the Constitution can neither be taken away nor abridged by the State on account of the injunction of Article 13 of the Constitution. The power of regulation of the authorities cannot render these core rights a teasing illusion or a promise of unreality.

It has to be borne in mind that through Article 13 of the Constitution it is provided that State cannot make any laws, rules and regulations that are contrary to part III of the Constitution. The framers of the Constitution have built a wall around certain parts of the fundamental rights to be protected forever, and thus limiting the ability of majority to intrude upon them. That wall is the basic structure adopted. In other words Article 13 declares that any law in breach of the fundamental right would be void to the extent of such violation. The impact of the impugned action shall have to be tested on the touchstone of rights and freedom guaranteed by Part III of the Constitution.

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 there must be implicit in such a fundamental right the corresponding duty to cater to the needs of the children of their own community. The beneficiary of such a fundamental right should be allowed to enjoy it in the fullest measure. Therefore, the educational institutions of their choice will necessarily cater to the needs of the minority community which had established the institution.

The right under Article 30 of the Constitution is preferential right of minority educational institution to admit students of its choice. This obligation is intended to ensure that the institution retains its minority character by achieving the twin objects of Article 30(1), enabling the minority community to conserve its religion and language and to give a thorough, good general education to children belonging to such minority community. So long as the institution retains its essential character by achieving the said objectives, it would remain a minority institution. The T.M.A. Pai Foundation and P.A. Inamdar case (supra) are unanimous on the view that in order to retain its minority character, it is essential for a minority educational institution to admit sufficient number of students from the minority community which has established it. Emphasizing the need for preserving its minority character so as to enjoy the privilege of protection of Article 30(1), it is necessary that the objective of establishing the institution was not defeated. In other words, a minority educational institution must primarily cater to the requirements of that minority else its character as minority institution is lost. That being so, bulk of majority of admission of students has to be from minority community which has established the institution. It has been held in St. Stephen College vs. University of Delhi (1992) 1 SCC 558 that the minorities have the right to admit their own candidates to maintain minority character of their institution. That is a necessary concomitant right which flows from the right to establish and administer educational institutions under Article 30(1) of the Constitution. There is also a related right to the parents in the minority communities. The parents are entitled to have their children educated in institutions having an atmosphere congenial to their own religion.

CHAPTER 12 – CONCLUSION

The State Governments are primarily responsible for recognizing educational institutions and granting minority status certificate. 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. After the Commission wrote to the State Governments, some of them finalised criteria and set up appropriate machinery for dealing with the matter. During the interaction, the Commission had with few State Governments, emphasis was laid for the prompt consideration of such requests. Since some State Governments requested the Commission to advise them in the matter of finalizing proper guidelines, Commission had brought out appropriate guidelines. These guidelines have been prepared on the basis of the legal provisions and the law pronounced by the High Courts and Supreme Court. The Guidelines relates to determination of Minority Status, Recognition, Affiliation and related matters in respect of Minority Educational Institutions. These guidelines have been sent to all the State Governments and Union Territories for their guidance. Guidelines have also been displayed on the website of the Commission. State Government authorities are expected to carry out appropriate changes in the rules and regulations notified by them based on the guidelines.

2. It is the duty of all the State Governments and Union Territories to 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 period 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 system and give wide publicity to it.

3. Some State Government authorities grant minority status certificate only for a temporary period. Commission has clearly pointed out 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 licence. 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 passing the order of conferral of 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.

4. Many instances have been brought to the notice of the Commission where statutes, rules and regulations made by the State Government are inconsistent with the provisions of Article 30. The Apex Court in its various judgements has clearly pointed out the rights enshrined under Article 30(1) of the Constitution. If any provision of a law made by the legislature of a State is repugnant to any provision of the law made by the Parliament which the Parliament is competent to enact or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List then, subject to the provisions of Article 254, the law made by Parliament shall prevail and the law made by the State Legislature shall to the extent of repugnancy be void. Commission during its visits to various States has advised the State Government authorities to amend / modify the laws and rules so that they are in consonance with the rights enshrined under Article 30. Commission recommended that the Central Government should also impress upon the State Governments and Union Territories to immediately look into all the concerned laws, rules and regulations to ensure that amendments are carried out, if necessary, to bring them in consonance with the rights given under Article 30 of the Constitution.

5. 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.

6. 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 seen that such tendency is primarily based on reluctance 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 seen 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.

7. Commission has recommended to the Central Government to establish a Central Madarsa Board for coordinating and standardizing the Madarsa system of education and also for its integrated development and mainstreaming. The Board to be established should be an autonomous body through an Act of Parliament to be duly insulated from the Government interference, given the extreme sensitivities and anxieties that lurk in this domain. In view of the endemic anxieties that pertain to the reform of Madarsa education, the proposed scheme recommended by the Commission for the Central Madarsa Board incorporates adequate provisions and safeguards against governmental interference in the Madarsas and guarantees the autonomy of the Central Madarsa Board. This leaves no margin whatsoever for any reasonable anxiety on the part of the clerics and the self-styled custodians of Islam in India. Affiliation to the Central Madarsa Board would be purely voluntary and an affiliated Madarsa can pull out of affiliation at any time. The Central Madarsa Board will not have the power to dictate the theological content of Madarsa education. Commission hopes that the Government finalises its decision in this regard at the earliest as it will certainly bring a qualitative change in the given situation.

8. 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. Article 30(1) of the Constitution is as follows:-

“30. Right of minorities to establish and administer educational institutions—
(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.”

From the above, it is seen that Article 30(1) refers to both religious and linguistic minorities. However, Section 2(f) of the NCMEI Act defines minorities as follows:-

“2(f) “minority, for the purpose of this Act, means a community notified as such by the Central Government.”

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

10. It is pertinent to point out that while the Standing Committee of the Parliament relating to the Ministry of HRD was considering certain amendments to the NCMEI Act, it has made a specific recommendation in its report to include linguistic minorities also within the purview of the NCMEI Act. It is understood that this recommendation was made as the Members of the Parliament have also received a large number of petitions from linguistic minorities for bringing the linguistic minorities also under the ambit of the NCMEI Act. Since Article 30(1) confers fundamental right on religious as well as linguistic minorities, interest of equity and justice require that linguistic minorities may also be brought within the domain of the NCMEI Act by incorporating suitable amendments therein. The Commission recommends accordingly.

