



ANNUAL REPORT

2005-2006

NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS
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CHAIRPERSON'S STATEMENT

I feel deeply privileged in making this prefatory statement to the very first Annual Report of the National Commission for Minority Educational Institutions (NCMEI). The work accomplished through the Commission, during the period under review, as well as the range and ramifications of the educational needs and bottlenecks encountered in this respect all over the country, establish clearly that such an instrument is a crying practical necessity, and not a judicial luxury.

The NCMEI was established, to begin with, through the promulgation of an Ordinance dated 11th November 2004; and the Chairperson and Members were appointed through a Notification dated 26th November 2004. The key objective of the Commission is to ensure that the true amplitude of the educational rights enshrined in Article 30 (1) of the Constitution is, in reality, available to the members of the religious minority communities. This entails, inter alia, addressing all issues that pertain to the denial, deprivation or violation of the constitutional rights of the minorities to establish and administer educational institutions of their choice, including all issues related to NOCs, Minority Status Certificates and affiliation to Universities.

Section 16 of the NCMEI Act obligates the Commission to prepare an Annual Report giving a comprehensive account of its activities during the previous financial year and forward a copy of the same to the Central Government, in compliance whereof this Report is being prepared and submitted to the Central Government.

The Commission consists of a Chairperson and two Members. Government appointed me as the Chairperson and Sh. B.S. Ramoowalia and Rev. Valson Thampu as Members vide Notification dated 26th November 2004. The Commission had to face and overcome the proverbial teething problems and a few valuable months were lost in the process. But I am happy that the loss of time was, comparatively, minimal and the Commission owes a huge debt of gratitude in this regard to the positive and empowering approach of the nodal ministry and, in particular, the Hon'ble HRD Minister. Without waiting for the infrastructure to be fully in place, the Commission started its work in right earnest and held its first meeting on 10th February 2005 and registered the first lot of cases in the meeting held on 10th March 2005. In exercising its adjudicatory jurisdiction, the Commission functions as a civil court, and so has evolved specific and appropriate procedures and regulations in order to transact its business effectively. Therefore, Commission has decided to cover the period from November 2004 to 31st March 2006 in the first year of functioning of the Commission for the purpose of this Report. Accordingly, this Annual Report for 2005-06 is prepared and submitted to the Government.

During the first year, our initial endeavour was to raise awareness regarding the setting up of this Commission, its functions and powers, among the stakeholders of minority education and, thereby, to enable them to take appropriate advantage of this new forum to redress their grievances, if any, pertaining to the deprivation or violation of the rights guaranteed by Article 30 of the Constitution. I am glad to note, based on the number and spread of the petitions received, that during the first year we have succeeded beyond expectations in this regard. My colleagues and I feel encouraged and happy to have made a substantial difference for hundreds of educational institutions from around the country during this period. The significant aspect of this achievement is that it has sent, far and wide, positive signals about the caring nature of governance. I wish to emphasize that the people-friendly culture evolved in the Commission is at least as important as the quantity of relief provided during this period of time.

As the saying goes, what is well begun is half done. During the coming years we intend to build further on the sound foundations laid during the period under review and carry forward the mission of educational empowerment entrusted to us by the Parliament and the Government. We, in the Commission, believe that evolving a culture of cooperation and goodwill between the State and the stakeholders of minority education so as to minimize grievances and rights-violations is, perhaps, even more important – and, in the long run, more beneficial – than redressing ever-multiplying grievances. The Government and communities are partners in the sacred enterprise of providing education and it shall be the endeavour of the Commission to make this partnership a happy and effective one to the extent that it lies within its functions and powers to address.

Last but not least the Commission would like to place on record its appreciation and sincere thanks to eminent personalities from the minority communities who had contributed their valuable advice and cooperation. I would also like to place on record the compact team of officers and employees of the Commission headed by the Secretary for efficient discharge of their duties even with lack of proper accommodation in the initial period. The Commission records its special thanks to all the members of the minority communities and organizations and associations for using the forum of the Commission for grievance redressal.

(JUSTICE M.S.A. SIDDIQUI)
CHAIRPERSON

CHAPTER 1 – INTRODUCTION

The National Commission for Minority Educational Institutions (NCMEI) was established, to begin with, through the promulgation of an Ordinance. The Department of Secondary and Higher Education, Ministry of HRD, Government of India, notified the National Commission for Minority Educational Institutions Ordinance 2004 (No. 6 of 2004) on 11th November 2004. Thereafter, on 16th November 2004, the Ministry of HRD issued the notification constituting the Commission, with its head quarters in Delhi. On 26th November 2004, the Government issued the notification appointing Justice M.S.A. Siddiqui as the Chairperson and Shri B.S. Ramoowalia and Shri Valson Thampu as Members of the Commission, to hold office for a period of five years w.e.f. the date they assume charge. The Chairperson Justice M.S. A. Siddiqui assumed charge on 29.11.2004. Shri B.S. Ramoowalia, Member joined on 30.11.2004 and Shri Valson Thampu, Member on 6.12.2004.

NCMEI Act 2004

Immediately after the promulgation of the Ordinance, the Government introduced the National Commission for Minority Educational Institutions Bill in the Parliament, which was passed by both the Houses of Parliament in the Winter Session of 2004. The National Commission for Minority Educational Institutions Act 2004 (2 of 2005) was notified on 6th January 2005. The Act was to constitute the National Commission for Minority Educational Institutions and it provided for matters connected therewith or incidental thereto. The key functions and powers of the Commission are to: -

- (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) Look into specific 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 Scheduled University and report its findings to the Central 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.

The Act, inter alia, affirmed the right of a minority educational institution to seek recognition as an affiliated college to a Scheduled University and provided for a forum in the form of the Commission for dispute resolution in matters of affiliation between a minority educational institution and a Scheduled

University. The decisions of the Commission in this regard are final and binding on the parties.

The Commission became a quasi-judicial body and was conferred with the powers of a civil court for the purpose of discharging its functions under the Act.

Genesis

The genesis of the National Commission for Minority Educational Institutions can be traced to the UPA Government's commitment to the nation made through the National Common Minimum Programme (NCMP). In the NCMP, in its Section on "National Harmony, Welfare of Minorities," it was mentioned that a Commission for Minority Educational Institutions would be established to ensure that the full amplitude of the educational rights enshrined in Article 30(1) will be available, in effect, to members of the notified minorities throughout the country, barring the State of Jammu & Kashmir.

The inception of the NCMEI was preceded by a nation-wide consultation, initiated by the MHRD, with the stakeholders of minority education from around the country, under the auspices of the National Monitoring Committee on Minority Education.

The Commission is mandated to look into specific complaints regarding deprivation or violation of the rights of minorities to establish and administer educational institutions of their choice. The educational rights of minorities are enshrined in Article 30 of the Constitution which states that "all minorities, whether based on religion or language shall have the right to establish and administer educational institutions of their choice".

The inception of the Commission has been hailed as a concrete expression of the commitment of the UPA Government to the core ideals of the Indian Constitution and, in particular, to the educational development of the minorities as basic to the enunciation and consolidation of the composite, pluralistic culture it envisions and espouses. The setting up of the Commission has evoked unqualified enthusiasm and unprecedented expectations from the minority communities as well as unreserved endorsement from the votaries of secularism and constitutionalism nation-wide at a time when there is an acute awareness of the empowering role of education. The Government received many representations on the need to empower the Commission to be more proactive in addressing the educational needs of the minorities. The Commission considered the suggestions offered or forwarded from various sources, including the PMO, and in the light thereof, formulated appropriate amendments to the NCMEI Act and forwarded the same to the Government.

NCMEI Amendment Act 2005

Based on the recommendations made by the Commission, the Government introduced the National Commission for Minority Educational Institutions (Amendment) Bill, 2005 in the Parliament. In the wake of the 93rd Constitutional Amendment passed by the Parliament, incorporated since then as Article 15(5) of the Constitution, to promote the educational advancement of the Scheduled Castes, Scheduled Tribes and socially and educationally backward classes of the citizens, it became necessary to effect corresponding amendments to the National Commission for Minority Educational Institutions Act. Consequently, an Ordinance to empower the Commission was notified on 23rd January 2006, which, in turn, was replaced by the National Commission for Minority Educational Institutions (Amendment) Act 2006 (notified on 29th March 2006).

The amendment brought all affiliating Universities within the ambit of the Act to afford a wider choice to the minority educational institutions in regard to affiliation. The Scheduled Universities, barring one, are all concentrated in the North and the North East. New Sections have been incorporated to enhance the efficacy of the Commission and to amplify its power to enquire into matters relating to deprivation of educational rights of the minorities by utilizing the services of any officer of the Central or State governments. The Commission has been vested with original as well as appellate jurisdiction to decide on questions relating to conferring minority status on educational institutions as also to cancel the same in the event of any proven abuse, in respect of the grounds laid down in the NCMEI Act. A deeming provision with reference to obtaining of NOC from the State Governments by minority Educational Societies intending to establish educational institutions has also been incorporated, which empowers the concerned Societies/Trusts to proceed further with the establishment of educational institutions, if State Governments do not process their applications and communicate their decisions to them within 90 days. The Commission is now vested with appellate jurisdiction in matters of refusal of State Governments to grant NOC for establishing a minority educational institution.

Initial Period

Soon after the Chairperson and Members assumed office, the Ministry of HRD allocated a room in Shastri Bhavan to the Commission. Later two more rooms were made available to accommodate the Secretary and office staff. During this period, the conference room of the Ministry of HRD served as a makeshift courtroom for the Commission. Subsequently, the first floor of Jeevan Tara Building located at Sansad Marg, New Delhi was finalized by the Commission and, after setting up the requisite facilities, including a court room, the Commission moved to its present premises by end of August 2005. Present

address of the Commission's office is 1st Floor, Gate No. 4, Jeevan Tara Building, 5, Sansad Marg, New Delhi.

Staff

In order to provide the Commission the necessary administrative and office support, Ministry of Human Resource Development created the following 22 posts vide order dated 10th December 2004:

Name of Post	Number
Joint Secretary	01
Deputy Secretary	01
Under Secretary	01
Section Officer	01
Assistant	01
L.D.C.	02
Sr. PPS	03
PS	01
PA	02
Steno Grade 'D'	03
Peon	06

The present Secretary of the Commission (of the rank of a Joint Secretary) joined the Commission on 4th February 2005. Some members of staff were loaned by the Ministry of HRD during the initial period and later posts were filled either on deputation or through direct recruitment. Since the number of posts sanctioned for the Commission was not adequate to take care of the workload of the Commission, Government was approached for creation of additional posts.

CHAPTER 2- CONSTITUTION 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 present composition of the Commission is as follows:

- | | | | |
|----|-------------------------|---|-------------|
| 1. | Justice M.S.A. Siddiqui | - | Chairperson |
| 2. | Shri B.S. Ramoowalia | - | Member |
| 3. | Shri Valson Thampu | - | Member |

Functions: The Functions of the Commission as specified in Section 11 of Chapter 4 of the NCMEI Act 2004 were 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) Look into specific 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 Scheduled University and report its findings to the Central Government for its implementation; and
- (c) 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 National Commission for Minority Educational Institutions Act 2004 was amended through the promulgation of the National Commission for Minority Educational Institutions Amendment Ordinance (1 of 2006) notified on 23rd January 2006. This was followed by the passing of the National Commission for Minority Educational Institutions (Amendment) Act 2006 (No. 18 of 2006) which was notified on 29th March 2006. The Amendment Act of 2006 amended Section 11 of the original Act. The present functions of the Commission as per the amended 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 for the purposes of discharging its functions under the Act has the powers of a Civil Court trying a suit. The powers of the Commission include adjudication in matters of affiliation to a university. If any dispute arises between a university and a minority educational institution relating to its affiliation to that university, the decision of the Commission thereon shall be final.

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 order. The Commission has also power to cancel the minority status of an educational institution on grounds laid down in the Act.

Commission has been empowered to investigate into complaints relating to deprivation of the educational rights of minorities. For the purpose of conducting any investigation the Commission can utilize the services of any officer of the Central Government or the State Government with the

concurrence of the concerned Government. For the purpose of such investigation, the officer whose services are utilized may, subject to the direction and control of the Commission: -

- (a) Summon and enforce the attendance of any person and examine him;
- (b) Require the discovery and production of any document; and
- (c) Requisition any public record or copy thereof from any office.

The officer shall investigate any matter entrusted to him by the Commission and submit a report thereon within the period specified by the Commission.

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 or a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution 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 – MEETINGS OF THE COMMISSION

The Commission was beset, in the early months, by the proverbial teething troubles. Despite this, the work started in right earnest with the skeletal staff and bare physical amenities, including office space, provided by the MHRD. Though the Commission met informally on a few occasions during January 2005, the first formal meeting of the Commission could be held only on 10th February 2005 to discuss procedures regarding the transaction of the business of the Commission, including the procedure and modalities for considering the applications/ petitions received by the Commission. The second meeting was held on 10th March 2005 and on that date the Commission registered 30 petitions and orders were passed on them. From 10th February 2005 up to 31st March 2006, the Commission held 45 meetings. The Commission moved to its permanent office at Jeevan Tara Building on 31st August 2005. The dates of the meetings of the Commission along with the number of cases considered are as follows: -

S. No.	Date of Meeting	No. of Cases
1	10.02.2005	Nil
2	10.03.2005	30
3	04.04.2005	21
4	15.04.2005	18
5	09.05.2005	14
6	18.05.2005	26
7	25.05.2005	44
8	03.06.2005	21
9	16.06.2005	32
10	04.07.2005	82
11	11.07.2005	31
12	18.07.2005	31
13	26.07.2005	16
14	03.08.2005	32
15	10.08.2005	27
16	16.08.2005	7
17	18.08.2005	7
18	30.08.2005	29
19	07.09.2005	19
20	12.09.2005	19
21	19.09.2005	17

22	23.09.2005	5
23	26.09.2005	39
24	05.10.2005	28
25	17.10.2005	8
26	18.10.2005	24
27	24.10.2005	18
28	25.10.2005	10
29	07.11.2005	13
30	17.11.2005	46
31	21.11.2005	32
32	05.12.2005	35
33	12.12.2005	26
34	15.12.2005	21
35	05.01.2006	26
36	18.01.2006	81
37	25.01.2006	59
38	07.02.2006	75
39	14.02.2006	60
40	21.02.2006	83
41	01.03.2006	7
42	08.03.2006	33
43	14.03.2006	46
44	22.03.2006	80
45	29.03.2006	26
Total		1404

In addition to these formal meetings of the Commission as a court at which 1404 cases were heard, emergency as well as unscheduled meetings were also held many times, as per need. This was necessary as the Commission received a large number of applications/ petitions, at times involving matters of great urgency, and initial consideration of the applications/ petitions did not require the presence of the petitioner or respondents. Orders were passed by the Commission at such meetings for registering the petitions/ applications received by the Commission and directions were given to issue notices to the concerned respondents. However, for court sittings, dates are decided in advance and notices are issued to the respondents and petitioners.

In the initial stages, the Commission found that the National Commission for Minority Educational Institutions Act had certain shortcomings. Therefore the amendments required for the said Act were discussed in some of the meetings, in the light of the suggestions received from various sources in this regard. Such informal meetings enabled the Commission to fine-tune and finalise its recommendations and forward them to the Government for making suitable amendments to the Act. The Commission accordingly sent its recommendations for amending the NCMEI Act to the Government on 28th June 2005.

Section 9 of the NCMEI Act provides that the Commission shall meet as and when necessary at such time and place as the Chairperson may think fit. This implies that the meetings of the Commission do not have to be confined to Delhi, but can be held anywhere within its territorial delimitation. During the year under review, however, the Commission's meetings were held only in Delhi, though several requests have been received from various quarters to convene meetings also at different locations. If a large number of cases are to be considered from a particular State, it makes sense for the Commission to hold its sittings at a suitable place in the concerned State subject to availability of facilities.

During the year under review, the Commission held meetings with the Chairmen and senior officers of the regulatory authorities. Since many of the petitions/ complaints relate to the rules and regulations formulated by the regulatory authorities like UGC, AICTE, NCTE, MCI, DCI, NCTE, CBSE, ICSE, etc., the Commission felt it necessary to have interactions with the Chairmen and senior functionaries of the regulatory authorities. During the year such meetings were held on the following dates: -

15 th February 2005	Meeting of the Commission with Chairmen of UGC & AICTE and officials of Ministry of HRD.
24 th February 2005	Meeting of the Commission with Chairmen of UGC, AICTE, MCI and NCTE and Vice Chancellors of Six Scheduled Universities.
17 th January 2006	Meeting of the Commission with Chairman, UGC & Vice Chancellors of Six Universities.
24 th January 2006	Meeting of the Commission with Chairman, C.B.S.E.
31 st January 2006	Meeting of the Commission with Chairman, UGC.
3 rd February 2006	Meeting of the Commission with Chairman, AICTE.

Through these interactions the regulatory authorities have become more aware of the need to initiate action to modify their rules and regulations and

have, in fact, done so in some instances. It is satisfying to note, for instance, that the regulatory authorities have set up minority cells in their organizations in deference to the concerns shared by the Commission. This, in turn, has resulted in raising awareness about, and concern for, minority rights within these organizations, facilitating speedy and sympathetic disposal of the cases relating to minority educational institutions, improving their feel-good-index. The Commission has been informed by the stake-holders of minority education from around the country that the creation of minority cells in the regulatory authorities has paved the way for better interaction and speedy consideration of their cases. Commission intends to continue such interactions with the appropriate functionaries of regulatory authorities.

CHAPTER 4 – HIGHLIGHTS OF THE YEAR

During the first year of functioning, one of the major highlights of the Commission relates to establishing the permanent office of the Commission taking into account the present and future needs. Drafting and finalizing of the rules and regulations of the Commission, formulating amendments to the NCMEI Act with a view to making the Commission more proactive were the other highlights. A third important feature of the initiatives undertaken by the Commission were the tours to various States to disseminate information about the Commission so as to enable the stakeholders of minority education to take full advantage of its functions and powers in protecting their educational rights enshrined in the Constitution.

The Commission paved the way for a major breakthrough by evolving a nation-wide consensus among the providers of Madrasa education, which has remained an elusive goal over the years.

CHAPTER 5 – TOURS AND VISITS

The NCMEI, being a new Commission, it was necessary to educate the stakeholders of minority education on making appropriate use of the Commission and to benefit optimally from its services. Officers in the education departments of many State Governments were also not fully aware either of the functions and powers of the Commission or of the width of the rights enshrined in Article 30(1). Therefore, the Commission deemed it necessary to reach out to the concerned constituencies scattered around the country. These visits and interactions were found to be mutually beneficial as the Commission was also able to develop a first-hand knowledge of the extent and diversity of the problems faced by the minority educational institutions in various States. These exercises served, among other things, to broaden the outlook of the providers and managers of minority education as well as foster in them a sense of partnership with the State in the practice of education.

During the first year, the tours and visits undertaken by the Commission are as follows:

S. No.	Dates	Place visited
1.	5.3.2005	Jaipur
2.	8.3.2005	Aligarh
3.	25.3.2005 to 27.3.2005	Kochi
4.	1.4.2005 to 3.4.2005	Trivandrum
5.	11.4.2005 to 13.4.2005	Bhopal
6.	21.4.2005 to 22.4.2006	Ludhiana
7.	14.5.2005 to 16.5.2005	Lucknow
8.	19.5.2005 to 21.5.2005	Mumbai
9.	13.6.2005 to 15.6.2005	Hyderabad
10.	19.6.2005	Lucknow
11.	7.7.2005	Jabalpur
12.	23.7.2005 to 24.7.2005	Ahmedabad
13.	5.8.2005 to 8.8.2005	Pune/ Hyderabad
14.	27.9.2005 to 29.9.2005	Allahabad
15.	8.10.2005	Gwalior
16.	20.10.2005 to 23.10.2005	Jabalpur
17.	8.11.2005 to 11.11.2005	Lucknow
18.	14.11.2005 to 15.11.2005	Agra
19.	19.11.2005	Meerut
20.	20.11.2005	Gwalior
21.	5.12.2005 to 8.12.2005	Bhopal
22.	8.12.2005 to 10.12.2005	Mumbai
23.	17.12.2005 to 18.12.2005	Nagpur
24.	19.12.2005 to 20.12.2005	Mumbai

25.	21.12.2005 to 24.12.2005	Trivandrum
26.	25.12.2005	Ujjain
27.	28.12.2005	Indore
28.	30.12.2005 to 1.1.2006	Jaipur
29.	7.1.2006 to 14.1.2006	Jabalpur
30.	9.1.2006 to 10.1.2006	Mumbai
31.	22.1.2006	Agra
32.	8.2.2006	Gwalior
33.	26.2.2006 to 27.2.2006	Rampur-Bilaspur
34.	26.2.2006 to 28.2.2006	Belgaum
35.	2.3.2006 to 3.3.2006	Vadodara & Ahmedabad
36.	17.3.2006 to 19.3.2006	Chennai
37.	25.3.2006 to 26.3.2006	Aurangabad
38.	27.3.2006 to 2.4.2006	Trivandrum

The above table comprises the tours undertaken by Chairperson and Members together or on individual basis. In addition to the official tours undertaken by the Chairman and Members of the Commission, they also availed of several opportunities for meeting representatives of the minority educational institutions during private visits to various parts of the country.

The Commission found that many of the stakeholders were not aware that the National Commission for Minority Educational Institutions is a quasi-judicial body, imbued with the powers of a civil court. Therefore, the complaints and petitions were being sent to the Commission mostly in the letter form. In the initial stages, very few petitions were sent in the format prescribed for submitting petitions to the courts. During the visits, guidelines for approaching the Commission and the procedural proprieties thereof were explained to the representatives of the minority educational institutions. During interactions with the representatives of the minority educational institutions, while explaining the details of the procedure involved and the manner in which a petition and complaint has to be drafted, the Commission sought the help of the participants to disseminate the information further for the benefit of others who were not able to attend such seminars/ conferences/ meetings. The extent to which the work of the Commission increased in the wake of these tours and visits proves how useful, necessary and effective these outreach initiatives have been. It merits mention that the Commission did not take the easier and expensive route of inserting advertisements in newspapers. Instead, the more laborious and community-oriented approach as outlined above was adopted. The extent to which awareness concerning the Commission as well as an ambience of faith in its efficacy spread through the length and breadth of this vast country is truly gratifying. It may be mentioned in passing that a Commission like the NCMEI must be seen, ideally, as a bridge between the State and the communities; and it must serve as an effective instrument for furthering a sense of partnership between the two. Such a partnership is especially relevant to the enterprise of education.

Given below are brief resumes of a few of the visits and interactions undertaken by the NCMEI.

Tour of the Commission to Mumbai and Pune from 19-21 May 2005

The Chairman of the Commission Justice M.S.A. Siddiqui along with Shri Valson Thampu, Member, and Secretary undertook the official tour to Mumbai and Pune from 19-21 May 2005. During this tour Commission met with the Chief Minister of Maharashtra. At the meeting, the Chairman appraised the Chief Minister of the powers and functions of the Commission. Since this visit took place before the NCMEI Act was amended comprehensively in early 2006, the following issues were discussed: the need to include universities in Maharashtra also in the Schedule of the NCMEI Act, problems faced by the minority educational institutions in obtaining NOC from the State Government, introduction of modern education in madarasas, the need to develop and popularize Urdu as a medium of instruction especially keeping in view Article 351A of the Constitution, the need to increase and improve the educational infrastructure for minorities to enable them to compete in the mainstream of education, etc.

During the visit the Commission interacted with the representatives of the minority educational institutions. The main issues raised during the interaction were: the need to provide adequate opportunities to minority communities to establish institutions of higher education especially B. Ed. Colleges, problems faced by minority educational institutions in admitting at least 50% of students under the management quota, the need to make State laws, rules and regulations consonant with the law declared by the Supreme Court in respect of Article 30, to minimize and eradicate undue delay in granting NOC, hassle-free recognition of the minority status of educational institutions, adequate provision of grant-in-aid to the minority educational institutions, protection from corrupt practices in the Government offices which adversely affect the minority educational institutions, and prompt redressal of grievances in this regard, if any.

At Pune, the Commission interacted with the representatives of minority educational institutions. The main issues that emerged included problems relating to non-affiliation, the reluctance of the State Government to sanction new schools for minorities, need to establish a Madarsa Board, relaxation of conditions to be given to minorities for backward areas and poorer sections for establishment of educational institutions, simplification of procedures, etc.

Tour of Chairman and Secretary of the Commission to Vadodara on 23 and 24 July 2005

The issues raised by the representatives of minority educational institutions during the tour included undue delay in getting NOC, delay in getting “Bahali” from the District Education Officer for appointment of teachers, surplus teachers being sent to the minority educational institutions by the Government, alleged discrimination in giving Government aid to new schools opened by the minorities, interference in the administration and day-to-day running of the schools, difficulty in getting permission to start professional colleges like B. Ed. Colleges, PTC Colleges and Nursing Colleges, need to have a Minority Redressal Cell in the State, etc.

Tour of the Commission to Hyderabad from 13-15 June 2005

The full Commission consisting of Justice M.S.A. Siddiqui, Chairman and Members Sh. B.S. Ramoowalia and Rev. Valson Thampu along with the Secretary of the Commission undertook an official tour to Hyderabad from 13-15 June 2005. The Commission met with the Chief Minister on 14th June 2005. During the meeting, Chairman requested the Chief Minister to recommend at least three Universities from the State of A.P. to be included in the Schedule of the NCMEI Act covering Andhra, Telengana and Rayalaseema regions. The issues discussed included modernization of madarasas, improving the facilities and infrastructure in minority educational institutions, consideration of proposal to distribute scholarships to deserving minority students, Urdu to be considered as a second language in the State of A.P., grant-in-aid to the minority educational institutions, etc. Issues relating to delay in the grant of NOC, delay in recognition of minority status, etc. were also discussed.

During the meeting with the representatives of the minority educational institutions, the issues brought to the notice of the Commission included: problems of affiliation to universities, the need to enlarge the functions and powers of the Commission, delay and difficulty in obtaining minority status, the neglect of Urdu as a second language in A.P., the need to provide for the conversion of temporary affiliation into permanent affiliation automatically, the urgency to allow more educational institutions for minority communities, allowing the minority educational institutions to conduct common entrance examinations (CETs), adequate financial aid to minority educational institutions, the need to eradicate avoidable delay in granting minority status to deserving educational institutions, the problems relating to temporary minority status certificates and their periodic renewal, concession to be given to poor students from rural background, introduction of vocational training in the syllabus of educational institutions, etc.

Tour of Chairman to Pune, Solapur and Gulbarga from 5-8 August 2005

The Chairman along with Secretary of the Commission visited Pune, Solapur and Gulbarga from 5-8 August 2005. During the visit, meetings were organized at all places to interact with the representatives of the minority educational institutions. The main problems identified include: the difficulties of the minorities in finding suitable land and building to establishing educational institutions, insufficiency of grant-in-aid given by the State Government to meet the expenses of running the institutions, unrealistic mandatory requirements in respect of playgrounds for educational institutions, the need to set up hostels for the children of minorities, especially in Urdu schools, the need to exempt minority institutions from the reservation policy of the State for SCs and STs in respect of staff recruitment, opening of new Anganwadis/ Balwadis and Primary schools for muslim girl students, appointment of Urdu-knowing teachers to Urdu schools, provision of interest-free loans to minority educational societies for construction of building and infrastructure for minority schools, the right of admission of students should be given to the minority educational institutions, etc.

Tour to Jabalpur on 21-22 October 2005

The Chairman accompanied by the Secretary undertook a tour to Jabalpur on 21-22 October 2005. At the meetings organized by the minority educational institutions, the problems raised included difficulty faced by the minority educational institutions in getting permission for new courses, simplification of rules and regulations of Government of M.P. relating to educational institutions, 100% grant-in-aid should be given to minority educational institutions, need to create awareness about modern education system, services of minority educational institutions should be utilized for research programmes and survey programmes, delay in issue of minority status certificates, concessional rates in property tax and other taxes to be given to the minority educational institutions, delay in the approval of appointment of teachers, etc.

Tour of Member Shri Valson Thampu along with Secretary to Agra on 15th November 2005

The Member of the Commission Shri Valson Thampu, along with Secretary visited Agra on 15th November 2005 and had interactions with the heads of educational institutions located in Agra and surrounding districts. The major problems brought out by the minority educational institution's representatives related to problems pertaining to grant of minority status certificates, lack of uniformity regarding policies relating to grant-in-aid, delay in the issue of minority status certificate, free education to be given to single girl child, etc.

Tour of Chairman, Member and Secretary of the Commission to Bhopal on 6-7 December 2005

The Chairman of the Commission Justice M.S.A. Siddiqui along with Shri Valson Thampu, Member and Secretary of the Commission visited Bhopal on 6-7 December 2005. The main problems brought out by the representatives of the minority educational institutions related to interference on the part of the universities in the right to administer by way of imposing Selection Committees for appointing Principals and other teaching staff, delay in issuing NOC by the State and providing affiliation by the University, unnecessary delay in the inspection of the institutions by the University, prescription of burdensome endowment funds by the regulatory authorities, grants to be given to madarasas, Urdu should be given importance by the M.P. Government, more funds to be given to the Maulana Azad Education Foundation, the adverse effect of the Supreme Court judgment regarding Chhattisgarh University on minority educational institutions, 100% grant-in-aid should be restored by the M.P. Government, enhancement of salary of teachers of minority educational institutions to be on par with the teachers of government schools, non-payment of salary of teachers for up to 8 months, special consideration to be given to schools located in tribal and rural areas, need for a nodal officer in the State Government to deal with the problems of minority educational institutions, allowing the schools to collect adequate fees for the proper running of the institutions in case of inability of Government to provide 100% grant-in-aid, scholarship to be given to minority educational institutions, etc.

During the visits, the Commission laid special emphasis on interacting with the senior officials of the State Governments dealing with educational matters. In many places, the Secretaries of the concerned departments participated in the interactions. It is heartening to note that in some States even Chief Secretaries to the Governments also participated in the interaction. Such meetings afforded valuable opportunities to the Commission for appraising the State functionaries the details of the objects and functions of the Commission as well as the general patterns of the problems and grievances in respect of minority education. Due emphasis was laid on the constitutional imperative on the part of the State Governments to bring the laws, rules, regulations and administrative orders/ instructions, etc. in consonance with the law declared by the Apex Court. The discussions also provided an opportunity to take up individual issues and the Commission was able to give proper clarifications/ directions wherever required.

The Commission was not able to visit many States during the year under report. During the coming years, the Commission would strive to visit as many States as possible as the Commission feels that such visits are effective

confidence building measures and could provide valuable opportunities for healthy interaction and promote better communication and understanding of the issues involved. It is also pertinent to point out that the NCMEI Act provides for advisory function of the Commission. Section 11 (a) of the Act relate to functions of the Commission is 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.”

During the visits the Commission could bring this section to the notice of the State Government officials. Even though the NCMEI Act provides that State Governments can refer any question relating to the education of minorities to the Commission for advice, during the year under report no such reference has been received from any State Government. The Commission expects that, as awareness about the mandate and functions of the Commission spreads, various State Governments would make use of the above mentioned provision and enable the Commission to serve them in discharging their Constitutional obligations in respect of the educational empowerment of the minorities.

CHAPTER 6- ANALYSIS OF PETITIONS AND COMPLAINTS RECEIVED DURING THE YEAR

The Commission started receiving petitions in February of 2005. The first batch of petitions was considered only in the second meeting held on 10th March 2005. Thereafter the Commission has been meeting regularly, sitting as a court to consider the petitions. Initially, a room allotted in Shastri Bhavan for the office of the Chairman was temporarily converted into a court room for the Commission. Thereafter the conference room in Shastri Bhavan was used as the court room till Commission moved to its present premises at Jeevan Tara Building. Court proceedings of the Commission were held on a weekly basis from the month of July 2005 onwards.

Since many people did not know the salient features and true scope of the Act under which the Commission has been established, the Commission, for a while received petitions in the format of letters. Determined to be people-friendly and proactive the Commission resolved to entertain such petitions, without insisting on a particular format. However, later on, the Commission devised the format for applying for minority status certificates.

The Commission has received a few petitions/ applications from minority educational institutions pertaining to issues and reliefs which were outside the ambit of the NCMEI Act. They were forwarded to the concerned authorities for appropriate action with intimation to the concerned petitioner. Among them were applications requesting for financial assistance. Such applications have been forwarded to the Maulana Azad Education Foundation and Central Wakf Board for action as deemed proper and the petitioners have been asked to follow it up with these organizations.

Linguistic minorities are outside the pale of the NCMEI Act. However, educational needs and grievances from this sector too have been received in the Commission during the year under review. This is not surprising, as Article 30 of the Constitution covers both religious and linguistic minorities. Commission has sent replies to such petitioners pointing out the fact and directing them to approach the appropriate authorities for redressal of their grievances.

Special mention needs to be made of complaints and representations made by the Jain Community from various States. Through the T.M.A. Pai Foundation verdict, the Hon'ble Supreme Court has made the State the unit for determining minority status. The power to recognize a religious community as a minority community within the State was, therein, ascribed to the concerned State Governments. State Governments should have, in the wake of the Pai Foundation Verdict, initiated action in this regard. Regrettably, though, a majority of the States and U.Ts have not done this, denying, in effect, the legitimate rights of large segments of the people. Communities are, thus,

robbed of their Constitutional rights through State inaction. The plight of the Jain community is a case in point. Recognized as a minority in a few states and refused the same status in all others, members of this community suffer discrimination, ironically in relation to each other, for the sole reason that they happen to live in different States of the Union of India. This is, admittedly, an aberration; and it deserves urgent and remedial attention on the part of all State Governments and it is desirable that the Central Government takes this matter with all State Governments. A special mention of this generic issue in this Report is deemed expedient for the obvious reason that one of the purposes in instituting the NCMEI is to ensure that fundamental rights are made available uniformly to citizens throughout the Union of India.

During the course of the year the Commission passed several orders. Some of the orders are mentioned in this chapter. Some of the detailed orders are given in the Appendix. Since there is a process involved in the finalisation of the cases, many cases registered during the year, especially during the first three months of 2006, could not be completed during the year. Even as this Annual Report was being prepared, many more cases registered during the year have been completed and appropriate orders passed. However, since these orders have been pronounced after 31st March 2006, they are not included in this Annual Report. Such orders would become part of the next Annual Report.

During the first year, the majority of the petitions related to the following subjects:

1. Minority Status Certificate.
2. No Objection Certificate (NOC) from the State Government and recognition from regulatory authorities.
3. Request for opening of new schools/ colleges, especially in the Urdu medium.
4. Request for up-gradation of schools and introduction of more courses in colleges.
5. Request for creating posts and filling up vacant posts.
6. Request for grant-in-aid and complaints regarding denial thereof.
7. Changes in the service conditions including removal of disparity in pay scales.
8. Grievances pertaining to pension, gratuity, leave encashment and other retirement benefits.
9. Provision of infrastructure and teaching-learning aids viz. computers, library, laboratory, etc.
10. Non-availability of text books in time.
11. Non-availability of Urdu textbooks.
12. Non-appointment of Urdu teachers in vacancies or posts meant for them.
13. Grant-in-aid to Madarsas and Makhtabs.
14. Payment of salary to employees in Madarsas.

MINORITY STATUS CERTIFICATE

During the year 2005, the Commission registered 373 petitions out of which 31 related to request for minority status certificate. However, in the first quarter of 2006, i.e. from 1st January to 31st March 2006, the Commission received a spate of applications. Out of the total number of 1381 applications received between 1.1.2006 to 31.3.2006, 1238 related to request for minority status certificate. The Commission was not equipped adequately in terms of staff and related facilities to handle such a situation. Every effort was made, however, to provide relief on merit, honouring the legal proprieties in this regard. In every instance the right of the State Governments to issue minority status certificates was upheld and, in respect of the States that had designated competent authorities to issue MSCs, the Commission limited itself strictly to appellate jurisdiction. As and when applications were received from institutions, without applying to the State Governments, they were directed to approach the concerned State first. In respect of those States that did not appoint competent authorities for the purpose, the Commission, after giving ample opportunities to the concerned Governments to be heard, exercised primary jurisdiction in this regard as provided for in the NCMEI Act.

The Commission had earlier sought information from all State Governments about the authorities constituted by them to issue minority status certificates and the procedure being followed in this regard. It was surprising to note that several State Governments had no mechanism to deal with the applications for minority status certificate. This explains why many minority educational institutions all on a sudden approached this Commission for relief in this regard. It is obvious from the records available with the Commission that a large number of these minority educational institutions had earlier approached the State Government authorities repeatedly over the years but to no avail. The inaction of some of the State Governments in this regard amounts to abdication of their Constitutional responsibilities. It is also symptomatic of the disparaging attitude to minority rights endemic in babudom. Some of the applications received by the Commission related to minority educational institutions which have been in existence for more than 50 years. Many others have been established long back, but have not been granted minority status certificate. The Commission, however, notes with appreciation that many State Governments have initiated action, of late, to establish proper mechanisms for dealing with applications for minority status certificate. It is hoped that all State Governments will designate competent authorities at the earliest and deal with the requests for minority status certificate expeditiously.

NO OBJECTION CERTIFICATE

For starting an educational institution it is mandatory to obtain a No Objection Certificate from the State Government. For institutions imparting

professional education the requirement is of essentiality certificate. The Commission has received a large number of petitions/ complaints, regarding either denial or inordinate delay in respect of No Objection Certificate. Discrimination has also been alleged in this regard.

Since the Commission received a large number of petitions relating to undue delay in the issue of No Objection Certificate, it recommended to the Government to fix a suitable time frame for considering this matter. This recommendation was welcomed by the Government and the Commission is happy that the Parliament, while amending the NCMEI Act, incorporated a deeming provision in respect of NOCs. Section 10 of the NCMEI Act now prescribes a time limit of 90 days for deciding on applications for No Objection Certificates. If applications for NOCs are not decided on and the same is not communicated to the applicant by the concerned competent authority within a period of 90 days, NOC shall be deemed to have been granted to the applicant.

In every interaction the Commission has had with the representatives of minority educational institutions the issue of No Objection Certificate has been raised, indicating how widespread and acute problems in this regard are. While Commission does not favour lowering of educational standards, including those that pertain to infrastructure, competent staff, hygienic facilities, etc. in the name of minority rights, it is also keen to ensure that the educational rights of minorities are not paralyzed under pretext of State regulation. It needs to be noted with reference to school education that constitutional provisions mandate the State Governments to provide education to all children between the age of 6 & 14. Article 21 (A) of the Constitution is in the Chapter relating to Fundamental Rights and is titled "Right to Education". Article 51 (A) relating to fundamental duties has been amended to include a new Sub-clause (k) where a parent or a guardian has been given the duty to provide opportunities for education to his child between the age of 6-14 years. With these constitutional provisions in place, it is difficult to understand the negative stand taken by many State Governments in delaying the application for grant of No Objection Certificate received from the minority communities for long periods of time.

In T.M.A. Pai Foundation Vs. State of Karnataka (2002) 8 SCC 481, it has been held by the Supreme Court that the right to "establish and administer educational institutions of their choice" guaranteed under Article 30 (1) of the Constitution can be regulated, but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and to prevent mal-administration. In short, the regulations made by the controlling authorities should not impinge upon the minority character of the institution.

Commission expects that the State Government authorities would decide on the issue of NOC quickly taking into account the provisions of Section 10 of NCMEI Act.

REQUESTS FOR NEW SCHOOLS/ COLLEGES/ UPGRADATION OF SCHOOLS

Commission has received many petitions pertaining to permission to establish new schools/ colleges. Some representations relate to request for up-gradation of existing schools. In individual cases notices have been issued to concerned authorities in the State Government and Commission has taken decisions on the basis of facts submitted before it. In some cases the allegations have been made about discriminatory treatment towards institutions set up by members of the minority community.

REQUEST FOR CREATION OF POSTS AND FILLING UP OF VACANT POSTS

Some of the petitions relate to refusal of the authorities to allow creation of additional posts and also undue delay in filling vacant posts. The rights under Article 30 (1) include the right to appoint teaching and non-teaching staff. This is subject to the regulations made by the State Government authorities relating to minimum qualifications. It has been alleged in many of the petitions that the State Government authorities do not sanction additional posts even though they become due as per the prescribed students-teacher ratio. Complaints have been received regarding inordinate delay in sanctioning these posts and in approving the selection and appointment of teachers. Undue delay in such approvals results in further financial distress as salary grant is released only after such approval is given by the competent authority. It is pertinent to point out that the State Government authorities need to refrain from making policies, rules and regulations which are contrary to the rights enshrined under Article 30. Where the State has already stipulated the student-teacher ratio it is difficult to understand why the authorities concerned drag their feet in sanctioning the additional posts that become due.

GRANT-IN-AID

The Commission has received many petitions relating to denial of grant-in-aid or delay in releasing grant-in-aid. While grant-in-aid is not a constitutional imperative, it is blatantly unlawful to deny grant-in-aid without any valid reasons or to discriminate against minority educational institutions in this respect. The Commission has considered the replies received from the concerned authorities in the State Governments and passed orders in individual cases.

CASES RELATING TO SERVICE CONDITIONS AND RETIREMENT BENEFITS

Commission has also received several petitions from individuals as well as representative organizations of teachers and other employees regarding service conditions and pensionary benefits. Some of these cases relate to disparity in the pay-scales between the teachers in Government educational institutions and those in minority educational institutions. There have been complaints regarding denial of pensionary benefits viz. pension, gratuity, leave encashment, etc. to the teaching and non-teaching staff of minority educational institutions.

PROVISIONS OF INFRASTRUCTURE AND TEACHING/ LEARNING AIDS

Some of the minority educational institutions have alleged before the Commission that they have not been provided with teaching/ learning aids viz. computer, library, laboratory facilities, etc. There have been petitions relating to request for financial assistance for infrastructure development including additional class rooms, building for library, laboratory, toilets, etc.

NON-AVAILABILITY OF TEXT BOOKS ESPECIALLY IN URDU

Complaints have been received from various states about the non-availability of text-books in time. Specific complaints have been received about non-supply of Urdu text books. It has to be a matter of great concern. This is a responsibility which has to be seriously considered by the State Government authorities. Such representations have been considered by the Commission and appropriate directions have been given to the concerned authorities.

PROBLEMS RELATING TO MADARSAS

According to the Supreme Court judgement in Azeez Basha case educational institutions include all institutions from madarsas to universities. Commission has received many petitions from the providers of madarsa education about lack of facilities in madarsas. There are schemes of the Central Government and State Governments to provide grant-in-aid to madarsas. The petitions allege undue delay in the release of grant-in-aid and some of the cases relate to long periods of delay. Such undue delay results in non-payment of salaries to the teachers and employees of the Madarsas, which is bound to be very demoralizing. While it is the duty of the Government to ensure proper education in all educational institutions including madarsas, undue delay in the release of grant-in-aid cannot be justified. Commission has passed orders in such petitions giving appropriate directions to the concerned authorities.

TIME TAKEN FOR DISPOSAL OF CASES

According to Section 12 of the NCMEI Act, the Commission shall for the purposes of discharging its functions under the Act have all the powers of a civil court trying a suit. The powers of the Commission include :-

- (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 section 123 and 124 of the Indian Evidence Act, 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.

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).

Accordingly, the Commission follows the procedure of a civil court. Once the case is registered, the Commission considers the petition/ complaint in its sitting. In complaints that fall within the ambit of the NCMEI Act, notices are issued to the respondents. The Commission endeavours to maintain a healthy balance between procedural simplicity and promptitude on the one hand and adherence to requirements of natural justice, on the other. The Commission is kept as a forum where Petitioners and Respondents are spared all expenditure. Accordingly, no application fee or court fee is levied. The Commission also decided to accept all petitions/ complaints received even though it is not in the form of a petition as required by a court. It is not necessary to engage lawyers, though there is a growing tendency to resort to professional help among Petitioners and Respondents.

Commission usually gives at least 4 weeks time for the respondents to send their reply. Next date of hearing is fixed on the basis of the time of 4-5 weeks given for the respondents to send their reply. However, in case of matters of proven urgency, shorter dates are given.

If the response/ reply is received on or before the date fixed for hearing the case, the Commission considers the response/ reply and sends the copy thereof to the petitioner/ other party for filing rejoinder if any. The time given for filing such rejoinder is usually 4 weeks. In case the response/ reply is not

received within the stipulated time of 4-5 weeks, another chance is given for the respondents to file the reply by issue of fresh notice. Commission gives reasonable time for the parties to file their reply. In certain cases where the matter involved requires decision of the State Government or regulatory authority and requires consultation with various departments or at various levels, adequate time is given for filing a response.

Commission has ensured that orders are passed at the earliest without compromising on providing adequate time for the parties to respond or file rejoinder.

During the year 2005, the total number of case registered were 373. Out of these, Commission at the time of writing this report has disposed of 354 cases. Out of 373 cases 67 cases were disposed off expeditiously; i.e. in one sitting itself. An analysis of the time taken for disposal of the cases reveals that the Commission was able to dispose of 110 cases within 3 months and 37 cases between 3 to 6 months. For other cases, the issues covered complicated matters including policy matters falling within the domain of the State Governments. Adequate time had to be given to the State Governments for giving their responses. Whenever a request for adjournment was received by the Commission it has been considered judiciously and adjournment granted in the interest of justice, wherever and to the extent possible.

A few typical cases disposed of by the Commission during the period are summarized below:

Case No. 103 of 2005

Request for opening a secondary school at Kalyan, Distt. Thane, Maharashtra

Petitioner: The President, Muhammadiya English School, Al-Hira, Near Custom Office, Reti Bunder, Kalyan-421 301, Dist. Thane.

Respondent: The Secretary, Deptt. of School Education, Govt. of Maharashtra, Mantralaya Extension Building, Mumbai-400 032.

The Muhammadiya Educational and Charitable Trust at Kalyan, Maharashtra approached the Commission for a direction to the State Government to accord sanction for the secondary section of Muhammadiya English School. They had taken up the matter with the State Government for the academic year 2005-06, but it did not evoke any response. Commission is glad to note that, in response to its intervention, the State Government decided on the application expeditiously. The School Education and Sports Department, Government of Maharashtra informed the Commission that they have given permission to the petitioner Trust to open a secondary section for the year 2005-06 on no-grant basis. While we are pleased to have been able to make

the appropriate relief available to the Petitioner, we would have been happier if exercising one's Constitutional rights could have happened without having recourse to legal remedies.

Case No. 108 of 2005

Amendment to certain provisions in CET Booklet of Maharashtra Government

Petitioner: Dr. Shaikh Ramzan, Secretary, Maharashtra Binaanudan Adhyapak Mahavidyalaya Sansthachalak Association, D.S.R.B. & College Compound, Plot No.10, Town Centre, Sidco, Aurangabad-431 003 (Maharashtra).

Respondents: 1. The Chief Secretary, Govt. of Maharashtra, Mantralaya, Mumbai.
2. The Director, Deptt. of Higher Education, Pune.

The petitioner, namely, Maharashtra Bina Anudan Adhyapak Mahavidyala Sansthachalak Association sought a direction to the Government of Maharashtra for deletion of Rule 1.3 of CET Booklet.

Rule 1.3 of the Rules of CET Examination published in the booklet is as under:-

“Aided/Non-aided Minority Institutions should fill up their 50% quota or quota approved by the Admission Control Committee from their own community from the Eligible Candidates through CET of the system suggested by the Admission Control Committee as per Merit. If sufficient candidates from the particular community are not available, remaining seats should be surrendered to the Centralised Admission Committee. Any irregularity in this case will be liable for fine. Non-minority seats will be filled by counseling through Centralised Admission Committee.”

The aforesaid rule provided that if sufficient candidates from a particular community are not available, remaining seats should be surrendered to the Centralised Admission Committee of the Government. The said rule, in effect, prescribed an arrangement of seat sharing in aided/non-aided minority educational institutions by fixing quota of seats between the management and the State.

It was contended on behalf of the petitioner that the said rule infringes Article 30 of the Constitution and it also runs counter to the dictum laid down by the Supreme Court in T.M.A. Pai Foundation Vs. State of Karnataka (2002) 8 SCC 481 and P. A. Inamdar Vs. State of Maharashtra (2005) 6 SCC 537.

In P. A. Inamdar's case (supra), a seven judges bench was constituted to interpret the judgement rendered by the eleven judges bench in T.M.A.Pai Foundation's case (supra). One of the questions arose for consideration in the case of P. A. Inamdar was as under:-

1. To what extent can the State regulate admissions made by unaided (minority or non-minority) educational institutions? Can the State enforce its policy of reservation and/or appropriate to itself any quota in admissions to such institution?

After examining the judgment rendered in T. M. A. Pai Foundation's case (supra), their Lordships of the Supreme Court answered the said question as under:-

“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 protection of Article 30 (1).”

Thus, the State cannot insist on minority educational institutions to implement the state policy on reservation for granting admissions.

The decision rendered by the Apex Court in P. A. Inamdar's case (supra) still holds the field. It has been held by the Supreme Court in Brahmo Samaj Education Society Vs. State of West Bengal (2004) 6 SCC 224 that the State Governments are obliged to take note of the declarations of the law by the Supreme Court and amend their laws, rules and regulations to bring them in conformity with the principles set out.

Commission referred to the amended Article 15 (5) of the Constitution, which is as under:-

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

The aforesaid article also exempts minority educational institutions from the purview of the State policy on reservations.

For the foregoing reasons, the Commission came to the conclusion that Rule 1.3 quoted above is not only violative of the decisions rendered by the Supreme Court in the cases of T. M. A. Pai and P. A. Inamdar, but it also infringes Article 15 (5) of the Constitution. Consequently, the Government of Maharashtra was requested to delete Rule 1.3 from the CET Information Booklet.

Necessary communication was sent to the Chief Secretary of the Government of Maharashtra.

Case No. 123 of 2005

Revised scale of pay of Madarsa teachers in the State of Orissa

Petitioner: The General Secretary, All Orissa Madrasa Teachers' Association, Madrasa Sultania, Buxi Bazar, Cuttack-753 001 (Orissa)

Respondent: The Secretary (School Education), Govt. of Orissa, Govt. Secretariat, Bhubaneswar

The All Orissa Madrasa Teachers' Association, Cuttack petitioned the Commission to recommend to the Government of Orissa to implement revised scale of pay for the madarsa teachers. Even though Government had sanctioned revised scale of pay in favour of approximately 7000 teachers of high schools in Orissa, the madarsa teachers were not accorded this facility. The petitioner pointed that the number of teachers were around 230 in 84 madaras and the High Court of Orissa had earlier directed the Government of Orissa for sanction of the revised scale of pay in favour of the petitioners. In reply to the notice issued, Commission was informed that the Government of Orissa has solved the problem by revising the pay scale of the teachers of the madaras.

This is one of the instances where the Commission's intervention has resulted in quick action leading to an amicable redressal of the grievances.

Case No. 126 of 2005

Grievances against collection of excess amount by minority educational institutions

Petitioner: The General Secretary, Minorities Students Organisation, 5-8-162, Station Road, Nampally, Hyderabad.

Respondents: 1. The Principal, Sana College of Teacher Education, Surya Pet Revenue Division, NH-9, Kodad, Nalgonda-508206.

2. The Principal, Shams-ul-Uloom College of Education, Markapur, Prakasham Dist. (A.P.)-523316.
3. The Principal, Hazarat Ameeruddin College of Education, H.No.7-15- 108/1A, Maya Bazaar Street, Giddalur (Yedavalli) Parkasam Distt. A.P.
4. The Principal, Bharath College of Education, 127/82, Sankarapuram, Cuddapah Distt. A.P.
5. The Principal, Hussainy College of Education, Vankatampeta, New Udayagiri, Duttalur (M) Nellore Distt. A.P.
6. The Principal, Dada Khalandaria College of Education, D.No.2/820, Nehru Nagar, Chinna Chowk, Cuddapah Distt. A.P.

The Minorities Students Organisation, Hyderabad complained that six colleges located in the State of Andhra Pradesh have charged more than the authorised amount for application form and registration for admission to these colleges. The petitioner demanded that the extra money taken from the petitioners by the respondent colleges should be given back to the concerned students. Commission issued notices to the respondent colleges. The Commission's intervention resulted in the respondent colleges taking immediate action to refund the extra amounts collected from the students on account of application form and registration fee for admission. The respondent colleges filed their replies enclosing therewith photocopies of the receipts regarding the refund of the excess amount given to the students.

Case No. 170 of 2005

Admission in a minority educational institution

Petitioner: Ms. Mohasina Begum, D/o. Khaja Nazeer Ahmed, C/o. Abdul Mateen, Plot No. 304, Kotturi Apartments, Prabath Nagar, Chaitanyapuri, Dilsukhnagar, Hyderabad-500 016.

Respondents: The Principal, Modern College of Education, Ghatkesar, R.R. District, Hyderabad (A.P.)

Ms. Mohasina Begum of Hyderabad filed a petition before this Commission against the Modern College of Education, R.R. District, Hyderabad alleging that the petitioner has been refused admission in the B. Ed. Course in the respondent college. Commission promptly issued notice to the respondent college and was glad to note that the respondent college in their reply informed the Commission that the petitioner has already been admitted to the said course in the college. This is typical of the many cases where the interventions of the Commission resulted in happy endings.

Case No. 183 of 2005

Grievance relating to an Urdu School in Maharashtra

Petitioner: Shri Abid Khan, President, Shaheed Abdul Hameed Education Society, Darwha-445202, Dist. Yavatmal, Maharashtra.

Respondents:

1. The Secretary, Deptt. of School Education, Maharashtra State, Mantralaya, Mumbai.
2. The Director of Education, Education Directorate, Maharashtra State, Central Building, Pune.
3. The Dy. Director of Education, Amravati Division, Balgaon Road, Amravati (M.S.).
4. The Education Officer (Secondary), Yavatmal, Godani Road, Yavatmal (M.S.).
5. The Education Officer (Primary), District Board Education Deptt., Yavatmal.
6. The District Education Department, Arni Road, Yavatmal (M.S.).

In this case, the petitioner society which is a minority educational institution approached the Commission with the following prayers :-

- (i) Arrears of grant-in-aid for the Urdu primary school be given with retrospective effect and 100% grant-in-aid for Vth, VIth and VIIth classes;
- (ii) 100% grant-in-aid for B.B. Fatima Urdu Girls High School, Darwha from the year 199-2000 for classes Vth to Xth; and
- (iii) Permission to start XIth class in Science Stream for girls students.

As far as prayer (i) is concerned, Commission found that the grand-in-aid is applicable only from the date of sanctioning and not with retrospective effect. Hence the petitioner school does not appear to have been discriminated against. That being the case, the petitioner was not entitled to any relief on this count.

As regards the second part of the prayer (i) relating to 100% grant-in-aid for Vth, VIth and VIIth classes, the Commission did not agree with the reply submitted on behalf of the State Government mentioning the criteria for sanction of grant-in-aid.

The Commission did not agree with the stipulation of the Government that reservation for backward classes must be fulfilled as per the prescribed percentage, since as per the amended Article 15 (5) of the Constitution, the policy of reservation of backward classes cannot be enforced by the State

Government as the petitioner institution falls within the ambit of Article 30 of the Constitution.

That being so, the criteria for reservation for the backward classes offend Article 30 read with Article 15 (5) of the Constitution. Consequently, the attention of the State Government was invited to the aforesaid constitutional provisions for amending the said criteria regarding reservation of backward classes so as to bring it in conformity with the law declared by the Supreme Court in T. M. A. Pai Foundation Vs. State of Karnataka (2002) 8 SCC 481 and the amended Article 15(5) of the Constitution.

As regards prayer No. (ii) regarding 100% grant-in-aid for B. B. Fatima Urdu Girls High School, Darwaha, the State Government has contended that new grant-in-aid formula is applicable to all unaided secondary schools. According to this formula, for secondary schools and unaided divisions in secondary schools, in first four years no grant-in-aid is given, from the 5th year onwards, the grant-in-aid is given starting with 20% increasing each year by 20% and reaching 100% grant-in-aid by the 9th year. Accordingly, 40% grant was sanctioned to the petitioner school. It is further contended that in the earlier scheme, girls schools were given 100% aid from the 4th year onwards, but that formula now stands abolished as a matter of state policy following a directive from the High Court of Maharashtra in Writ Petition 1773/2000. In this view of the matter, no relief can be granted to the petitioner on this count.

The prayer No. (iii) pertains to grant permission to start XIth class in Science stream for girls students. This prayer has been opposed by the State Government on the ground that the State Government has taken a decision not to grant permission to start new schools exclusively for girls in the State.

Taking into account the arguments brought out before the Commission, the Commission concluded that the stand taken by the State Government regarding withholding grant of permission to the petitioner society to start a new school exclusively for girls in the State is violative of Article 30 (1) of the Constitution. The Commission also concluded that the action of the State Government in denying permission to the petitioner society to start a new school exclusively for the girls in the State amounts to violation of the petitioner's fundamental right to establish educational institutions of its choice.

The Commission requested the Government of Maharashtra in the Education Department to grant permission to the petitioner society to establish a Junior College of Science for Women in Urdu medium at Darwaha, if the petitioner society fulfils the norms and guidelines prescribed for starting such a college in the State.

Case No. 190 of 2005

Request for starting Standard VIII Division in Urdu Medium School at Pitapur, Tal. Akkalkot, Distt. Solapur.

Petitioner: Shri Muluk Sab. L. Sagri, A/P: Pitapur, Tal: Akkalkot, Dist. Solapur (Maharashtra)

Respondent: The Secretary, Deptt. of School Education, Govt. of Maharashtra, Mantralaya, Mumbai.

The petitioner requested the Commission to take up the matter with the Government of Maharashtra for allowing the petitioner school to start Standard VIII Division. The Commission issued notice to the Secretary, Department of School Education, Government of Maharashtra. The Commission was informed by the Education Officer (Primary), Zila Parishad, Solapur, Maharashtra, that they had sorted out the issue by discussing the matter with the petitioner and arrived at a compromise solution. Since the petitioner and the respondent sorted out the matter on the ground of out of court settlement, the Commission disposed off the matter accordingly.

Case No. 226 of 2005

Permission to establish an Urdu Primary School at Zafar Nagar, Nagpur.

Petitioner: The Secretary, Qidwai Educational & Cultural Society, Lashkari Bagh, Nagpur-440 017.

Respondent: 1. The Director (Education), Nagpur Division, Nagpur.
2. The Executive Officer, Municipal Corpn. of Nagpur, Nagpur.

Commission passed the following order on 14.2.2006:

By this petition, the petitioner seeks a direction to the State Government for granting permission to establish an Urdu Primary School at Zafar Nagar, Nagpur. This petition has been opposed on the ground that at present Nagpur Municipal Corporation is running about 42 Urdu Primary Schools in the city and if the petitioner is allowed to establish another Urdu School at Zafar Nagar, it would effect the admission/strength of Urdu Primary Schools run by the Nagpur Municipal Corporation. In view of the fact that Article 21A commands the State Government to provide free and compulsory education to all children of the age of six to fourteen years, the Commission came to the conclusion that the stand taken by the Municipal Corporation, Nagpur clearly violates the fundamental right enshrined in this Act. That apart, the aforesaid plea of the Nagpur Municipal Corporation has the effect of preventing, distorting or restricting healthy competition amongst the educational institutions for promoting

academic excellence. That being so, the stand taken by the Municipal Corporation, Nagpur is invalid in law as lacking legal sanction. Moreover, the Muslim community of Nagpur has a fundamental right to establish an educational institution of its choice under Article 30 of the Constitution. It is well settled that the fundamental right enshrined in Article 30 (1) is subject to certain reasonable regulations. It is significant to mention here that 'to regulate' is not 'to restrict' but 'to facilitate' the effective exercise of the very right. A benignly regulated liberty, which neither abridges nor exaggerates the autonomy but promotes better performance is the right construction of the constitutional provisions of Article 30. Strangely enough, the stand taken by the Municipal Corporation, Nagpur does not even fall within the ambit of any regulation framed by the State Government or any competent authority. It is also well settled that any law or executive direction which infringes the substance of the right guaranteed under Article 30 (1) 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 the infringement of the fundamental rights.

For the foregoing reasons, the Commission came to the conclusion that the Municipal Corporation, Nagpur has violated the petitioner's fundamental right to establish educational institution of its choice, i.e. Urdu Primary School at Zafar Nagar, Nagpur.

Accordingly, the Government of Maharashtra in the local self Government was requested to direct the Municipal Corporation, Nagpur for according permission to the petitioner society for establishment of an Urdu Primary School at Zafar Nagar, Nagpur keeping in view the mandate of Articles 21A and 30 of the Constitution.

A copy of the Order was sent to the Govt. of Maharashtra for taking appropriate action.

Case No. 245 of 2005

Release of grant of pay salary of the Arabic Aided Teachers in Gulbarga, Karnataka.

Petitioner: The President, Arabic Aided Schools Employees Association, Gulbarga Division, Gulbarga (Karnataka);

Respondent: The Principal Secretary to Govt. of Karnataka, Finance Department, Vidhana Soudha, Bangalore-560 001.

The Arabic Aided Schools Employees Association, Gulbarga, Karnataka, petitioned the Commission for release of grant by the Government of Karnataka to pay salary of Arabic Aided Teachers of Schools in Gulbarga Division,

Karnataka. Commission recommended the petition to the Chief Secretary, Government of Karnataka for sympathetic consideration and appropriate orders. Commission was glad to note that the Government of Karnataka took prompt action and the petitioner association informed vide their letter dated 31.1.2006 that Karnataka Government had released the salary up to December 2005. This is another case where Commission's intervention resulted in positive result.

Case No. 290 of 2005

Grievance against a minority educational institution

Petitioner: Meritorious Minorities Medical Students of MBBS, Hyderabad.

Respondent: The Principal, Deccan College of Medical Sciences,
P.O. Kanchan Bagh, DMRL X Road, Santoshnagar,
Hyderabad - 500 058 (A.P.).

By this petition, the petitioners sought direction to the respondent medical college to return their original certificates and the fees deposited by them. The petition was resisted on the ground that out of 10 petitioners, 7 have been accommodated in the college itself and rest of the petitioners had taken admission in some other colleges after attending the first semester of the respondent college. According to the respondent, their original certificates were sent to the affiliating university vide letter No.DCMS/ACAD/1890 dated 16.8.2005 for verification and approval of the admission. That being so, the original certificates deposited by the petitioners were not in the custody of the respondent college. Since the petitioners have already attended the first semester, as such the fees deposited by them for the said semester cannot be refunded to them. Reliance was placed on the order dated 14.8.2003 passed by the Supreme Court in Islamic Academy of Education & Anr. Vs. State of Karnataka in W.P. (Civil) No.350 of 1993.

The Commission felt that the respondent college has not committed any illegality in utilizing the fee for the first semester in terms of the aforesaid order of the Supreme Court. Consequently, the petition being devoid of merit, was dismissed.

Case No. 301 of 2005

Allegation against minority educational institution receiving illegal admission fee

Petitioner: Shri Syed Mohammed Hussain, H.No.18-7-198/A/282/A,
Talabkatta, Morad Mahel, Mughalpura, Hyderabad.

Respondent: The Principal, YIF College of Engineering & Technology, 786, Himayat Nagar, Gandipet, 'X' Road, Moinabad Road, Mandal, Ranga Reddy, Dist.-500 075 (A.P.).

The petitioner made an allegation in the petition that the respondent institution had received Rs.80,000/- in cash as admission fee which according to the petitioner is illegal and amounts to a corrupt practice. The allegation was denied by the respondent college. According to the respondent, the fee prescribed by the Govt. of Andhra Pradesh, i.e. Rs.22,000/- per annum has been charged from the petitioner and the allegations made by the petitioner are false and mischievous.

Commission found that there is no documentary evidence on record to show or suggest receipt of Rs.80,000/- by the respondent college. In this view of the matter, the Commission found it not appropriate to act on the bald statement made by the petitioner regarding payment of Rs.80,000/- as admission fee. Consequently, the petition was dismissed for want of clear and cogent evidence about the alleged corrupt practices.

Case No. 327 of 2005

Request for provision of computers to the petitioner school

Petitioner: The Manager, Amroha Public School, Amroha.

Respondent: 1. The Secretary, National Council for Promotion of Urdu Language, Wing 6, 2nd Floor, West Block, R.K. Puram, New Delhi-110 022.

2. The Secretary, Maulana Azad Education Foundation, 13, Social Justice Service Centre, Pahar Ganj, New Delhi-110 055.

Amroha Public School, Station Road, Amroha had requested the Commission for provision of computer facilities to the students of the petitioner school. Commission issued notice to the Maulana Azad Foundation. The Foundation informed the Commission its willingness to consider the petitioner's application for financial assistance subject to fulfillment of the norms prescribed therefor. In view of this matter, the Commission disposed of the petition by directing the petitioner to submit a fresh petition to the Maulana Azad Education Foundation for grant of financial assistance.

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 those 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, which 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. 6 of 2005

Affiliation of Rashida Begum Muslim Mahavidhyalaya, Amroha, U.P. to M.J.P. Rohilkhand University, Bareilly.

Petitioner: Chairman, Rashida Begum Muslim Mahavidhyalaya, A-80, Nizamuddin East, New Delhi.

Respondent: Registrar, M.J.P. Rohilkhand University, Bareilly.

In this case the Rashida Begum Muslim Mahavidhyalaya, which is a minority educational institution, sought relief in respect of its permanent affiliation to the M.J.P. Rohilkhand University, Bareilly for the B. Ed. course of the petitioner institution. The Petitioner placed before the Commission xerox copies of various orders passed by the Chancellor of the respondent University, (His Excellency the Governor of U.P.) containing specific directions to the respondent University for granting affiliation to the petitioner college. The respondent University in its written statement averred that all orders of the Chancellor of the University have been complied with admitting thereby that the University has granted permanent affiliation to the petitioner college for its B.Ed. courses. However, it was brought before the Commission that examination forms for B.Ed. students have not been supplied to the petitioner college as a result whereof the students would be adversely affected. Since the respondent University has already granted permanent affiliation to the petitioner college, it is under legal obligation to supply examination forms to the petitioner college. This is necessarily a concomitant right, which flows directly from the right of affiliation. The intervention of the Commission resulted in an amicable solution to the problem. The University should have acted upon the orders passed by the Chancellor and sorted out the grievances when the petitioner approached the University.

Case No. 20 of 2005

Minority Status Certificate for the Khalsa Model Senior Secondary School, Dunlop Bridge, Kolkata.

Petitioner: Khalsa Model Senior Secondary School, 135, B.T. Road (Dunlop Bridge), Kolkata-700 035.

Respondent: The Secretary, Central Board of Secondary Education, Delhi.

The Khalsa Model Senior Secondary School, Dunlop Bridge, Kolkata (hereinafter to be referred as petitioner) approached the Commission seeking a declaration about the status of the said school as a minority educational institution. The petition was opposed by the CBSE on the ground that the petitioner has not been conferred the status of minority educational institution by the Govt. of West Bengal and as such it is not entitled to invoke the jurisdiction for this Commission.

Commission considered the matter and found that it is beyond the pale of controversy that the petitioner is affiliated to the CBSE and that it was founded and established in the year 1964 by the Gurdwara Sikh Sangat, which is a registered charitable society. The management and administration of the petitioner is controlled and managed by Gurdwara Sikh Sangat. It was also

undisputed that way back in 1982 the Govt. of West Bengal had issued 'No Objection Certificate' in favour of the petitioner for its affiliation with the CBSE.

The petitioner had applied on 07.09.1999 before the National Commission for Minorities, Govt. of India, for a declaration of its status as a minority educational institution on the ground that it is managed and administered by Gurdwara Sikh Sangat. The National Commission for Minorities informed the petitioner that such a declaration can only be given by the concerned State Government in accordance with the Bye-laws framed therefor vide letter dated 22.09.99. Pursuant to the said communication, the petitioner applied to the Secretary, Govt. of West Bengal, Education Department seeking such a declaration, but without any success. Thereafter the petitioner filed a Writ Petition No. 7636(W) of 2004 in the High Court at Calcutta for declaration about its status as a minority educational institution. By the order dated 21.06.04, the High Court directed the State Govt. to reconsider the representation of the petitioner and dispose it off by a reasoned order. Pursuant to the said directions of the High Court, the State Govt. reconsidered the matter and passed a reasoned order, copy of which was annexed with the petition. According to the State Govt., since the petitioner has not been recognized by the West Bengal Board of Secondary Education, it has no power to grant the minority status to the petitioner. The grounds of rejection is mentioned in the order of the Commission given at Appendix to this report.

Aggrieved by the order of the State Govt., the Petitioner invoked jurisdiction of this Commission. On scrutiny Commission found that the copy of the Certificate of Registration granted by the Registrar of Firms, Societies and Non-trading Corporations, Govt. of West Bengal, filed by the petitioner clearly showed that Gurdwara Sikh Sangat, Dunlop Bridge Calcutta is a registered charitable Society. The petitioner also filed a xerox copy of the Memorandum of Association, which contained the names and description of members of said society. The aforesaid documents clearly proved that the Gurdwara Sikh Sangat, Dunlop Bridge, Calcutta is a registered society, the composition of which indicated the presence of Sikhs members on it. The petitioner is managed and controlled by the Sikh Community. The petitioner has apparently maintained its Sikh character, which is evident from its very name, emblem and motto. The immovable property of the petitioner shall be vested in the said Charitable Society. Thus the Petitioner has been constituted as a self contained and autonomous institution.

For the foregoing reasons, the Commission was of the opinion that the petitioner is a minority educational institution covered under Art. 30 of the Constitution of India. Accordingly, the Commission ordered that a Certificate declaring the petitioner as a Minority Educational Institution be issued.

This is a typical case where a minority educational institution was forced to run from pillar to post for a long period of time without getting its rightful recognition.

Case No. 25 of 2005

Affiliation of the Dental College set up by Crescent India Medical Education Trust, Pune.

Petitioner: The Crescent India Medical Education Trust, Inemdar Mansion, 957, Nana Peth, Ma-Parvez Road, Pune-411 002 (Maharashtra).

Respondent:

1. The Registrar, Maharashtra University of Health Science, Gangapur Road, Anandvali Marg, Nashik-422 013.
2. The Principal Secretary, Govt. of Maharashtra, Mantralaya Extension Building, Mumbai-400 032.
3. The Dental Council of India, Aiwan-e-Galib Marg, Kotla Road, New Delhi- 110 002.
4. The Secretary, Ministry of Health & Family Welfare, Deptt. of Health, Nirman Bhavan, New Delhi.

The petitioner trust namely Crescent India Medical Education Trust, Pune established a dental college and approached the Maharashtra University of Health Sciences, Nashik for affiliation. The petitioner trust is a registered public trust established by the Muslim trustees for integrated development of education of the Muslim community. The petitioner duly applied to the respondent university for affiliation of a dental college established at Pune and paid a sum of Rs. 5 lakhs to the respondent University as the affiliation fee. The petitioner also applied to the State government of Maharashtra seeking permission to set up the said dental college. The Government of Maharashtra on 8th July 2004 granted permission to the petitioner under Section 64 (5) of the Maharashtra University of Health Sciences Act 1998 for establishment of a new dental college at Pune with intake capacity of 100 students per annum, subject to approval by the Central Government and affiliation by the respondent University. However, in August 2004, the respondent University refused to grant the provisional affiliation to the petitioner. The petitioner approached the Commission as the action of the respondent University amounted to violation and deprivation of rights of minorities guaranteed under Article 30 (1) of the Constitution. The petitioner also alleged that the respondent University in the past had granted affiliation to other colleges without insisting upon the provision of the perspective plan and the requirement of a hospital of 100 beds having three years running operation. The petitioner alleged that the action of the respondent University in rejecting the application of the affiliation of the petitioner is hit by the doctrine of hostile discrimination.

The Government of Maharashtra and the Dental Council of India did not contest the proceedings before the Commission. The respondent University resisted the petition on the ground of jurisdiction and also on the ground that the perspective plan prepared by the respondent University is binding on the petitioner and therefore petitioner's request for affiliation cannot be allowed.

The Commission noted that the respondent university refused to grant affiliation to the petitioner and did not even recommend the petitioner's case to the State Government for establishment of a new dental college at Pune and the State Government granted the permission to the petitioner for establishment of the said dental college, before the date of refusal for affiliation by the respondent university. The Commission in its order [**copy of the order at Appendix to this report**] found that the refusal to give affiliation by the University is without just and sufficient grounds and amounted to violation of the educational rights of the minorities guaranteed under Article 30 (1) of the Constitution. The Commission rejected the argument of the respondent University that the permission was granted by the State government without recommendation by the respondent University and as such the said permission of the State Government is ineffective and invalid. Commission found that the proviso to sub-section (5) of Section 64 of the Maharashtra University of Health Sciences Act clearly empowers the State Government to grant permission for starting a new college or institution even without the recommendation of the University. The perspective plan prepared by the University under Section 64 (1) merely serves as a guideline for deciding the desirability of setting up a medical college by the State Government in a particular region or area of the State and it cannot impair the fundamental rights guaranteed under Article 30 (1) of the Constitution. The Apex Court had held that "the grant of approval or permission as contemplated under Section 64 of the Act is nothing but substantially a grant of Essentiality Certificate under para 3 of the Regulation insofar as it relates to location of the proposed medical college. The State Government while granting an Essentiality Certificate or permission to establish a new medical college acts as a sovereign and discharges its constitutional obligation."

The Commission concluded that the desirability of having the dental college at the proposed location under Para 3 of the regulation is required to be decided by the State Government and not by the concerned University. Consequently, The Commission came to the conclusion that the action of the respondent University in refusing affiliation to the petitioner constituted an infringement of the fundamental rights of the minorities guaranteed under Article 30 (1) of the Constitution. The findings of the Commission were sent to the State Government, Vice Chancellor of the respondent University and the University Grants Commission for implementation in terms of Section 11 (b) of the NCMEI Act.

Case No. 33 of 2005

Refusal of permission by Allahabad University to the Hamidia Girl's Degree College, Allahabad, to start the course of Computer Application in Social Sciences

Petitioner: The Principal, Hamidia Girl's Degree College, Sultanpur Bhawa, Noorullah Road, Allahabad-211 003.

Respondent: The Registrar, University of Allahabad, Allahabad- 211 002.

In response to the notice issued by the Commission, the respondent University informed that the petitioner college did not fulfill the conditions imposed by the panel of Inspectors and, therefore, the authorities/ bodies of the University, who were empowered for granting permission, did not give permission to the college to start the course of Computer Application in Social Sciences. The Vice Chancellor of the respondent University informed the Commission that if the college fulfills the conditions imposed by the panel of inspectors, permission for starting the course would be granted, pending the approval of the competent authority/ body. Commission asked the petitioner college to fulfill the conditions which are necessary to ensure excellence in education. The Commission's intervention in the matter resulted in an amicable solution to the issue, as the petitioner college realized the need for fulfilling the conditions and the University promptly conducted the inspection of the college and permission was granted with retrospective effect for the session 2004-05. This resulted in the protection of the education of students who had enrolled for the course.

Case No. 238 of 2005

**Infringement of rights guaranteed under Article 30 of the Constitution-
Petition by Al-Badar Rural Dental College & Hospital, Gulbarga, Karnataka**

Petitioner: The Chief Trustee, Al-Badar Rural Dental College & Hospital, MSK Mill Road, Gulbarga-585 102 (Karnataka).

Respondent:

1. The Secretary (Health Education), Govt. of Karnataka, Govt. Secretariat, Bangalore.
2. The Registrar, Gulbarga University, Gulbarga, Karnataka.

The petitioner dental college is an unaided minority educational institution. The petitioner sought a direction to the State Government to allow filling up of 100% seats through management quota. The issue raised in this petition is no longer res integra as it has been held by the Apex Court in P.A. Inamdar Vs. State of Maharashtra (2005) 6 SCC 537 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. It was also held that minority institutions are free to admit students of their own choice including students of non-minority community.

The Commission disposed of the petition as nothing survived in the petition in view of the above-mentioned judgement.

Case No. 316 of 2005

Affiliation with Central Board of Secondary Education

Petitioner : Guru Teg Bahadur Public School, Sector 15C, Chandigarh

Respondent: 1. The Chairman, Central Board of Secondary Education, 2, Community Centre, Shiksha Kendra, Preet Vihar, New Delhi-110 092.
2. The Secretary Education (S), Chandigarh Administration, Chandigarh.

Guru Teg Bahadur Public School, Sector 15C, Chandigarh, submitted a petition to the Commission alleging discrimination by CBSE relating to affiliation of the petitioner school. The CBSE was noticed and the Learned counsel for the CBSE, on instructions, stated that as a one-time measure, and the final measure, not to be granted under any circumstances in the succeeding years, the CBSE will allow the students of the petitioner school to appear in Class X examination to be conducted by the CBSE in the month of March 2006. He also stated that the Chairman of the petitioner school has earlier given undertaking not to start Class IX and Class X in the petitioner school, but has not adhered to the same. The present one-time measure was subject to the condition that the petitioner school will immediately disband the present Class IX of the school and not promote the students of that class to Class X and further that the petitioner school shall not admit, by promotion or otherwise, any student to Class IX. However, the petitioner school can admit students only after receiving formal affiliation, if granted by the CBSE.

The petitioner agreed to the conditionalities put forward by the CBSE. Commission disposed of the case accordingly.

CHAPTER 8 – REFERENCES FROM CENTRAL GOVERNMENT AND STATE GOVERNMENTS AND COMMISSION'S RECOMMENDATIONS

During the year many references were received from the Central Government. The references mainly related to the following: -

1. Amendments to the National Commission for Minority Educational Institutions Act.
2. General problems faced by minority educational institutions.
3. Specific problems relating to certain minority educational institutions.
4. Need to change rules, regulations and statutes of the Universities under the State Governments.

Some of the cases in this regard are mentioned the following paragraphs : -

The General Secretary of All India Association for Christian Higher Education, New Delhi submitted a proposal to the Ministry of HRD for setting up a new "Institute for Educational Development of Minorities". The Ministry of HRD referred the matter to the Commission. The Commission called the petitioner for a discussion on the subject. After considering the project proposal the Commission was of the opinion that there is a need for training in educational management for the Managers and Administrators of Minority Educational Institutions. Such projects are envisaged and facilitated best as partnerships with the Ministry of HRD. This kind of partnership involves among other things sharing the financial implications on a reasonable basis. Commission recommended that MHRD can support such projects by bearing the cost of 75% and the remaining 25% can be contributed or mobilized by the institution concerned. Commission's recommendations accordingly were sent to the Ministry of HRD.

The Ministry of HRD forwarded a reference from Shri Abu Asim Azmi, MP (RS) in which suggestions were made relating to improvement in minority education and the institutions thereto. The Commission considered the issues and the conclusions were sent to the Secretary, Ministry of HRD, GOI, for such action as may be deemed appropriate.

The suggestions made in the reference of Shri Abu Asim Azmi were as follows: -

1. The Government of India with the objective of encouraging education among minorities should establish a separate ministry like the Ministry for Social Justice and Empowerment or an initiative like the NCPUL under the HRD Ministry which is entrusted with the responsibility of granting aid to the NGO's.

2. The long pending issue of the recognition and affiliation of Minority Institutions needs to be resolved for efficient functioning of these institutes. We propose a Minority Education Act to be enacted by the Parliament to resolve this issue.
3. The No objection Certificates that are currently issued by the State Governments should be issued by the affiliating boards.
4. Special provisions should be made to setup the B.Ed colleges and hostels for Boys & Girls in Minority populated areas. These provisions will have to be backed by allocation of land and financial assistance by the Government.
5. A uniform syllabus and structure for all minority institutions should be proposed and a sub-committee can be formed to work out the details.
6. Commission for Minority Education should have statutory powers and its ruling on minority institutions affiliation should be final.
7. The government has already acknowledged the Muslim Community as educationally and socially backward students should be granted concessions in marks/ percentages for admissions in professional colleges on the lines of SC/ ST students.
8. A scheme of coaching for minority students is available with the Ministry of Social Justice and Empowerment which has been diluted. We propose that the scheme be brought to the original shape as it was envisaged when the scheme was launched.
9. We propose appointment of Urdu teachers in Central Schools, Kendriya Vidyalayas, Sainik Schools, and Navodaya Vidyalayas etc.
10. A single point proposal of Reservation for Muslim students in educational institutions will go a long way in educational upliftment of Muslims. We strongly propose that.

After a thorough examination of and due discussions on the various suggestions made therein, the Commission made the following recommendations on the aforesaid suggestions:

Suggestion No.1 :

The educational empowerment of the religious minorities:- The suggestion that a separate Ministry to look after the welfare of minorities has

become infructuous, as the Government of India has already set up a Ministry for Minority Welfare with Shri A.R. Antulay as Minister. As regards promoting the educational empowerment of the Muslims and other notified minorities, the Commission is now fully empowered to look after all issues pertaining to the violation or denial of the rights envisaged in Article 30(1).

Suggestions No.2 and 6:

These suggestions are fully covered by the provisions of Section 10 (A)(1) and Section 12 (1) of the National Commission for Minority Educational Institutions Act (for short "the Act"), which are as under:-

"10.(A) (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.

12(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."

Suggestions No.3:

The issue raised by Mr. Abu Asim Azmi stands resolved by Section 10 (1) of the Act, which is as under:-

"10(1) Any person who desires to establish a Minority Educational Institution may apply to the Competent authority for the grant of no objection certificate for the said purpose."

Sub-section (3) of Section 10 of the Act contains a deeming provision to the effect that 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 applicant, it shall be deemed that the competent authority has granted no objection certificate to the applicant.

Section 12A (1) of the Act provides that 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 to the Commission. It also provides that any order made by the Commission under sub-section (4) of Section 12 (A) of the Act shall be executable by the Commission as a decree of a civil court.

Suggestion No. 4:

Setting up separate B.Ed colleges and hostels for girls and boys in minority, especially Muslim, dominated areas:- This request is made against the background that orthodox Muslim parents, especially in rural areas and mofusil towns, do not allow their grown up daughters to study in co-educational institutions. This results in the denial of educational rights, especially, to Muslim girls. While the Government cannot, by itself, set up separate gender-specific institutions, it can always enable the communities concerned to meet its specific needs by extending appropriate financial assistance in areas of need. The Commission feels strongly that promoting the educational development of Muslim girls deserves to be a priority. For this to happen, it is necessary that B.Ed colleges in sufficient numbers, where Muslim girls can be trained to be teachers, need to be set up. The Commission recommended that the MHRD may evolve a scheme for establishing B.Ed colleges for girls in Minority-intensive areas in partnership with the local community sharing the financial burden equally (50:50) with the communities that come forward to avail themselves of such a scheme. Land for establishing such institutions must be provided by the Government free of cost, on appropriate terms and conditions.

Suggestion No. 5 :

The Commission feels that uniform syllabus and structure for all minority educational institutions is neither feasible nor desirable in the interest of the minorities.

Suggestion No.7:

As regards this suggestion, the Commission feels that concessions in marks/ lowering of eligibility requirements for minority students is neither feasible nor desirable. The emphasis must be on the educational development and not on the lowering of standards and requirements. It has been held in St. Stephens College Vs. Delhi University (1992) 1 SCC 558 that minority educational institutions cannot be permitted to fall below the standards of excellence expected of educational institutions. They cannot decline to follow the general pattern of education under the guise of exclusive right of management.

Suggestions No.8 :

The Commission has no comments to offer as the suggestion falls within the domain of the Ministry of Social Justice and Empowerment.

Suggestions No.9 :

It has come to the notice of the Commission that thousands of sanctioned posts for Urdu teachers remain vacant in various states. An audit of

these vacancies needs to be undertaken immediately and remedial action initiated. Non-appointment of Urdu teachers is a serious stumbling – block to the educational empowerment of the Muslims. It is pertinent to note that the non-appointment of Urdu teachers flies in the face of Constitutional provisions. Article 350A reads as follows:

“It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provisions of such facilities.”

Besides this, Article 29 (1) upholds the right of every citizen to have a distinct language, script or culture of its own and the right to conserve the same.

In the light of the above, the need and the duty to fill the existing vacancies as expeditiously as possible is amply clear.

Suggestion No.10:

The Commission feels that the emphasis should be on empowering the Muslims community to develop and to mainstream itself. Every effort to ensure that the socially and educationally backward among the minorities are enabled to derive the benefit of Article 15(5) needs to be made. For this to be meaningful adequate facilities and opportunities for quality education need to be created.

Another reference was received from the Ministry of HRD which was a request from an NGO “Society for the cause of Justice”, Secunderabad for providing financial grant for conducting a case study in Andhra Pradesh. Commission considered this matter and decided that such studies would be undertaken by the Commission itself at a future date. Therefore, Commission did not want to make any comments on the proposal submitted by the NGO. Government may provide adequate finances to the Commission as grant for such purposes.

The Bishop of Jabalpur had submitted a petition to the Ministry of HRD regarding problems faced by the Christian educational institutions in the State of Madhya Pradesh. The Ministry of HRD referred this petition to the Commission. The petition contained general points relating to the problems faced by the Christian educational institutions in the State of Madhya Pradesh. The Commission visited Bhopal on 6-7 December 2005 and had interactions with the representatives of the minority educational institutions. Since the Commission has to function like a court, the minority educational institutions were requested to send petitions to the Commission relating to specific issues

so that appropriate notices could be issued to the concerned respondents. The Commission also took the opportunity of discussing the issues raised in the petition with the senior officers of the Government of Madhya Pradesh including the Chief Secretary, Principal Secretary (Education), Principal Secretary (Finance), Principal Secretary (Technical Education), Principal Secretary (Minorities Welfare Department) and other officials of the Departments of Education. Commission requested the Government of Madhya Pradesh to take urgent action on the issues raised by the petitioner.

Commission received references from the Ministry of HRD forwarding suggestions received by the Ministry relating to amendments to the NCMEI Act. Some of the references forwarded by the Ministry of HRD were from other Departments including PMO. The suggestions received from diverse sources were consolidated and considered in depth in the process of evolving suggested amendments to the NCMEI Act. The Government thereafter introduced the Bill for amendment to the NCMEI Act.

The Ministry of HRD has referred a copy of the Martin Luther Christian University Bill, 2005 to the Commission for comments. The said Bill proposed the establishment of a private university by the name of Martin Luther Christian University in the state of Meghalaya. The Ministry of HRD had received the Bill from the Ministry of Home Affairs. The Commission examined the said Bill and was of the opinion that the proposed legislation is constitutionally valid and does not involve any deviation from the existing National or Central Policy to its detriment and it would not be a hindrance to any enactment of uniform law of the country. The Commission was also of the opinion that the proposed legislation does not seem to be in conflict with any existing Central law. Consequently the Commission recommended that the Government of India may accord its approval to the proposed Bill.

Another reference was received from the Ministry of HRD which contained the petition from the Minority College Teachers' Association of Bihar. The petitioner association wanted that the teachers of the minority degree colleges of Bihar should be paid their salary regularly. The Commission considered the representation and found that the subject matter pertains to the Education Department of Government of Bihar. As Bihar was then under the President's Rule, Commission decided to forward a copy of the representation to the Secretary to His Excellency, the Governor of Bihar for submitting it before His Excellency for such orders as may be deemed proper.

The Ministry of HRD forwarded a Memorandum submitted to the Prime Minister during his visit to Leh in June 2005. The petitioner has requested among other things establishment of a centrally sponsored Islamic institution at Chuchot, Leh.

The Commission considered the request and consulted some organizations dealing with educational matters. The views received were duly considered by the Commission and recommendation was given to the Ministry of HRD that the Commission strongly supports the demand raised by the residents of Leh for establishment of a centrally sponsored Islamic institution at Chuchot, Leh.

The Commission had also received some references from the Ministry forwarding petitions where the petitioners have challenged the validity of certain Central Acts. Since the Commission does not have jurisdiction to examine the legislative competence of the Parliament for enacting such Acts, it was decided to inform the Ministry of HRD that Commission does not have comments to offer in such cases.

The Ministry of HRD had forwarded a petition by the General Secretary, Markazu Ssaquafathi Ssunniyya, Sunni Cultural Centre , Karanthur, Calicut, Kerala, wherein they had requested for allotment of Registration by the HRD. On a perusal of the documents enclosed to the letter under reference, Commission was of the opinion that the petitioner Sunni Cultural Centre has been working for the educational advancement for the people of the country in general and in Kerala, in particular. Many of the students of the said Cultural Centre are now studying in various universities of our country. The said Cultural Centre has also been constituted with the object of carrying out educational, social, cultural and charitable activities for the welfare of the socially and educationally backward people. Consequently, the Commission recommended their case for registration to the Ministry of HRD.

During the year no reference has been received by the Commission from any State Government. Even though Section 11 (a) of the NCMEI Act confers advisory powers to the Commission to advise the State Government on any question relating to the education of minorities that may be referred to it, no reference in this regard has been received by the Commission. The Commission hopes that in the coming years, the State Governments may make use of this provision and seek advice of the Commission for their own benefit.

CHAPTER 9 – STUDIES UNDERTAKEN BY THE COMMISSION

The NCMEI Act empowers the Commission to undertake any initiative which, in its opinion, will help protect the full amplitude of Article 30(1) of the Constitution. Such initiatives and interventions to be effective and appropriate, it is imperative that the ground realities in respect of the issues addressed are brought to light. There is a great need, besides, to raise awareness concerning the educational rights of the minorities, the extent of their violations and deprivations as well as the magnitude of the needs in this regard. There is an appalling gulf between ground reality and public awareness in respect of the socio-economic and educational empowerment of the Minorities.

Given the bewildering variety that marks the beauty and vitality of the religio-cultural mosaic that India is, problems and needs vary widely from State to State and region to region. This is particularly so in respect of the plight of the minorities and the problems faced by them. There is a need, hence, to undertake or commission State-specific studies to ascertain the ground realities and evolve effective response strategies.

In the first year, however, Commission did not undertake any such studies. The functions and powers of the Commission include making recommendations to the appropriate Government for effective implementation of programmes and schemes relating to the minority educational institutions. During the first year, the Commission was concentrating on setting up the institution, preparing the procedures and regulations relating to the working of the Commission, disseminating information relating to the powers and functions of the Commission and how to use the forum of the Commission for grievance redressal, etc. In the coming years Commission proposes to undertake studies relating to improvement of educational facilities to the minority communities.

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

During the year under review, the work of the Commission was concentrated, mainly, on the following areas:

- (a) Giving effect to the constitutional rights of the religious minorities as enshrined in Article 30(1) so as to promote a sense of confidence and belonging among the stakeholders of minority education.
- (b) Reaching out to, and interacting with, the minority communities far and near to develop a first-hand understanding of the realities that bear on the mandate of the Commission.
- (c) Raising awareness among the officers and departments of education in various States and UTs concerning the true scope of minority rights and promoting a positive and proactive attitude among them.
- (d) Engaging with the National Regulatory Authorities, affiliating Boards as well as affiliating Universities to promote clarity of understanding in respect of minority rights and to carve out the required space for minority rights in their Statutes, directives and guidelines.

In all these respects the Commission has been able to make significant contributions. It is gratifying to note that, as a result, appreciable changes have come about in the perceptions on minority education and minority rights both on the side of the managers of minority education and the administrators of education in the States and UTs.

In the next stage of the evolving engagement of the Commission with the challenges of minority education, greater attention will be paid to the goal of promoting the integrated educational development of minorities. It is appropriate here, therefore, to provide, a conceptual blueprint of what is envisaged to be undertaken and achieved.

On Minority Educational Institutions (MEIs)

At this stage it is necessary to mention, albeit briefly, the special significance that educational institutions have for the minorities.

A MEI is one of the two nerve centres of community life; the other being its place of worship. Those who are familiar with the history of minority educational institutions will recognize readily that a MEI exists at the centre of a community. Such an institution embodies the liberal, progressive and secular character of its society.

A MEI is, therefore, ambidextrous, so to speak. With one hand it holds fast to what is authentic in the spiritual culture that gave birth to it. With the other hand

it reaches out to the wider society in a spirit of service and commitment to nation building. Surely, no one can doubt or debate the immense contributions the religious minorities have made, through their educational initiatives, to building the “India of our dreams”.

An Approach to the Integrated Development of minorities

Promoting development of any kind, especially integrated development, involves two things. First, the obstacles and bottlenecks in the path of development must be removed. A boat that is kept anchored cannot be taken forward simply by rowing hard. The forces and factors that hold back the minorities from developing must be identified and removed. Mention needs to be made, in this context, to the procedural tangles in which those who provide education and those who seek to establish new educational institutions are often trapped. They deserve discouragement, whereas they face encouragement. The keenness to ‘regulate’ (which is misunderstood as nothing but controlling) is not matched by the willingness to enable. The eagerness to ensure that educational facilities are used in a certain way is not matched by the keenness to help establish these facilities. The widespread attitude of “how not to” must give way to “how it can be,” without compromising the spirit of the law in force.

Elsewhere in this report, mention is made of the problem of Perspective Plans. In respect of higher education, they are required to be made; but are made, more often than not, without any regard for the rights and needs of the minorities. The right to establish educational institutions enshrined in Article 30(1) is rendered inoperative in this manner. Such measures that seem just in terms of letter of the law have the effect of whittling down the ambit of minority rights and erode the very purpose of Article 30(1). Instances like these underscore the need to bring about a radical change in the educational outlook of the State and its many functionaries at all levels.

Partnership in Education [“PIE”]

There has come about, in the recent decades, a growing awareness that the civil society has to play a significant role in development. Non-Governmental Organizations (NGOs) are located in this sector. Minority Educational Institutions belong to this category. It is a principle now well-settled that development has to be a collaborative and participative process. There is a need, hence, to shift to a model of partnership. This is all the more relevant and beneficial in the sector of education.

Partnership presupposes equity in sharing resources and reciprocity in exercising authority. It excludes unilateralism of every kind.

This practice is, as of now, legitimized by the legalistic dogma that receiving grant in aid is not a constitutional imperative for the MEIs. It is seldom asked,

“Why not?” What is overlooked in the process is that an overwhelming majority of the MEIs are serving the educational needs of the society as a whole, and the services they render are comparable in quantity, and superior in quality, to what the State provides. Yet a disproportionately large share of the State’s resources, comprising the tax payers’ money, is deemed the exclusive preserve of the State-run institutions. The minorities too pay taxes. They too contribute to the State exchequer. Educational cess is levied from them as well. That being the case, it is not clear by what legal scruple they can be excluded from sharing a reasonable proportion of the educational budget. The time has come for us to realize that the State can no longer limit itself to playing the role of a traffic cop on the crossroads of education, having only the duty to direct, devoid of any duty to develop.

It is right and necessary, therefore, that the State strengthens the hands of the stakeholders of minority education –those who have credible track-records in providing education- to establish educational institutions, in view of the rising demand for education at the present time. Education, being a fundamental right for all children in the age group of 6-14 (Article 21A), the State has a duty to set up adequate and accessible facilities to enable all children in this age-group to attend school. Given the economic backwardness of the minorities, they cannot be expected to mobilize the resources it takes to meet the capital investment required for establishing schools, colleges and institutions imparting professional education. Such investments must be shared, ideally, on a 50-50 basis between the State and the managers of minority education as well as other educational N.G.Os. Additionally, rules and regulations in force regarding NOCs and affiliation must be revised and liberalized. Infrastructure requirements, especially in terms of land, must be relaxed. Special emphasis needs to be laid on universalizing primary education, as this is the most neglected area today. Optimum community participation must be ensured. For this to happen, the general awareness concerning education needs to be raised and the support of the media, especially that of the Public Broadcaster, must be secured for this. If a fraction of the time that is allotted to sports can be assigned to education –readily acknowledged to be the key factor in development- the whole nation will benefit.

Special mention needs to be made of the fact that, while educational institutions of various kinds continue to be established by the minorities, they are unable to establish institutions of national excellence. MEIs of national repute have been all established in the distant past. Financial constraint is the main reason for this. Institutions of excellence play a crucial role in providing inspirational motivation for the members of the community, as well as of the wider society, to develop. They enhance the image and fortify the morale of the community concerned and foster in them a sense of belonging. They activate merit and bring out the best from individuals and communities. They contribute immensely to national good. As of today, there is a rat race for benefiting from MEIs of prestige, without any reciprocal concern either to respect their character or for

playing a role in enabling more and more such institutions to come up. This is a predatory instinct, of reaping what one has not sown. From an integrative model of educational development it becomes clear that the State and the rest of the civil society have a duty to empower and enable the minorities to play a catalytic role in the educational progress of the country, besides developing their own potential to the uttermost. Arguably, enabling the minorities, who comprise 20% of the population to develop, has to be a major priority in nation building. An under-developed community cannot contribute to national wealth. The integrated educational development of the minorities, therefore, must be deemed integral to national interests.

The larger purpose of integrative development is national integration. Promoting the cause of integrated development is not, therefore, a matter only of facilitating an increase in educational infrastructure. The vision of education must be integrative. It is dangerous and anti-democratic, however, to equate integration with homogenization. The latter is incompatible with democracy, whereas the former is basic to its health and wholeness. Integration presupposes genuine respect for uniqueness, individuality and diversity. Unity, not uniformity, is the goal of integration. India is a garden of a billion flowers, not a factory in which only identical gadgets are forged. Those who promote ideological allergy to the uniqueness of the culture and vision of the minorities, therefore, mount an assault on the spirit and substance of India's democratic culture. They subvert the very foundation for our national progress.

A Case Study: The Central Madarsa Board

A significant initiative on the part of the NCMEI during the period under review is the initiative to evolve a nation-wide consensus, among Muslims, to set up a Central Madarsa Board to standardize, mainstream and modernize Madarsa education. The education provided through Madarsas remains anchored in the past and is irrelevant to the needs and opportunities of today. For that reason, the products of Madarsa education remain isolated from the national mainstream. Relevance is the key to empowerment and integration.

The Commission, addressing this major and sensitive issue, set in motion a long series of consultation with the stakeholders of Madarsa education and evolved a near-total consensus in this regard. Indian Muslims are second to none in their patriotic fervour. They are as emotionally integrated with the national mainstream, even if the community continues to be economically backward. The Muslim masses in India crave to be empowered through appropriate education. This is the ideal climate of opinion for the Central Government to enter into a partnership in education with the community. But partnership in education cannot be selective, without sending wrong signals. The project of mainstreaming and standardizing Madarsa education is envisaged as a signal announcing a paradigm shift in the approach to education in general and minority education in particular.

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

We have traversed some six decades from the ambience of attaining Independence and the idealistic spirit that prevailed then. To that extent, the intention behind making special provisions to preserve the uniqueness of India, especially her religious, linguistic and cultural diversities is not immediately apparent to many in public life today. Article 30(1) encapsulates an array of educational rights meant to ensure that the minorities, politically handicapped in democracy by numerical insignificance, are empowered to preserve the uniqueness and distinctiveness of their identity and culture as harmonious with the ethos of the “socialist, secular democracy” premised in the Preamble of the Constitution. The educational rights envisioned for the minorities are intelligible and invaluable only to the extent of being committed to the realization of this vision. A concern for preserving the robustness of our democratic culture, therefore, underlies the legislative consensus and executive keenness to set up the National Commission for Minority Educational Institutions. It is a universally acknowledged dictum that the feel-good factor of the minorities -the extent of security, empowerment and involvement they experience – is a significant index to the health and wholeness of a secular democracy.

The Hon'ble Supreme Court of India in the TMA Pai Foundation V/s. State of Karnataka (2002) 8 SCC 481 and P.A. Inamdar V/s. State of Maharashtra (2005) 6 SCC 537 has clearly identified the basic ingredients of the right to administer conferred on minority educational institutions envisaged in Article 30(1), which are the right:

- 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.
- f) Additionally the Apex Court has also clarified that the right to administer includes also the right to appoint the Head of the Institution, who has to serve as the chief executive arm of the Management.

Further, Article 15 of the Constitution has also been amended recently by inclusion of a sub-clause viz. Article 15 (5), which is as under: -

“(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or

for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.”

Some general patterns of violation or deprivation of minority rights

The representations, complaints and petitions received in the Commission over the year under review establish clearly that minority rights are undergoing serious erosion. Some of the common patterns in this category are identified below:

(a) State legislations tend to be, increasingly, at variance from the spirit and scope of the law declared by the Supreme Court in respect of Article 30(1), even when these pronouncements are invoked in the Preamble of such legislations. Besides this, instances have come to the notice of the Commission, of Government orders in some States whittling down the ambit of minority rights beyond the scope of the legislations that correspond to them.¹ This widening gap between the law and the regulations evolved thereon is a matter of serious concern. It is impractical for minority educational institutions to resist this trend through litigation every time it happens.

To understand the gravity of the situation, it is enough to take just one example. As per the rules in force in the State of Andhra Pradesh, an educational institution established and administered by a minority community will qualify for “minority status” only if the in-take from the respective community is not less than 70%, which is utterly impracticable. Christians, for instance, are only 2% of the total population in the State and they are scattered all over. That being the case, such an arbitrary and unrealistic requirement disqualifies almost every educational institution established by minority communities, including several well-established ones, from exercising their constitutional rights. Requirements like this make Article 30(1) a teasing illusion for the minorities. A clear cut distinction needs to be made between evolving rules and regulations meant to eliminate the abuse of minority rights, which is laudable, and the same being made with a covert intention to keep Article 30(1) in suspended animation for the minorities.

¹ In one of the cases adjudicated by the Commission, the petitioner had requested for issue of directions towards deletion of a State Government rule which sought to enforce reservation quotas in minority educational institutions. The rule stated that if all the seats from a particular community were not filled, the unfilled seats should be surrendered to the Centralised Admission Committee of the Government, which would then fill up those seats from its own list. This rule of the particular State Government as explained above, runs counter to the judgement of the Supreme Court in the TMA Pai Foundation case and in the P.A. Inamdar's case. Accordingly, this Commission came to the conclusion that the said rule was not only violative of the decision rendered by the Supreme Court but that it also infringed upon Article 15 (5) of the Constitution. Thus, the particular State Government was asked to delete the above rule from its statutes.

(b) Yet another category of the deprivation or violation of minority rights pertains to the regulations and directives evolved by the National Regulatory authorities and affiliating universities from time to time. When existing rules are amended hardly any thought is paid to the need to protect the space for minority rights. All institutions are treated alike in the name of equality, erasing thereby the space for exercising minority rights from the educational canvas. A case in point is the directive issued by the UGC regarding the composition of the Selection Committees for Principals and teachers in affiliated colleges. The composition prescribed by the UGC, which are binding on all affiliating Universities, amounts to a de facto denial of the clearly established right of the management of minority colleges to select and appoint heads of institutions and the teaching faculty, provided the minimum eligibility requirements prescribed by the regulatory authorities are met. Such a trend, to be sure, does not portend any mal intention on the part of the UGC but is the result, clearly, of an oversight. Yet this will have the effect, if not checked and guarded against, of making Article 30(1) altogether meaningless for the minorities.

(c) A third pattern in this category relates to the difficulties faced by religious minorities in securing permission to establish educational institutions. In some instances that have come to light, the right of minorities to establish educational institutions of their choice is sought to be blocked by invoking "Perspective Plans" that may not provide any space for establishing a school or college or technical/ professional institution in the given location. Perspective Plans are made, invariably, keeping the general situation in mind and the special needs of the minorities are rarely taken into account in formulating them. This results largely from the fact that representatives of the minority communities are conspicuous by their absence in the Committees that formulate such Plans. Nor are the stakeholders of minority education or their community leaders consulted on such matters.

Policy decision

It is well settled that any law or executive direction which infringes the substance of the right 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, financial and political, can justify infringement of the fundamental right.

(d) A fourth pattern pertains to the problems encountered in securing State approval for institutions and the harassments faced by those who try to establish educational institutions, especially schools. A case in point is that of an officer bearer of a minority educational Society facing threat of arrest because the English medium school established by him was not approved by the State, though application in this regard had been moved and was kept pending. It came to light subsequently that apprehensions of the school in

question becoming popular, and thereby affecting the clientele of the nearby school established by the majority community, was at the root of the delay in granting approval to the school, though there was no deficiency of any kind in its establishment. Thankfully, such instances are rare as of now; but there is a need to raise awareness concerning this as such aberrations could aggravate, giving the demand for, and prestige of, education at the present time, fuelling unprecedented competition among the entrepreneurs that throng this field. As a rule, the instinct of predatory profiteering drives the eagerness to prevent the minorities from establishing educational institutions.

(e) Yet another pattern of problems faced by minority educational institutions pertain to securing affiliation to Universities. An institution, which does not have affiliation to a University/board would not be able to grant valid degrees/diplomas/mark-sheets to their students and, therefore, would not be able to attract students for admission to its institution. This would effectively make the institution a non-starter. Article 30(1) can be, thus, wrecked on the rock of affiliation.² While it is indisputable that all institutions seeking affiliation to Universities must fulfill the prescribed requirements, it is also a fact that affiliating universities need to have an enabling and pro-active approach to affiliation, especially in respect of the minorities. The situation needs to be approached in terms of how affiliation can be given meaningfully, and not in terms of how it can be denied cleverly. There is a need to re-think the current outlook on affiliation which is shaped, largely, by the apparently laudable intention to safeguard excellence in higher education. The requirements –especially infrastructure requirements- are prescribed from this angle of concern. While the intention is noble, the effect could be that this makes venturing into higher education an exclusive privilege for the moneyed entrepreneurs in all communities. Entrepreneurs are driven less by altruism and more by the profit motive, as is already evident from the dark clouds of profiteering that loom large in the horizon of professional and technical education in our country at the present time. Unless the outlook on affiliation is re-examined and made more hospitable to those who are motivated by social justice and community empowerment, leaving a wide enough margin for staggered growth over a period, say of five years, Article 30(1) will mean little to those who seek to establish institutions of higher and professional education, especially in rural and semi-urban India. Those who are familiar with the history of some of the outstanding institutions today will know that they had humble origins and that they grew over the decades through the sacrificial service of many generations, and not because there was money power backing them. This is especially true of the minority institutions of national standing; and this is

² One of the Petitions before the Commission pertained to the denial of affiliation by a University to a minority institution, though it was set up with due permission from the concerned State Government. The University denied the affiliation on the ground that the perspective plan prepared by it did not permit the setting up of that college at the proposed location. The Commission held the action of the University as a violative of the fundamental rights guaranteed under Article 30(1) of the Constitution and accordingly, directed the Vice Chancellor of the said University to reconsider their decision.

a truth of history that we cannot afford to abandon in the course our educational march forward.

It is necessary, at this juncture, to mention of the need to re-examine the requirements in respect of land for establishing educational institutions in urban areas, especially in metropolitan cities. In cities like Bombay and Delhi the prospective minority managements cannot afford to meet, even on concessional rates, the land requirements. This is obviously so in respect of prescriptions that pertain to playgrounds and other sporting facilities. The time has come for the State to consider seriously the idea of creating common sporting facilities for clusters of schools in such cities and amending the regulations in this respect vis-à-vis individual institutions.

(f) Minority Status Certificates. Though a passing mention of this problem has been made already, it is necessary to take note of some of the major problems that the minority educational institutions face in this regard. It is at once shocking and significant that several states and UTs do not have any provision for issuing minority status certificates. This is tantamount to denying minority rights as institutions can exercise them only if their status is recognized by a competent authority designated by the State. Conferring original jurisdiction on the NCMEI in respect of the educational institutions located in States and UTs that do not have no provision for issuing minority status certificates has been, hence, a welcome and necessary step.

(g) Issues pertaining to Grant in Aid. Increasingly State Governments are retreating from their social obligation in education by abolishing the grant-in-aid scheme in a gradual manner. The rules and practice in force in several States abolish posts in the grant-in-aid category, when their incumbents either retire or die. Such a practice stands on a ridiculous presumption that the incumbent, and not the post, is admitted to the grant-in-aid scheme! Admittedly receiving grant-in-aid is not a constitutional right. Yet, there is a need to revisit this serious issue in the light of the progressive legislation that today finds its place in the Constitution as Article 21A, which enshrines the right to education as a fundamental right of all children in the 6-14 age-group. Article 30(2) is an injunction against the State not to discriminate against the minority educational institutions and prevent it from receiving aid on the ground that the institution is under the management of a minority community. This brings the State under the obligation to establish adequate facilities to provide affordable, quality education to all children in the country. The educational neglect of rural/tribal India and of the teeming masses that live in sub-human conditions in the mushrooming slums of India is an issue too well-established to need any further corroboration. Minority communities are providing minimal educational facilities in places where the State has failed. It is not difficult to see that educational institutions that serve the poorer sections cannot survive without grant in aid. Minority communities are struggling to fill in the educational vacuum resulting from State inaction. It is right and necessary, irrespective of which way the

needle of law is turned, to deem them as partners with the State in making Article 21A a meaningful reality on the ground. That being the case, these institutions must be deemed to have a right, rooted in social justice, to be enabled to survive and serve out of the budgetary allocations in States and UTs.

Government schools run wholly out of grant-in-aid. Often they are inferior in standard of education, compared to the schools maintained by the minorities. Be that as it may, the real issue is that in tens and thousands of instances these institutions serve the same socio-economic segment –the poor and the under-privileged- that send their children to government schools. A poor child studying in a Government school has the benefit, such as it is, of education subsidized by the State, whereas his comparable counterpart in a minority institution is denied the same. This is not merely a dry-as-dust legal issue but also a human and moral issue for the simple reason that in tens and thousands of cases the poor in a locality may have no option but to send their children to minority educational institutions because Government schools are non-existent.

It is a welcome and healthy trend that the budgetary allocations on education and health are showing substantial increases. Educational cess is being levied. It is naïve to assume, however, that larger budgets will mean greater educational development. There is a need to ensure that budgetary allocations are translated into educational facilities on the ground. If that is to happen at all, the role of the civil society – especially the contributions being made by the stakeholders of minority education- as partners in education with the State, entitled to a fair share of the financial allocations in this regard, needs to be acknowledged and implemented. The dogma that “grant in aid is not a constitutional imperative” needs to be re-thought and a cooperative outlook evolved in the larger interests of the nation.

Some General Issues

(i) **Ignorance of the purpose, logic, and scope of Article 30(1).** A bird’s eye view of the complaints received at the Commission indicates that there is considerable ignorance in respect of the substance and scope of the educational rights accorded to the minorities. Neither the administrators of the affiliating Universities, nor the officers of national regulatory authorities nor the personnel in State education departments keep pace with the developments in respect of the judicial pronouncements in this regard. In *Brahmo Samaj Education Society vs State of West Bengal* (2004) 6SCC224, the Supreme Court has commanded State Governments to take note of the declaration of law by it and amend their laws, rules and regulations so as to bring them in conformity with the principles set out therein. It is also desirable that periodic communications and updates go from the MHRD addressing the key links in the chain of education so that denial or violation of minority educational rights does not happen due to ignorance.

(ii) **A negative idea of “regulation”.** It is a settled principle in law that the State has the right to regulate the educational rights of minorities. It is trite law that Regulations have to be ‘reasonable’ and they will be so if they are aimed at (i) ensuring that the benefit of these institutions are available to the minority communities and (ii) serves the purpose of promoting excellence in education and (iii) eradicates profiteering and maladministration. Instances have come to the notice of the Commission some regulatory authorities of the States interfere in day to day administration of minority educational institutions under the garb of regulations. They have formulated regulations which actually strike at the substratum of the educational rights of the minorities guaranteed under Article 30(1) of the Constitution.

(iii) **Willful neglect.** Schemes aimed at promoting Urdu as a medium of instruction –preparation of Urdu textbooks, filling up of vacant teaching posts in Urdu, especially the appointment of heads of Urdu departments- are languishing through non-implementation.

(iv) **Lack of appreciation for the services rendered by the minorities.** As compared to the scenario obtained a couple of decades ago, there is much less appreciation for the enormous contribution that religious minorities have made, and are making, to the cause of nation-building via education. This is ironic because the eagerness to take advantage of the facilities offered by the more prestigious among them is far greater today than was the case then. There is a need to raise public awareness concerning the sacrificial service rendered by religious minorities, far in excess of their financial abilities. The State needs to respect and empower initiatives by minorities in the field of education, particularly efforts to reach out and empower the poor and the neglected segments of the society. Education necessarily involves a partnership between the State and the Civil Society. Without a doubt, religious minorities are the foremost providers of education on behalf of the Civil Society.

We have mentioned details of some of the cases decided by the Commission in Chapters VI & VII. In this chapter we are mentioning about some of the cases having a direct bearing on violation or deprivation of educational rights of minorities.

In one of the cases the petitioner had sought the permission from the State Government to start a Junior College of Science in Urdu, for women exclusively. The State Government had refused permission stating that it had taken a decision not to allow new schools exclusively for girls in the State. The Commission directed the State Government to reconsider its decision as it amounted to violation of the petitioner’s fundamental right to establish an educational institution of its choice. In yet another similar case, a petitioner had requested for permission to start an Urdu Primary School, which was denied by the State Government stating that there were numerous such schools in that

particular city. In this case also the Commission opined that the denial of permission was violative of Article 30 of the Constitution and directed the concerned State Government to take appropriate action in the case.

The Commission has been empowered to issue Minority Status Certificate in cases where the State Governments have unduly delayed their decision or have used their discretion to deny such a certificate to a deserving minority educational institution. In a particular case a certain minority institution had been requesting for grant of minority status certificate for a number of years. This institution had to run from pillar to post for seeking its recognition as a minority educational institution despite fulfilling all the requirements such as its initial establishment as a minority institution, the continuing minority character of the administration of the institution, immovable property of the institution being in the control of the same minority group etc. Accordingly, the Commission declared this institution as a minority educational institution and issued the minority status certificate as requested for by them.

This Commission has also been empowered to hear complaints of non-affiliation of minority educational institutions by the concerned universities/ boards. It is apparent that the refusal to get affiliation by an institution to a particular university/ board without just and sufficient grounds amounts to the denial of the right to establish an educational institution. An institution, which does not have affiliation to a University/board would not be able to grant recognised degrees/ diplomas/ marksheets to their students and, therefore, would not be able to attract students for admission to its institution. This would effectively kill the initiative of that community to set-up the educational institution.

In one of the cases pertaining to a minority institution seeking permanent affiliation to a University, it was found that despite the affiliation have been granted, the University had not forwarded examination forms for students studying in that particular institution. The intervention of the Commission led to the said University issuing the examination forms for the concerned students of that institution. In another case a minority institution despite being granted permission by a State Government to set-up a college was denied affiliation by the concerned University. The University had denied the affiliation on the ground that the perspective plan prepared by it did not permit the setting up of that college at the proposed location. The Commission found the action of the University in refusing affiliation as a violation of the fundamental rights guaranteed under Article 30(1) of the Constitution and accordingly, directed the Vice Chancellor of the said University to reconsider their decision.

Apart from the above-mentioned important cases decided by the Commission in the period under review, the Commission also disposed off certain other cases in which the rights of minorities to establish and administer their institutions had been violated or infringed upon. In most of these cases

these institutions were hamstrung by the delay in decision making by the concerned authorities in the various states. In one of the cases a particular School had approached the concerned State Government for starting the secondary section in their School. The State Government did not communicate their decision to the concerned institution. The Commission's intervention in the matter led to the State Government approving the proposal of the concerned institution.

In another case some student's organizations complained that the minority institutions had charged an unauthorized excess amount of money for the application form and registration from students seeking admission to these colleges. The petitioners demanded that the extra money be refunded to the concerned students. The Commission's intervention resulted in the colleges immediately refunding the excess amounts. In one case some teachers had complained to the Commission that their salaries had not been paid by the State Government for several months. The Commission's intervention led to the concerned State Government immediately releasing their salaries. In yet another case a Minority Educational Institution had requested the Commission for provision of computer facilities for students of their School. The Commission had issued a notice to the Maulana Azad Foundation which expressed its willingness to consider the petitioner's application for financial assistance subject to fulfillment of the prescribed norms.

The Commission has during its visits to the various state governments also come across many other instances of problems being faced by the minority educational institutions. Some of the issues raised by the minority educational institutions in front of the Commission during their meetings included : - delay in getting "Bahali" from the District Education Officer for appointment of teachers; surplus teachers being sent to the minority educational institutions by the Government; alleged discrimination in giving Government aid to new schools opened by the minorities; the issue of Urdu being accorded the status of a 2nd / 3rd language in some states; some universities insisting on constitution of a Selection Committee for appointment of Principal and other teaching Staff; disparity in pay-scales of teachers of minority educational institutions vis-a-vis teachers of Government Schools etc. The Commission had taken up these issues with the various state governments for issue of guidelines by them to ameliorate the situation.

CHAPTER 12 – CONCLUSIONS

On the basis of what has been discussed in the previous chapters, the Commission makes the following recommendations: -

Proposed Amendments to the NCMEI Act

By the time this Report is prepared, the National Commission for Minority Educational Institutions (NCMEI) has been in existence for more than a year. Established, first, under an Ordinance, the Commission was made a statutory body through the NCMEI Act of 2004, which was subsequently amended in the light of a vast number of suggestions and requests received from around the country. It is noteworthy that the PMO took an active interest in the matter and forwarded several amendments to be considered by the Commission. This indicates a sincere intention both on the part of the Government and the Civil Society, to make the NCMEI an appropriate and empowered instrument to give effect to the full amplitude of Article 30 (1) of the Constitution of India. The message has been heard far and wide and has been received well and with much gratitude by all beneficiaries that include not only members of the five notified minority communities but also a vast segment of the people of India. It is a well-known fact that the society as a whole benefits from the educational institutions of excellence established and maintained by the minorities.

In the light of the hundreds of petitions considered by the NCMEI, three major and crucial lacunae have been noticed in the NCMEI Act in its present form, which need urgent attention and further amendment. They are examined and the desired amendments suggested below.

Amendment I:

Section 2 (g) reads as under: -

“Minority Educational Institution” means a college or institution (other than a University) established or maintained by a person or group of persons from amongst the minorities;

This definition implies that university is not an institution, whereas in the case of S. Azeez Basha & Anr. Vs. The Union of India AIR 1968 SC 662, the Apex Court has clarified beyond any doubt that a University is also an institution. The exclusion of “University” from the definition of a Minority Educational Institution strikes at the root of Article 30 (1) of the Constitution. In Aziz Basha’s case (supra), the Supreme Court has held that the Expression “an educational

institution” employed in Article 30 (1) is of wide amplitude and it embraces within its fold a University also. Section 2(g) of the NCMEI Act narrows the width of Article 30 (1). Article 13 of the Constitution injuncts the State from enacting any law that offends or violates any of the rights guaranteed in Chapter 3 of the Constitution.

In the light of the above it is proposed that the words “other than a University” be deleted from the definition of a minority educational institution in Section 2(g) of the NCMEI Act.

Amendment II:

Section 10A

One of the most significant and proactive features of the NCMEI Act of 2004 was the formal and explicit affirmation it contained of the right to affiliate as an integral and essential facet of the educational rights encapsulated in Article 30 (1). The right “to establish and administer institutions of their choice” can be paralyzed by withholding affiliation to prospective institutions. It was in view of the seriousness of this problem that the right to affiliate was incorporated, in the first place, in the original Act. The relevant section read:

10. Right of a Minority Educational Institution to seek affiliation to a Scheduled University.

- (1) Notwithstanding anything contained in any other law for the time being in force, a Minority Educational Institution may seek recognition as an affiliated college of a Scheduled University of its choice.
- (2) The Scheduled University shall consult the Government of the State in which the minority educational institution seeking affiliation under sub-section (1) is situate and views of such Government shall be taken into consideration before granting affiliation”.

In the process of amending the Act, this section was substituted by engrafting Section 10A which reads as under:

10 A. 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. [Emphasis added].**
- (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 regulation, of the University.

It needs to be highlighted that an Ordinance/ Act of every affiliating University incorporates a specific section limiting its territorial jurisdiction within the State of its origin. Section 10A and this provision are in direct conflict, as is evident from the following instance. A college situated in Bharuch (State of Gujarat) sought affiliation to the University of Delhi, which resisted the application on the ground that it could not legally affiliate the College as it is situated outside the territorial jurisdiction of the NCT of Delhi. The Commission, on the basis of a harmonious interpretation of Section 10A with the corresponding delimitation in the Statutes of Delhi University, decided that Section 10A of the NCMEI Act expands the territorial jurisdiction of an affiliating University. By adopting such an interpretation, the Commission had to make Section 10A workable. Regrettably, this resulted in further litigation on the part of the University and the matter is currently pending with the High Court of Delhi. This impasse portends to be generic and such wasteful legal confrontations can be avoided by amending Section 10A in the following manner.

10. A. 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, **irrespective of the territorial jurisdiction conferred on it by 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 regulation, of the University.

Amendment III

Sections 12B (4) and 10 (1) of NCMEI Act.

Section 12B of the National Commission for Minority Educational Institutions Act, 2004 provides right of appeal against the order of rejection of the application for grant of minority status certificate to a minority educational institution. Sub-section (4) lays down the procedure for disposal of the appeal filed before the Commission. Sub-section (4) is as under: -

“(4) On receipt of the appeal under sub-section (3), the Commission may, after giving the parties to the appeal an opportunity of being heard, and in consultation with the State Government, decide on the minority status of the

educational institution and shall proceed to give such directions as it may deem fit and, all such directions shall be binding on the parties”.

[emphasis added]

It needs to be highlighted that the expression “and in consultation with the State Government” employed in sub-section (4) *ibid*, was not in the original Bill which was tabled on the Floor of the Parliament. It appears that the said expression was added at the time of passing of the said Bill. The requirement of consultation with the State Government for deciding an appeal is against the principles of natural justice. It is well settled that statutory enactments must ordinarily be construed according to their plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unworkable or totally irreconcilable with the rest of the statute. If an appeal provided under Section 12B is to be decided with the consent or concurrence of the State Government, then that procedure will be offending the principles of natural justice. It virtually takes away the substantive right of appeal created in favour of an aggrieved party, as the result of the appeal will depend not on the merits of the case, but on the consent of the respondent and that would result in gross injustice to the appellants. It is hardly likely that that was the intention of the Legislature, as such an interpretation would lead to absurdity or injustice to one of the parties in the proceedings.

The aforesaid expression also leads to an inference that what the Parliament had given with one hand is taken away with the other. Since the expression “**and in consultation with the State Government**” completely destroys the right of appeal created in favour of the aggrieved party, it would be appropriate to delete this expression, i.e., “**and in consultation with the State Government**” by proposing suitable amendment in Sub-section (4) of Section 12B of the NCMEI Act.

Similarly, Sub-section (1) of Section 10 of the NCMEI Act also requires slight amendment. Sub-section (1) of Section 10 is as under: -

“(1) Any person who desires to establish a Minority Educational Institution may apply to the Competent authority for the grant of no objection certificate for the said purpose.”

A bare reading of this provision gives an impression that ‘No Objection Certificate’ is required for establishment of a minority educational institution in all cases. As per the provisions of various laws regulating the establishment of minority educational institutions, especially relating to technical and professional colleges, it is not mandatory to get the ‘No Objection Certificate’ from the competent authority under the State Government. The competent authority in the NCMEI Act has been defined as follows: -

“Competent authority” means the authority appointed by the appropriate Government to grant no objection certificate for the establishment of any educational institution of their choice by the minorities.

In certain Central enactments relating to establishment of professional colleges, no ‘No Objection Certificate’ for establishment of such professional institutions is required from the State Government, as these institutions are covered by Entry 66 of List I of Schedule VII to the Constitution. In the case of State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors. JT 2006 (4) SC 201, it has been held by the Supreme Court that so far as coordination and determination of standards for higher education or research in scientific and technical institutions are concerned, the subject is exclusively covered by Entry 66 of List I of Schedule VII to the Constitution and the State has no power to encroach upon the legislative power of the Parliament. That being so, in such cases, ‘No Objection Certificate’ from the State Government is not required for establishment of an educational institution.

Therefore it is proposed that the following expression may be added before the words “any person” employed in Sub-section (1) of Section 10: -

“Subject to such law, as may be made by the appropriate Government,”

After amendment, Sub-section (1) *ibid* shall be read as under: -

“Subject to such law, as may be made by the appropriate Government, any person who desires to establish a Minority Educational Institution may apply to the competent authority for the grant of no objection certificate for the said purpose.”

- The norms for deciding and according minority status vary from state to state. It needs to be highlighted that section 2(g) of the NCMEI Act defines a Minority Educational Institution as:

“Minority Educational Institution” means a college or institution (other than a University) established or maintained by a person or group of person from amongst the minorities;”

This definition is in harmonious consonance with the letter and spirit of Article 30 (1). Since the NCMEI Act is a Central Act, it prevails over all State legislation, ordinances, rules and regulations. Reference in this connection may be made to Article 254 of the Constitution which is as under:

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States. – (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which 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 clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.”

Thus, if the State formulates regulations prescribing criteria for granting Minority Status of an educational institution and if it is repugnant to the provisions of Section 2(g) of the NCMEI Act, then such a rule/ regulation shall be void to the extent of repugnancy. It is, therefore, necessary that States be advised suitably in order to amend all conflicting regulations as highlighted above.

- The requirements prescribed for granting minority status in several states are such that in effect minority status could be denied to deserving institutions. These prescriptions assume diverse colours and contours. The State should be required to revise these rules so as to ensure that no deserving institution is denied its rightful status and the protection that goes with it. Prescribing a fixed, and often impracticably high, percentage of in-take from the minority community concerned, as States increasingly tend to, is unrealistic and disabling. What is reasonable is to require that educational institutions aspiring to minority status should preferentially admit all eligible applicants from the minority community subject to availability of seats.
- It has been brought to the notice of the Commission that State government are increasingly withdrawing from the duty to facilitate education through grant-in-aid. Faculty positions that enjoy grant in aid are abolished as incumbents retire. The withdrawal of state subsidy in this manner can cause minority educational institutions located in rural and tribal areas as well as among poorer segments of the community to collapse. In many under-developed and educationally neglected areas of our country, educational institutions run by religious minorities are the only rays of hope for the local people, especially the under-privileged. Such institutions need to be supported and strengthened, rather than disabled, especially in the light of the

Constitutional mandate to provide free, universal education for all children in the age group of 6-14 years under Article 21A. This Article elevates the right to education to the status of a fundamental right. It is a well-known fact that the minorities are not financially strong to establish or maintain educational institutions on their own. They need financial help and encouragement from the Government in this regard.

- A major problem faced by minority educational institutions is the dearth of qualified teachers to man their schools. In various States the Governments/ Universities have formulated rules/ regulations/ ordinances which impinge on, and gradually annihilate, the minority character of educational institutions. Foremost among them is the tendency to disallow teacher training colleges. The availability of well-trained and committed teachers from one's own community in adequate numbers is a key factor that determines and sustains the minority character of an educational institution. The right to establish teacher training colleges becomes very vital in this light and any obstruction in this regard should be a matter of grave concern. If competent teachers from the concerned minority community are not available, the educational freedom and facilitation envisaged under Article 30(1) could become incrementally illusory. It is imperative, therefore, to remove all impediments in the way of establishing teacher training colleges offering both diploma and degree level training throughout the country. The need for this is all the more evident in the light of the fact that State Governments tend to discourage, by rules and regulations, recruitment of teachers from other States. At the same time, they disallow teacher training colleges from being established by religious minorities. The NCTE could be instructed, in this regard, to adopt a favourable and enabling attitude and facilitate the training of the vast numbers of teachers that are already required for the existing institutions as well as the institutions that are sure to emerge in response to the rising demand for more and better education.

- National Regulatory Authorities in education, like the U.G.C., A.I.C.T.E., N.C.T.E., M.C.I., D.C.I., C.B.S.E., etc. should be instructed to amend their rules and regulations to bring them into consonance with the law declared by the Supreme Court. Reference may, in this connection, be made to the decision of the Supreme Court in Brahmo Samaj vs. The State of West Bengal [(2004) 6 SCC 224]. Often there is a gap between the law declared by the Apex Court and the rules and regulations in force in various States. Rules and regulations are formulated often, overlooking the law declared by the Supreme Court, neglecting the needs and violating the rights of minority institutions. The idea of creating a monitoring cell as part of the HRD Ministry specifically mandated to keep vigil against the whittling down of minority rights through executive and bureaucratic formulations and prescription is worth considering. This is because in the absence of such a provision affected minority institutions are forced to resort to legal remedies, which are time consuming and unaffordable. It is imperative that the Central Government advise the State Governments and

Central regulatory authorities to amend their statutes and rules to bring them into conformity with the directions in the T.M.A. Pai Foundation Verdict of the Apex Court. There is a need to sensitize the officers and instrumentalities of the State concerning the various pronouncements of the Hon'ble Supreme Court in respect of minority rights. In the course of the work of the Commission, and in view of the patterns of rights violations, it appears that the level of awareness in this regard is rather low and inadequate.

It has been brought to the notice of the Commission that there are thousands of unauthorized schools imparting primary education in various States, in the absence of accessible and affordable facilities for those who are, therefore, compelled to resort to these schools. Tens and thousands of children from extremely poor and underprivileged segments of our society study in these schools. Several of these so-called 'unauthorized schools' have been functioning for years and quite a large number of them are run by members of minority communities. State Governments shut their eyes to these institutions for a period of time and then wake up from time to time and either impose punitive fines on them or direct them to be closed. While such steps can be justified in a legal sense, they fall short of the requirements of social justice. Forcing the closure of these institutions or breaking their resolve to survive through financially crippling penalization robs the children of the poor of the only hope of securing minimal education which flies in the face of the revolutionary incorporation of the right to education as a fundamental right through Article 21A of the Constitution. There is a need to temper legality with social justice in such a situation. To that end it is suggested that State Governments be required to undertake a comprehensive survey of these allegedly "unauthorized" schools and initiative procedure for their regularization, ensuring that the required facilities are put in place to ensure that quality education is imparted through them. The burden for this cannot be imposed solely on the shoulders of those who are struggling to keep these institutions alive. It would be necessary to create a Central Fund out of which such institutions are given a one-time grant for their upgradation and standardization.

There prevails an unequal situation, as of now, in respect of litigation vis-à-vis minority rights. The authorities [universities, departments of education, etc.] fight the cases with the tax payers' money; whereas affected and aggrieved minority educational institutions have to dig into their scarce resources. In a vast majority of cases, institutions without adequate means are left with the sole and lamentable option to suffer in silence. This inequality of resources needs to be addressed, especially with a view to removing the presumed immunity of officers who willfully abuse their power to the detriment of minority rights. Equality of opportunity is of the essence of justice. As of now, the availability of justice to minority educational institutions is seriously vitiated by inequality of resources as outlined above. The Commission would suggest, in order to minimize this inequality, that grievance cells be set up in the Education Departments of various States, manned by those who are aware of

the problems faced by minority educational institutions and are in sympathy with the cause of empowering them. Unless remedies of some kind are devised, minority rights could become a rare luxury available only to the powerful, influential and rich among the minorities, which makes a mockery of the spirit of Article 30(1).

Complaints have been received from various States that the Governments concerned are nudging minority and private non-minority educational institution out of the grant-in-aid scheme. The State governments seek to justify this on the alibi of paucity of funds. This is a serious matter, as thousands of minority educational institutions located in under-developed areas, in villages, tribal belts and slums that serve the poorest among them as well as the socially and educationally backward sections of our society are sure to collapse if grant-in-aid is thus withdrawn. What underlies this development is a negative attitude to non-governmental initiatives in education. Ideally as well as factually, the minorities and the Government are in a state of partnership in meeting the ever-increasing educational needs of the society. The State Governments have not been able to set up adequate accessible educational facilities and private, including minority, initiatives become necessary on account of the vacuum resulting thereby. State subsidy originates in the tax payers' money. While it is true that the right to receive grant in aid is not a Constitutional imperative, it is also true that the minorities have a right to a share of the educational subsidy as they also pay taxes as well as educational cess, like everyone else. The assumption, therefore, that only Government schools are entitled to grant in aid and that minority schools can be discriminated, in comparison with them, in the matter of grant in aid is unsustainable and unjust. The retrograde nature of this assumption and consequential practice has become several folds since the incorporation of Article 21A in the Constitution which makes education a fundamental right for all children in the age group of 6-14, bringing the State Governments under the obligation to set up thousands of schools. If minority schools are indirectly forced to close by withdrawing grant from them, the State Governments will have to set up schools to take their place, which is next to impossible. Withdrawing educational subsidy from minority educational institutions must be deemed, in this light, as a self-defeating and unwise step. What needs to happen is exactly the opposite. The State needs to encourage and empower minority NGOs with proven track record in providing education to set up more institutions. Since education is in the concurrent list, it is appropriate to share the financial implications of this equitably between the Central and State Governments. The Commission wishes to recommend that a suitable scheme for minority empowerment in providing education be evolved expeditiously.

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 11th November, 2004/Kartika 20, 1926 (Saka)

**THE NATIONAL COMMISSION FOR MINORITY EDUCATIONAL
INSTITUTIONS ORDINANCE, 2004**

No.6 OF 2004

Promulgated by the President in the Fifty-fifth Year of the Republic of
India

An Ordinance to constitute a National Commission for Minority Educational Institutions and to provide for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:- .

CHAPTER I

PREIMINARY

1. (1) This Ordinance may be called the National Commission for Minority Educational Institutions Ordinance, 2004. Short title, extent and commencement.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force at once.

Definitions

2. In this Ordinance, unless the context otherwise requires,-

(a) "affiliation" together with its grammatical variations, includes, in relation to a college, recognition of such college by, association of such college with, and admission of such college to the privileges of, a Scheduled University;

(b) "college" means a college or teaching institution (other than a University) established or maintained by a person or group of persons from amongst a minority community;

(c) "Commission" means the National Commission for Minority Educational Institutions constituted under section 3;

(d) "degree" means any such degree as may, with previous approval of the Central Government, be specified in this behalf by the University Grants Commission, by notification in the Official Gazette;

(e) "Member" means a member of the Commission and includes the Chairperson;

(f) "minority", for the purpose of this Ordinance, means a community notified as such by the Central Government;

(g) "Minority Educational Institution" means a college or institution (other than a University) established or maintained by a person or group of persons from amongst the minorities;

(h) "prescribed" means prescribed by rules made under this Ordinance;

(i) "qualification" means a degree or any other qualification awarded by a University;

(j) "Scheduled University" means a University specified in the Schedule;

(k) "technical education" has the meaning assigned to it in clause (g) of section 2 of the All India Council for Technical Education Act, 1987;

52 of 1987.

(l) "University" means a university defined under clause (f) of section 2 of the University Grants Commission Act, 1956, and includes an institution deemed to be a University under section 3 of that Act, or an institution specifically empowered by an Act of Parliament to confer or grant degrees.

3 of 1956

CHAPTER II

THE NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS

Constitution of National Commission for Minority Educational Institutions

3. (1) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the National Commission for Minority Educational Institutions to exercise the powers conferred on, and to perform the functions assigned to it, under this Ordinance.

(2) The Commission shall consist of a Chairperson and two members to be nominated by the Central Government.

Qualifications for appointment as Chairperson or other Member

4. (1) A person shall not be qualified for appointment as the Chairperson unless he,-

(a) is a member of a minority community; and

(b) has been a Judge of a High Court.

(2) A person shall not be qualified for appointment as a Member unless he,-

(a) is a member of a minority community; and

(b) is a person of eminence, ability and integrity

5. (1) Every Member shall hold office for a term of Five years from the date on which he assumes office.

(2) A Member may, by writing under his hand addressed to the Central Government, resign from the office of Chairperson or, as the case may be, of Member at any time.

(3) The Central Government shall remove a person from the office of Member if that person-

- (a) becomes an undischarged insolvent;
- (b) is convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude;
- (c) becomes of unsound mind and stands so declared by a competent court.
- (d) refuses to act or becomes incapable of acting;
- (e) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission; or
- (f) in the opinion of the Central Government, has so abused the position of Chairperson or Member as to render that person's continuance in office detrimental to the public interest:

Provided that no person shall be removed under this clause until that person has been given an opportunity of being heard in the matter.

(4) A vacancy caused under sub-section (2) or otherwise shall be filled by fresh nomination and a person as nominated shall hold office for the unexpired period of the term for which his predecessor in office would have held office if such vacancy had not arisen.

(5) The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed;

6. (1) The Central Government shall provide the Commission with a Secretary and such other officers and employees as may be necessary for the efficient performance of the functions of the Commission under this Ordinance.

(2) The salaries and allowances payable to, and the other terms and conditions of service of, the Secretary, officers and other employees appointed for the purpose of the Commission shall be such as may be prescribed.

7. The salaries and allowances payable to the Chairperson and Members and the administrative expenses, including salaries, allowances and pensions payable to the Secretary, officers and other employees referred to in section 6, shall be paid out of the grants referred to in sub-section (1) of section 14.

8. No act or proceeding of the Commission shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Commission.

9. (1) The Commission shall meet as and when necessary at such time and place as the Chairperson may think fit.

(2) the Commission shall regulate its own procedure.

(3) All orders and decisions of the Commission shall be authenticated by the Secretary or any other officer of the Commission duly authorised by the Secretary in this behalf.

Term of office and conditions of service of Chairperson and Members

Officers and other employees of Commission

Salaries and allowances to be paid out of grants

Vacancies, etc. not to invalidate proceedings of Commission

Procedure to be regulated by Commission

CHAPTER III

RIGHT OF A MINORITY EDUCATIONAL INSTITUTION

Right of a
Minority
Educational
Institution to
seek affiliation
to a Scheduled
University

10. Notwithstanding anything contained in any other law for the time being in force, a Minority Educational Institution may seek recognition as an affiliated college of a Scheduled University of its choice

CHAPTER IV

FUNCTIONS AND POWERS OF THE COMMISSION

Functions of
the Commis-
sion.

11. Notwithstanding anything contained in any other law for the time being in force, the Commission shall-

(a) advise the Central Government or any State Government on any question relating to the education of minorities that may be referred to it;

(b) look into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating affiliation to a Scheduled University and report its findings to the Central 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.

Power of
Commission

12. (1) If any dispute arises between a minority educational institution and a Scheduled 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 ordinance, have all the powers of a civil court while 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 requisitioning any public record or document or copy of such record or document from any office;

I of 1872.

(e) issuing commissions for the examination of witnesses or documents; and

(f) any other matter which may be prescribed.

Financial
and
administra-
tive powers
of the
Chairperson

13. The Chairperson shall exercise such financial and administrative powers as may be vested in him by the rules made under this section:

Provided that the Chairperson shall have authority to delegate such of the financial and administrative powers as he may think fit to any Member or Secretary or any other officer of the Commission subject to the condition that such Member or Secretary or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the Chairperson.

CHAPTER V

FINANCE, ACCOUNTS AND AUDIT

14. (1) The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilised for the purposes of this Ordinance.

Grants by the Central Government

(2) The Commission may spend such sums of money as it thinks fit for performing the functions under this Ordinance, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

15. (1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

Accounts and audit

(2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Commission under this Ordinance shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

16. The Commission shall prepare, in such form and at such time, for each financial year, as may be prescribed, its annual report giving a full account of its activities during the previous financial year and forward a copy thereof to the Central Government.

Annual report

17. The Central Government shall cause the annual report, together with a memorandum of action taken on the advice tendered by the Commission under section 11 and the reasons for the non-acceptance, if any, of any such advice and the audit report to be laid as soon as may be after they are received before each House of Parliament.

Annual report and audit report to be laid before Parliament

18. The Central Government if deems fit may, by notification in the Official Gazette, add any other University to the Schedule or omit any University therefrom.

Power to amend Schedule

19. The Chairperson, Members, the Secretary, officers and other employees of the Commission shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Chairperson, Members, Secretary, employees, etc. of the Commission to be public servants

45 of 1860

20. (1) In the discharge of its functions under this Ordinance, the Commission shall be guided by such direction on questions of policy relating to national purposes, as may be given to it by the Central Government.

Directions by the Central Government

(2) If any dispute arises between the Central Government and the Commission as to whether a question is or is not a question of policy relating to national purposes, the decision of the Central Government shall be final.

Protection against action taken in good faith	<p>21. No suit, prosecution or other legal proceeding shall lie against the Central Government, Commission, Chairperson, Members, Secretary or any officer or other employee of the Commission for anything which is in good faith done or intended to be done under this Ordinance.</p>
Ordinance to have overriding effect.	<p>22. The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Ordinance.</p>
Returns or information.	<p>23. The Commission shall furnish to the Central Government such returns or other information with respect to its activities as the Central Government may, from time to time, require.</p>
Power to make rules	<p>24. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.</p> <p>(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-</p> <p>(a) salaries and allowances payable to, and the other terms and conditions of the service of, the Chairperson and Members under sub-section (5) of section 5 and of the Secretary, officers and other employees under sub-section (2) of section 6;</p> <p>(b) the financial and administrative powers to be exercised by the Chairperson under section 13;</p> <p>(c) the form in which the annual statement of accounts shall be prepared under sub-section (l) of section 15;</p> <p>(d) the form in, and the time at, which the annual report shall be prepared under section 16;</p> <p>(e) any other matter which is required to be, or may be, prescribed.</p> <p>(3) Every rule made under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both House agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.</p>
Powers to remove difficulties	<p>25. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance, as appear to it to be necessary or expedient, for removing the difficulty:</p> <p>Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Ordinance.</p> <p>(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.</p>

THE SCHEDULE

[See section 2 (j)]

Sl. No.	Name of the University
1.	University of Delhi
2.	North Eastern Hill University
3.	Pondicherry University
4..	Assam University
5.	Nagaland University
6.	Mizoram University

A. P. J. ABDUL KALAM,
President.

T. K. VISWANATHAN,
Secy. to the Govt. of India.

TO BE PUBLISHED IN PART I OF THE GAZETTE OF INDIA

Government of India
Ministry of Human Resource Development
(Department of Secondary & Higher Education)

New Delhi, the 16th November, 2004

Notification

NO. F. 11-2/2004-MC (P):- Whereas the Government India has been seized of the demand of the Minorities to look into the complaints regarding deprivation or violation of the Constitutional rights of the minorities, to establish and administer educational institutions of their choice and to permit a minority educational institution to seek direct affiliation to a scheduled Central University.

2. Now, therefore, the Government of India are pleased to constitute the National Commission for Minority Educational Institutions, with immediate effect, as envisaged under Sec. 3 of the Ordinance No. 6 of 2004 promulgated on the 11th Nov., 2004.

3. The terms of reference of the Commission shall be as follows:

- i) To advise the Central Government or any State Government, on any question relating to the education of minorities, that may be referred to it;
- ii) To look into specific complaints regarding deprivation or violation of the rights of minorities to establish and administer educational institutions of their choice, and any dispute regarding affiliation to a Scheduled University and to report its findings to the Central Government for implementation; and
- iii) to do such acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission.

4. The Commission would act as the 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. The Commission would be granted the powers of a Civil Court under the Code of Civil Procedure, 1908 for the purpose of discharging its functions.

5. The Commission would consist of three members comprising a Chairperson and two Members. All the Members should, as far as possible, be chosen from among the minority communities. The Chairperson should have been a Judge of a High Court. The Members should be persons of eminence, ability and integrity. The term of the Members, including the Chairperson, would be five years.

6. (i) A Member may, be writing under his hand addressed to the Central Government, resign from the office of Chairperson or, as the case may be, of Member at any time.

- (ii) The Central Government shall remove a person from the office of Member if that person –
- (a) becomes an undischarged insolvent;
 - (b) is convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude;
 - (c) becomes of unsound mind and stands so declared by a competent court;
 - (d) refuses to act or becomes incapable of acting;
 - (e) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission; or
 - (f) in the opinion of the Central Government, has so abused the position of Chairperson or Member as to render that person's continuance in office detrimental to the public interest:

Provided that no person shall be removed under this clause until that person has been given an opportunity of being heard in the matter.

7. The Chairman will have the status of a Minister of State and the Members of the Commission will have the status of a Secretary to the Government of India. The Chairman, Members and staff of the Commission shall be public servants within the meaning of Section 21 of the Indian Penal Code. The Chairman and Members of the Commission shall be paid a consolidated emolument of Rs.45000/- per month. They shall be entitled to HRA, TA, Medical, telephone facilities, etc. as admissible to a Secretary to the Government of India.

8. The salaries and allowances payable to the Chairperson and members and the administrative expenses, including salaries, allowances and pensions payable to the Secretary, officers and other employees referred to in section 6 of the Ordinance, shall be paid out of the grants of such sums of money, as the Central Government may think fit and provide, for being utilized for such purposes.

9. The Commission shall obtain such information, as it may deem necessary or relevant to the subject matter, from any authority, organization or individual.

10. The Commission may adopt its own procedure of working and may visit any part of India, as and when considered necessary.

11. The Headquarters of the Commission shall be in New Delhi.

Ordered also that the notification be published in the Gazette of India for general information.

(C. Balakrishnan)
Joint Secretary to the Government of India
Ph. No. 23381096

Manager
Government of India Press
(Bharat Sarkar Press)
Faridabad

No. F.11-2/2004-MC (P)

Dated: 16th November, 2004

Copy to:

1. Secretary, Ministry of Finance, North Block, New Delhi.
2. Secretary, Deptt. of Expenditure, North Block, New Delhi.
3. Secretary, Deptt. of Personnel & Training, North Block, New Delhi.
4. Secretary, Ministry of Home Affairs, North Block, New Delhi.
5. Secretary, Ministry of Law & Justice, Deptt. of Legislature, Shastri Bhawan, New Delhi.
6. Secretary, Ministry of Social Justice & Empowerment, Shastri Bhawan, New Delhi.
7. Pay and Accounts Office (HRD), Shastri Bhawan, New Delhi.

(C. Balakrishnan)
Joint Secretary to the Government of India

TO BE PUBLISHED IN PART I OF THE GAZETTE OF INDIA

Government of India
Ministry of Human Resource Development
(Department of Secondary & Higher Education)

New Delhi, the 26th November, 2004

Notification

NO. F. 11-2/2004-MC (P):- In pursuance of the National Commission on Minority Educational Institutions Ordinance No. 6 dated 11 November, 2004 and the notification of the National Commission for Minority Educational Institutions on 16 November 2004, the President of India is pleased to appoint Justice (Retd.) M.S.A. Siddiqui as the Chairperson and Shri Balwant Singh Ramoowalia and Shri Valson Thampu as Members of the National Commission on Minority Educational Institutions, to discharge the functions of the Commission as enumerated in the said Ordinance.

2. The tenure of their appointments will be for five years with effect from the date they assume their respective charge.

3. The rules governing the salaries and allowances payable to and the terms and conditions of the service of the Chairperson and the Members will be notified separately.

4. The headquarters of the Commission shall be in New Delhi.

Ordered also that the notification be published in the Gazette of India for general information.

(C. Balakrishnan)
Joint Secretary to the Government of India
Ph. No. 23381096

Manager
Government of India Press
(Bharat Sarkar Press)
Faridabad

Annexure-IV

TO BE PUBLISHED IN PART I SECTION 2 OF THE GAZETTE OF INDIA

Government of India
Ministry of Human Resource Development
(Department of Secondary & Higher Education)

New Delhi, dated the 10th December, 2004**ORDER**

NO. F. 11-2/2004-MC (P) (Part-II) - The National Commission for Minority Educational Institutions has become functional with the appointment of the Chairman and two Members with effect from 26th November, 2004. In order to provide the Commission the necessary administrative and office support, (with the approval of the competent authority), the following posts are created with immediate effect: -

Sl. No.	Name of post	Number	Scales of Pay
1.	Joint Secretary	1	18400-500-22400
2.	Dy. Secretary	1	12000-375-16500
3.	Under Secretary	1	10000-325-15200
4.	Section Officer	1	6500-200-10500
5.	Assistant	1	5500-175-9000
6.	LDC	2	3050-75-3950-80-4590
7.	Sr. PPS	3	12000-375-16500
8.	PS	1	6500-200-10500
9.	PA	2	5500-175-9000
10.	Steno Gr. 'D'	3	4000-100-6000
11.	Peon	6	2550-55-2660-60-3200
	'Total'	22	

(C. Balakrishnan)
Joint Secretary to the Government of India

To

The Manager
Government of India Press (With Hindi Version)
FARIDABAD


भारत का राजपत्र
The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 2]
No. 2]नई दिल्ली, शुक्रवार, जनवरी 7, 2005 / पौष 17, 1926
NEW DELHI, FRIDAY, JANUARY 7, 2005 / PAUSA 17, 1926

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 7th January, 2005/ Pausa 17, 1926 (Saka)

The following Act of Parliament received the assent of the President on the 6th January, 2005, and is hereby published for general information: -

THE NATIONAL COMMISSION FOR MINORITY EDUCATIONAL
INSTITUTIONS ACT, 2004
No. 2 OF 2005

[6th January, 2005.]

An Act to constitute a National Commission for Minority Educational Institutions and to provide for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-fifth Year of the Republic of India as follows: -

CHAPTER I
PRELIMINARY

1. (1) This Act may be called the National Commission for Minority Educational Institutions Act, 2004.

(2) It extends to the whole of India except the State of Jammu & Kashmir.

(3) It shall be deemed to have come into force on the 11th day of November, 2004.

Short title, extent
and commence-
ment

2. In this Act, unless the context otherwise requires, —

(a) “affiliation” together with its grammatical variations, includes, in relation to a college, recognition of such college by, association of such college with, and admission of such college to the privileges of, a Scheduled University;

(b) “college” means a college or teaching institution (other than a University) established or maintained by a person or group of persons from amongst a minority community;

Definitions.

- (c) "Commission" means the National Commission for Minority Educational Institutions constituted under section 3;
- (d) "degree" means any such degree as may, with previous approval of the Central Government, be specified in this behalf by the University Grants Commission, by notification in the Official Gazette;
- (e) "Member" means a member of the Commission and includes the Chairperson;
- (f) "minority", for the purpose of this Act, means a community notified as such by the Central Government;
- (g) "Minority Educational Institution" means a college or institution (other than a University) established or maintained by a person or group of persons from amongst the minorities;
- (h) "prescribed" means prescribed by rules made under this Act;
- (i) "qualification" means a degree or any other qualification awarded by a University;
- (j) "Scheduled University" means a University specified in the Schedule;
- (k) "technical education" has the meaning assigned to it in clause (g) of section 2 of the All India Council for Technical Education Act, 1987; 52 of 1987
- (l) "University" means a university defined under clause (f) of section 2 of the University Grants Commission Act, 1956, and includes an institution deemed to be a University under section 3 of that Act, or an institution specifically empowered by an Act of Parliament to confer or grant degrees. 3 of 1956

CHAPTER II

THE NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS

Constitution of National Commission for Minority Educational Institutions.

3. (1) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the National Commission for Minority Educational Institutions to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The Commission shall consist of a Chairperson and two members to be nominated by the Central Government.

Qualifications for appointment as Chairperson or other Member.

4. (1) A person shall not be qualified for appointment as the Chairperson unless he, —

- (a) is a member of a minority community; and
- (b) has been a Judge of a High Court.

(2) A person shall not be qualified for appointment as a Member unless he,—

- (a) is a member of a minority community; and
- (b) is a person of eminence, ability and integrity.

Term of office and conditions of service of Chairperson and Members.

5. (1) Every Member shall hold office for a term of five years from the date on which he assumes office.

(2) A Member may, by writing under his hand addressed to the Central Government, resign from the office of Chairperson or, as the case may be, of Member at any time.

(3) The Central Government shall remove a person from the office of Member if that person —

- (a) becomes an undischarged insolvent;
- (b) is convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude;
- (c) becomes of unsound mind and stands so declared by a competent court;
- (d) refuses to act or becomes incapable of acting;
- (e) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission; or
- (f) in the opinion of the Central Government, has so abused the position of Chairperson or Member as to render that person's continuance in office detrimental to the public interest:

Provided that no person shall be removed under this clause until that person has been given an opportunity of being heard in the matter.

(4) A vacancy caused under sub-section (2) or otherwise shall be filled by fresh nomination and a person so nominated shall hold office for the unexpired period of the term for which his predecessor in office would have held office if such vacancy had not arisen.

(5) The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed.

6. (1) The Central Government shall provide the Commission with a Secretary and such other officers and employees as may be necessary for the efficient performance of the functions of the Commission under this Act.

Officers and other employees of Commission.

(2) The salaries and allowances payable to, and the other terms and conditions of service of, the Secretary, officers and other employees appointed for the purpose of the Commission shall be such as may be prescribed.

7. The salaries and allowances payable to the Chairperson and Members and the administrative expenses, including salaries, allowances and pensions payable to the Secretary, officers and other employees referred to in section 6, shall be paid out of the grants referred to in sub-section (1) of section 14.

Salaries and allowances to be paid out of grants.

8. No act or proceeding of the commission shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Commission.

Vacancies, etc., not to invalidate proceedings of Commission.

9. (1) The Commission shall meet as and when necessary at such time and place as the Chairperson may think fit.

Procedure to be regulated by Commission.

(2) The Commission shall regulate its own procedure.

(3) All orders and decisions of the Commission shall be authenticated by the Secretary or any other officer of the Commission duly authorized by the Secretary in this behalf.

CHAPTER III

RIGHT OF A MINORITY EDUCATIONAL INSTITUTION

10. (1) Notwithstanding anything contained in any other law for the time being in force, a Minority Educational Institutions may seek recognition as an affiliated college of a Scheduled University of its choice.

Right of a Minority Educational Institution to seek affiliation to a Scheduled University.

(2) The Scheduled University shall consult the Government of the State in which the minority educational institution seeking affiliation under sub-section (1) is situate and views of such Government shall be taken into consideration before granting affiliation.

CHAPTER IV
FUNCTIONS AND POWERS OF COMMISSION

Functions of Commission.	<p>11. Notwithstanding anything contained in any other law for the time being in force, the Commission shall —</p> <p>(d) advise the Central Government or any State Government on any question relating to the education of minorities that may be referred to it;</p> <p>(e) look into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating affiliation to a Scheduled University and report its findings to the Central Government for its implementation; and</p> <p>(f) 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.</p>
Powers of Commission.	<p>12. (1) If any dispute arises between a minority educational institution and a Scheduled University relating to its affiliation to such University, the decision of the Commission thereon shall be final.</p> <p>(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 matters, namely: —</p> <p>(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;</p> <p>(b) requiring the discovery and production of any document;</p> <p>(c) receiving evidence on affidavits;</p> <p>(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office.</p> <p>(e) issuing commissions for the examination of witnesses or documents; and</p> <p>(f) any other matter which may be prescribed.</p>
Financial and administrative powers of Chairperson.	<p>13. The Chairperson shall exercise such financial and administrative powers as may be vested in him by the rules made under this section:</p> <p>Provided that the Chairperson shall have authority to delegate such of the financial and administrative powers as he may think fit to any Member or Secretary or any other officer of the Commission subject to the condition that such Member or Secretary or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the Chairperson.</p>
<p>CHAPTER V FINANCE, ACCOUNTS AND AUDIT</p>	
Grants by Central Government.	<p>14. (1) The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilized for the purposes of this Act.</p> <p>(2) The Commission may spend such sums of money as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).</p>
Accounts and audit.	<p>15. (1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.</p> <p>(2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General.</p>

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

16. The Commission shall prepare, in such form and at such time, for each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and forward a copy thereof to the Central Government.

Annual report.

17. The Central Government shall cause the annual report, together with a memorandum of action taken on the advice tendered by the Commission under section 11 and the reasons for the non-acceptance, if any, of any such advice, and the audit report to be laid as soon as may be after they are received before each House of Parliament.

Annual report and audit report to be laid before Parliament.

CHAPTER VI

MISCELLANEOUS

18. (1) The Central Government if deems it fit may, by notification in the Official Gazette, amend the Schedule by including therein any other University or omitting therefrom any University already specified therein and on the publication of such notification, such University shall be deemed to be included in or, as the case may be, omitted from the Schedule.

Power to amend Schedule.

(2) Every notification issued under sub-section (1), shall be laid before each House of Parliament.

45 of 1860. 19. The Chairperson, Members, Secretary, officers and other employees of the Commission shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Chairperson, Members, Secretary, employees, etc., of Commission to be public servants.

20. (1) In the discharge of its functions under this Act, the Commission shall be guided by such direction on questions of policy relating to national purposes, as may be given to it by the Central Government.

Directions by Central Government.

(2) If any dispute arises between the Central Government and the Commission as to whether a question is or is not a question of policy relating to national purposes, the decision of the Central Government shall be final.

21. No suit, prosecution or other legal proceeding shall lie against the Central Government, Commission, Chairperson, Members, Secretary or any officer or other employee of the Commission for anything which is in good faith done or intended to be done under this Act.

Protection of action taken in good faith.

22. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Act to have overriding effect.

23. The Commission shall furnish to the Central Government such returns or other information with respect to its activities as the Central Government may, from time to time, require.

Returns or information.

24. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely: —

- (a) the salaries and allowances payable to, and the other terms and conditions of the service of, the Chairperson and Members under sub-section (5) of section 5 and of the Secretary, officers and other employees under sub-section (2) of section 6;
- (b) the financial and administrative powers to be exercised by the Chairperson under section 13;
- (c) the form in which the annual statement of accounts shall be prepared under sub-section (1) of section 15;
- (d) the form in, and the time at, which the annual report shall be prepared under section 16;
- (e) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to remove difficulties. to 25. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient, for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Repeal and saving 26. (1) The National Commission for Minority Educational Institutions Ordinance, 2004 is hereby repealed.

Ord. 6 of 2004

(2) Notwithstanding the repeal of the said Ordinance, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE

[See section 2 (j)]

Sl. No.	Name of the University
1.	University of Delhi.
2.	North-Eastern Hill University.
3.	Pondicherry University.
4.	Assam University.
5.	Nagaland University.
6.	Mizoram University.

T.K. VISWANATHAN
Secretary to the Govt. of India

TO BE PUBLISHED IN PART I OF THE GAZETTE OF INDIA

Government of India
Ministry of Human Resource Development
(Department of Secondary & Higher Education)

New Delhi, the 18th January, 2005

NOTIFICATION

NO. F. 7-5/2005-MC (P). In exercise of the powers conferred by clause (f) of Section 2 of the National Commission for Minority Educational Institutions Act, 2004, the Central Government hereby notifies the following communities as the minority communities for the purpose of the said Act, namely:

1. Muslims
2. Christians
3. Sikhs
4. Buddhists
5. Zoroastrians (Parsis)

This issues with the approval of the competent authority.

(C. Balakrishnan)
Joint Secretary to the Government of India

To
The Manager
Government of India Press
(Bharat Sarkar Press)
Faridabad

No. F. 7-5/2005-MC (P)

Dated: 18th January, 2005

Copy to:

1. Cabinet Secretary, Cabinet Secretariat, Rashtrapati Bhawan.
2. Principal Secretary to the Prime Minister, South Block, New Delhi.
3. Secretary to the President, Rashtrapati Bhawan.
4. Secretary, Ministry of Finance, North Block, New Delhi.
5. Secretary, Deptt. of Expenditure, North Block, New Delhi.
6. Secretary, Deptt. of Personnel & Training, North Block, New Delhi.
7. Secretary, Ministry of Home Affair, North Block, New Delhi.
8. Secretary, Ministry of Law & Justice, Deptt. of Legislature, Shastri Bhavan, New Delhi.
9. Secretary, Ministry of Social Justice & Empowerment, Shastri Bhavan, New Delhi.
10. Pay and Accounts Office (HRD), Shastri Bhavan, New Delhi.

(C. Balakrishnan)
Joint Secretary to the Government of India

Annexure-VII

No. 12/4/2005-Public
Government of India/ Bharat Sarkar
Ministry of Home Affairs/ Grih Mantralaya
(Public Section, Room No. 13)

North Block, New Delhi
dated, the 3rd March, 2005

OFFICE ORDER

Consequent upon the appointment of Shri Justice (Retd.) M.S.A. Siddiqui as Chairman of the National Commission for Minority Educational Institutions with effect from 26th November, 2004 with the status of Minister of State of the Union, he will rank in Article 10 of the Table of Precedence.

2. Shri Balwant Singh Ramoowalia and Shri Valson Thampu, who have been appointed as Members of the National Commission for Minority Educational Institutions, with effect from 26th November, 2004, with the status of Secretary to the Government of India, will rank in Article 23 of the Table of Precedence.

3. The above position will be personal to Shri Justice (Retd.) M.S.A. Siddiqui, Shri Balwant Singh Ramoowalia and Shri Valson Thampu for the duration of the term of their office. It is not proposed to issue any formal amendment to the Table of Precedence.

(Munish Girdhar)
Under Secretary to the Government of India
Tel. No. 23093666

To

1. All Ministries/ Departments of the Government of India
2. All State Governments/ Administrations of Union Territories
3. Ministry of Human Resource Development (Shri C. Balakrishnan, Joint Secretary (P), Deptt. of Secondary & Higher Education, Shastri Bhawan, New Delhi with reference to their D.O. No. F.11-2/2005-MC (P) dated 27.1.2005 with three spare copies for the persons concerned.

(Munish Girdhar)
Under Secretary to the Government of India
Tel. No. 23093666



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 1

PART II—Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 6]

नई दिल्ली, सोमवार, जनवरी 23, 2006/माघ 3, 1927

No. 6]

NEW DELHI, MONDAY, JANUARY 23, 2006/MAGHA 3, 1927

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 23rd January, 2006/ Magha 3, 1927 (Saka)

THE NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS (AMENDMENT) ORDINANCE, 2006

NO. 1 OF 2006

An Ordinance to amend the National Commission for
Minority Educational Institutions Act, 2004.

WHEREAS the National Commission for Minority Educational
Institutions (Amendment) Bill, 2005 has been introduced in the Council of
States but has not yet been passed;

AND WHEREAS Parliament is not in session and the President is
satisfied that circumstances exist which render it necessary for him to take
immediate action to give effect to the provisions of the said Bill with certain
modifications;

NOW, THEREFORE, in exercise of the powers conferred by clause (1)
of article 123 of the Constitution, the President is pleased to promulgate the
following Ordinance:—

Short title and Commencement. **1.** (1) This Ordinance may be called the National Commission for Minority Educational Institutions (Amendment) Ordinance, 2006.

(2) It shall come into force at once.

Amendment of section 2 **2.** In section 2 of the National Commission for Minority Educational Institutions Act, 2004 (hereinafter referred to as the principal Act), - 2 of 2005.

(i) in clause (a), the word “Scheduled” shall be omitted;

(ii) after clause (a), the following clause shall be inserted, namely: -

‘(aa) “appropriate Government” means, -

(i) in relation to an educational institution recognized for conducting its programmes of studies under any Act of Parliament, the Central Government; and

(ii) in relation to any other educational institution recognized for conducting its programmes of studies under any State Act, a State Government in whose jurisdiction such institution is established;’;

(iii) after clause (c), the following clause shall be inserted, namely: -

‘(ca) “Competent authority” means the authority appointed by the appropriate Government to grant no objection certificate for the establishment of any educational institution of their choice by the minorities;’;

(iv) after clause (d), the following clause shall be inserted, namely: -

‘(da) “educational rights of minorities” means the rights of minorities to establish and administer educational institutions of their choice;’;

(v) clause (j) shall be omitted.

Substitution of new Chapter for Chapter III

3. For Chapter III of the principal Act, the following Chapter shall be substituted; namely, -

CHAPTER III

RIGHT OF A MINORITY EDUCATIONAL INSTITUTION

Right to establish a Minority Educational Institution.

10. (1) Any person who desires to establish a Minority Educational Institution may apply to the Competent authority for the grant of no objection certificate for the said purpose.

(2) The Competent authority shall, -

- (a) on perusal of documents, affidavits or other evidence, if any; and
- (b) after giving an opportunity of being heard to the applicant,

decide every application filed under sub-section (1) as expeditiously as possible and grant or reject the application, as the case may be:

Provided that where an application is rejected, the Competent authority shall communicate the same to the applicant.

(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, -

- (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 object certificate to the applicant.

(4) The applicant shall, on the grant of a no objection certificate or 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;

Explanation.- For the purpose of this section, -

(a) “applicant” means any person who makes an application under sub-section (1) for establishment of a Minority Educational Institution;

(b) “no objection certificate” means a certificate stating therein, that the Competent authority has no objection for the establishment of a Minority Educational Institution.

10A. (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.

Right of a
Minority
Educational
Institution to
seek
affiliation.

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

Provided that such authorized person shall have right to know the status of such application after the expiry of sixty days from the date of filing of such application.’

Amendment
of section 11.

4. In section 11 of the principal Act, for clauses (b) and (c), the following clauses shall be substituted, namely: -

“(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.”

	<p>5. In section 12 of the principal Act,-</p> <p>(a) in sub-section (1), the word "Scheduled" shall be omitted;</p> <p>(b) after sub-section (2), the following sub-section shall be inserted, namely: —</p> <p>“(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 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.”.</p>	Amendment of section 12
45 of 1860 2 of 1974	<p>6. After section 12 of the principal Act, the following sections shall be inserted, namely: -</p> <p>12A. (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.</p> <p>(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:</p> <p>Provided that the Commission may entertain an appeal after expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period.</p> <p>(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.</p> <p>(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.</p> <p>(5) An order made by the Commission under sub-section (4) shall be executable by the Commission as a decree of a civil court and the provisions of the Code of Civil Procedure, 1908, so far as may be, shall apply as they apply in respect of a decree of a civil court.</p>	Insertion of new sections 12A to 12F Appeal against orders of the Competent authority.
5 of 1908.		
19 of 1992.	<p>12B. (1) Without prejudice to the provisions contained in the National Minority Commission Act, 1992, where an authority established by the Central Government or any State Government, as the case may be, for grant of minority status to any educational institution rejects the application for the grant of such status, the aggrieved person may appeal against such orders of the authority to the Commission.</p>	Power of the Commission to decide on the minority status of an educational institution.

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

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

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

(4) On receipt of the appeal under sub-section (3), the Commission may, after giving the parties to the appeal, an opportunity of being heard, decide on the minority status of the educational institution and shall proceed to give such directions as it may deem fit and, all such directions shall be binding on the parties.

Explanation.— For the purposes of this section and section 12C, “authority” means any authority or officer or commission which is established under any law for the time being in force or under any order of the appropriate Government, for the purpose of granting a certificate of minority status to an educational institution.

Power to cancel

12C. The Commission may, after giving a reasonable opportunity of being heard to a Minority Educational Institution to which minority status has been granted by any authority or Commission, as the case may be, cancel such status under the following circumstances, namely: -

(a) if the constitution, aims and objects of the educational institution, which has enabled it to obtain minority status has subsequently been amended in such a way that it no longer reflects the purpose, or character of a Minority Educational Institution;

(b) if, on verification of the records during the inspection or investigation, it is found that the Minority Educational Institution has failed to admit students belonging to the minority community in the institution as per rules and prescribed percentage governing admission during any academic year.

Power of Commission to Investigate matters relating to deprivation of educational rights of minorities.

12D. (1) The Commission shall have the power to investigate into the complaints relating to deprivation of the educational rights of minorities.

(2) The Commission may, for the purpose of conducting any investigation pertaining to a complaint under this Act, utilize the services of any officer of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.

(3) For the purpose of investigation under sub-section (1), the officer whose services are utilized may, subject to the direction and control of the Commission,-

- (a) summon and enforce the attendance of any person and examine him;
- (b) require the discovery and production of any document; and
- (c) requisition any public record or copy thereof from any office.

(4) The officer whose services are utilized under sub-section (2) shall investigate into any matter entrusted to it by the Commission and submit a report thereon to it within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such further inquiry as it may think fit.

12E. (1) The Commission, while enquiring into the complaints of violation or deprivation of educational rights of minorities shall call for information or report from the Central Government or any State Government or any other authority or organization subordinate thereto, within such time as may be specified by it:

Power of
Commission to
call for
information, etc.

Provided that, -

(a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint;

(b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required, or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly.

(2) Where the inquiry establishes violation or deprivation of the educational rights of the minorities by a public servant, the Commission may recommend to the concerned Government or authority, the initiation of disciplinary proceedings or such other action against the concerned person or persons as may be deemed fit.

(3) The Commission shall send a copy of the inquiry report, together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken, or proposed to be taken thereon, to the Commission.

(4) The Commission shall publish its inquiry report and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

Bar of jurisdiction. 12F. 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.”

Omission of section 18. 7. Section 18 of the principal Act shall be omitted.

Amendment of section 24. 8. In section 24 of the principal Act, in sub-section (2), after clause (a), the following clause shall be inserted, namely: -

“(aa) the forms in which appeal under sub-section (3) of section 12A and sub-section (3) of section 12B shall be made,”

Omission of Schedule. 9. The Schedule to the principal Act shall be omitted.

A.P.J. ABDUL KALAM,
PRESIDENT.

T.K. VISWANATHAN
Secy. to the Govt. of India



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 20] नई दिल्ली, बुधवार, मार्च 29, 2006 / चैत्र 8, 1928
No. 20] NEW DELHI, WEDNESDAY, MARCH 29, 2006 / CHAITRA 8, 1928

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 29th March, 2006/ Chaitra 8, 1928 (Saka)

The following Act of Parliament received the assent of the President on the 28th March, 2006, and is hereby published for general information:

THE NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS (AMENDMENT) ACT, 2006

NO. 18 OF 2006

[28th March, 2006]

An Act to amend the National Commission for Minority Educational Institutions Act, 2004.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows: —

1. (1) This Act may be called the National Commission for Minority Educational Institutions (Amendment) Act, 2006. Short title and commencement

(3) It shall be deemed to have come into force on the 23rd day of January, 2006.

(4)

2. In section 2 of the National Commission for Minority Educational Institutions Act, 2004 (hereinafter referred to as the principal Act), — Amendment of section 2.

(i) in clause (a), the word “Scheduled” shall be omitted;

(ii) after clause (a), the following clause shall be inserted, namely: -

“(aa) “appropriate Government” means, —

(i) in relation to an educational institution recognized for conducting its programmes of studies under any Act of Parliament, the Central Government; and

(ii) in relation to any other educational institution recognized for conducting its programmes of studies under any State Act, a State Government in whose jurisdiction such institution is established;

(iii) after clause (c), the following clause shall be inserted, namely: -

‘(ca) “Competent authority” means the authority appointed by the appropriate Government to grant no objection certificate for the establishment of any educational institution of their choice by the minorities;’;

(iv) after clause (d), the following clause shall be inserted, namely: -

‘(da) “educational rights of minorities” means the rights of minorities to establish and administer educational institutions of their choice;’;

(v) clause (j) shall be omitted.

Substitution of
new Chapter for
Chapter III

3. For Chapter III of the principal Act, the following Chapter shall be substituted; namely:-

CHAPTER III

RIGHTS OF A MINORITY EDUCATIONAL INSTITUTION

Right to
establish a
Minority
Educational
Institution.

10. (1) Any person who desires to establish a Minority Educational Institution may apply to the Competent authority for the grant of no objection certificate for the said purpose.

(2) The Competent authority shall, -

- (a) on perusal of documents, affidavits or other evidence, if any; and
- (b) after giving an opportunity of being heard to the applicant,

decide every application filed under sub-section (1) as expeditiously as possible and grant or reject the application, as the case may be:

Provided that where an application is rejected, the Competent authority shall communicate the same to the applicant.

(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, -

- (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 or 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;

Explanation.- For the purpose of this section, —

(a) “applicant” means any person who makes an application under sub-section (1) for establishment of a Minority Educational Institution;

(b) “no objection certificate” means a certificate stating therein, that the Competent authority has no objection for the establishment of a Minority Educational Institution.

10A. (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.

Right of a Minority Educational Institution to seek affiliation.

(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:

Provided that such authorized person shall have right to know the status of such application after the expiry of sixty days from the date of filing of such application.?

4. In section 11 of the principal Act, for clauses (b) and (c), the following clauses shall be substituted, namely: -

Amendment of section 11.

“(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.”

5. In section 12 of the principal Act,-

(a) in sub-section (1), the word “Scheduled” shall be omitted;

(b) after sub-section (2), the following sub-section shall be inserted, namely: —

“(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 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.”

6. After section 12 of the principal Act, the following sections shall be inserted, namely: -

Amendment of section 12

Insertion of new sections 12A to 12F

45 of
1860
2 of 1974

12A. (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.

Appeal against orders of the Competent authority.

(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 expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period.

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

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

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

5 of 1908.

Power of the Commission to decide on the minority status of an educational institution.

12B. (1) Without prejudice to the provisions contained in the National Commission for Minorities Act, 1992, where an authority established by the Central Government or any State Government, as the case may be, for grant of minority status to any educational institution rejects the application for the grant of such status, the aggrieved person may appeal against such orders of the authority to the Commission.

19 of 1992.

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

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

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

(4) On receipt of the appeal under sub-section (3), the Commission may, after giving the parties to the appeal an opportunity of being heard, and in consultation with the State Government, decide on the minority status of the educational institution and shall proceed to give such directions as it may deem fit and, all such directions shall be binding on the parties.

Explanation.— For the purposes of this section and section 12C, “authority” means any authority or officer or commission which is established under any law for the time being in force or under any order of the appropriate Government, for the purpose of granting a certificate of minority status to an educational institution.

Power to cancel

12C. The Commission may, after giving a reasonable opportunity of being heard to a Minority Educational Institution to which minority status has been granted by an authority or Commission, as the case may be, cancel such status under the following circumstances, namely:

(a) if the constitution, aims and objects of the educational institution, which has enabled it to obtain minority status has subsequently been amended in such a way that it no longer reflects the purpose, or character of a Minority Educational Institution;

(b) if, on verification of the records during the inspection or investigation, it is found that the Minority Educational Institution has failed to admit students belonging to the minority community in the institution as per rules and prescribed percentage governing admission during any academic year.

12D. (1) The Commission shall have the power to investigate into the complaints relating to deprivation of the educational rights of minorities.

(2) The Commission may, for the purpose of conducting any investigation pertaining to a complaint under this Act, utilize the services of any officer of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.

(3) For the purpose of investigation under sub-section (1), the officer whose services are utilized may, subject to the direction and control of the Commission,-

(a) summon and enforce the attendance of any person and examine him;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof from any office.

(4) The officer whose services are utilized under sub-section (2) shall investigate into any matter entrusted to it by the Commission and submit a report thereon to it within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such further inquiry as it may think fit.

12E. (1) The Commission, while enquiring into the complaints of violation or deprivation of educational rights of minorities shall call for information or report from the Central Government or any State Government or any other authority or organization subordinate thereto, within such time as may be specified by it:

Provided that, -

(a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint;

(b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required, or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly.

(2) Where the inquiry establishes violation or deprivation of the educational rights of the minorities by a public servant, the Commission may recommend to the concerned Government or authority, the initiation of disciplinary proceedings or such other action against the concerned person or persons as may be deemed fit.

(3) The Commission shall send a copy of the inquiry report, together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken, or proposed to be taken thereon, to the Commission.

(4) The Commission shall publish its inquiry report and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

12F. 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.'

7. Section 18 of the principal Act shall be omitted.

Power of Commission to Investigate matters relating to deprivation of educational rights of minorities.

Power of Commission to call for information, etc.

Bar of jurisdiction.

Omission of section 18.

Amendment of section 24.

8. In section 24 of the principal Act, in sub-section (2), after clause (a), the following clause shall be inserted, namely: -

“(aa) the forms in which appeal under sub-section (3) of section 12A and sub-section (3) of section 12B shall be made;”,

Omission of Schedule.

9. The Schedule to the principal Act shall be omitted.

Repeal of Ordinance 1 of 2006 and saving.

10. (1) The National Commission for Minority Educational Institutions (Amendment) Ordinance, 2006, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

T.K. VISWANATHAN
Secy. to the Govt. of India

the concerned State Government in accordance with the Byelaws framed therefore vide letter dated 22.09.99. Pursuant to the said communication, the Petitioner applied before the Secretary, Govt. of West Bengal, Education Department seeking such a declaration, but without any success. Thereafter the Petitioner filed a writ petition No. 7636 (W) of 2004 in the High Court at Calcutta for declaration about its status as a minority educational institution. By the order dated 21.06.04, the High Court directed the State Govt. to reconsider the representation of the Petitioner and disposed it off by a reasoned order. Pursuant to the said directions of the High Court, the State Govt. reconsidered the matter and passed a reasoned order, copy of which has been annexed with the petition. According the State Govt., since the Petitioner has not been recognized by the West Bengal Board of Secondary Education, it has no power to grant minority status to the Petitioner. The Petitioner's application was rejected on the following grounds: -

- (1) That whether this School is being run by a Sikh community is a matter of record which can be verified by the concerned competent authority viz. CBSE.
- (2) As to whether or not Sikh community is a minority community in West Bengal, there is a specific and formal order of the State Government in the Home Department which is evident and can be acted upon by the CBSE.
- (3) The State Government in the Education Department does not have any power and authority to decide on issues of management of schools/ institutions not recognized by it under the provisions of West Bengal Board of Secondary Education Act and the Rules framed thereunder. The power to grant Special Constitution for management in consideration of the circumstances of such cases is vested with the West Bengal Board of Secondary Education but it covers only the schools/ institutions recognized by it which is not the present case under the relevant Rules of the affiliating Board (CBSE) Rule 20 Chapter-VI of Affiliation Byelaws there is a provision of the State Act to apply Rule 20 (1) and if not, under Rule 20 (2) the Board will act as per its own Byelaws.
- (4) In the limited context of grant of No Objection Certificate, it is made clear that in this Particular context i.e. whether the School and its management are being run by the minority community or not is a matter of record which are well within the ambit of the Byelaws of the affiliating Board i.e. CBSE. Secondly, the generic status of the Sikh community as to whether there is minority in this State is amply clear in the order of the State Government in the Home Department which are widely referred to such cases.

Aggrieved by the said order of the State Govt., the Petitioner has invoked jurisdiction of this Commission. Section 2 (f) of the National Commission for Minority Educational Institutions, 2004 (for short the Act) defines the term "minority" as under:-

“minority” for the purpose of this Act, means a community notified as such by the Central Government.

Ld. Counsel for the Respondent has fairly conceded that Sikh is a minority community as defined under Section 2 (f) of the Act.

Section 2(g) of the Act defines “Minority Education Institution” as under: -

“Minority Educational Institution” means a college or institution (other than a University) established or maintained by a person or group of persons from amongst the minorities.

The Petitioner has filed a copy of the Certificate of Registration granted by the Registrar of Firms, Societies and non-trading Corporations, Govt. of West Bengal, which clearly shows that Gurdwara Sikh Sangat, Dunlop Bridge Calcutta is a registered charitable society. The Petitioner has also filed a Xerox copy of the Memorandum of Association which contains the names and description of members of said society. The aforesaid documents clearly prove that the Gurdwara Sikh Sangat, Dunlop Bridge, Calcutta is a registered society, the composition of which indicates the presence of Sikhs members on it. The Petitioner is managed and controlled by the Sikh Community. The Petitioner has apparently maintained its Sikh character, which is evident from its very name, emblem and motto. The immovable property of the Petitioner shall be vested in the said Charitable Society. Thus the Petitioner has been constituted as a self contained and autonomous institution.

For the foregoing reasons, we are of the opinion that the Petitioner is a Minority Educational Institution covered under Art. 30 of the Constitution of India. It is, therefore, ordered that a Certificate declaring the Petitioner as a Minority Educational Institution be issued.

VALSON THAMPU (Out)
MEMBER

B.S. RAMOOWALIA
MEMBER

JUSTICE M.S.A. SIDDIQUI
CHAIRMAN

**BEFORE THE NATIONAL COMMISSION FOR
MINORITY EDUCATIONAL INSTITUTIONS
SHASTRI BHAWAN, NEW DELHI**

CASE NO. 25 OF 2005

Crescent India Medical Educational Trust
A registered Trust having its office at
Inamdar Mansion, 957, Nana Peth,
Ma-Parvez Road Pune-411002
Maharashtra

... Petitioner
Through : Mr. P. A. Inamdar, President

Versus

1. The Registrar, Maharashtra University of
Health Science,
Gangapur Road, Anandvali Marg
Nashik-422013
Maharashtra
2. The Government of Maharashtra
Mantralaya, Mumbai-32
Maharashtra
3. The Government of India
Ministry of Health & Family Welfare
Department of Health
Nirman Bhawan,
New Delhi

... Respondents
Through : Mr. Manu Krishnan, Advocate
for Respondent No.1
None for other respondents.

CORAM :

Mr. Justice M. S. A. Siddiqui, Chairman
Mr. B. S. Ramoowalia, Member

ORDER

(Delivered on the 30th day of August, 2005)

Justice M. S. A. Siddiqui, Chairman

The petitioner trust (hereinafter referred to as "the petitioner") is a registered public trust established by the Muslim trustees for integrated development of education of the Muslim community. On 22nd October 2003, the petitioner duly applied to the

respondent No.1 (for short “the respondent university”) for affiliation of a dental college proposed to be established at Pune and paid a sum of Rs.5.00 lakhs to the respondent university as the affiliation fee. The petitioner also applied to the State Government (respondent No.2) seeking permission to set up the said college. On 8th July 2004, the respondent No.2 granted permission to the petitioner under Section 64 (5) of the Maharashtra University of Health Sciences Act, 1998 (for short “the Act”) for establishment of a new dental college at Pune with intake capacity of 100 students per annum, subject to approval of the Central Government and affiliation by the respondent university. By the letter dated 4th August 2004, respondent university refused to grant even provisional affiliation to the petitioner on the following grounds :-

- (i) that the perspective plan for granting permission to the new colleges prepared by the university does not provide the need of the new dental college at Pune city; and
- (ii) that the petitioner does not have its own functional hospital for the last three years.

According to the petitioner, the said action of the respondent university amounts to violation and deprivation of rights of the minorities guaranteed under Article 30 (1) of the Constitution. It is also alleged that the respondent university in the past had granted affiliation to other colleges without insisting upon the provision of the perspective plan and the requirement of a hospital of 100 beds having three years running operation, and as such the action of the respondent university in rejecting the application of affiliation is also hit by the doctrine of hostile discrimination.

Respondent No.2 (State Government) and the respondent No.3 did not contest the proceedings. The respondent university resisted the petition on the ground that the Commission has no jurisdiction to entertain the petition inasmuch as the respondent university is not a scheduled university and any dispute regarding affiliation to a non-scheduled university is outside the purview of the National Commission for Minority Educational Institutions Act, 2004 (for short “the NCMEI Act”). It is also alleged that the perspective plan prepared by the respondent university under Section 64 of the Act is binding on the petitioner and that the petitioner’s request for affiliation cannot be allowed, as the petitioner did not satisfy the criterion of a hospital of 100 beds having three years running operation. It is further alleged that action of the respondent university in refusing to grant affiliation to the petitioner does not impinge upon the educational rights of the minorities guaranteed under Article 30 (1) of the Constitution.

It is beyond the pale of controversy that the petitioner is a minority educational institution. The petitioner had applied to the respondent university for affiliation of a new dental college proposed to be established at Pune and deposited a sum of Rs.5.00 lakhs. The respondent university refused to grant affiliation to the petitioner. The respondent university did not even recommend the petitioner’s case to the State Government (respondent No.2) for establishment of a new dental college at Pune, yet the State Government (Respondent No.2) granted permission to the petitioner for establishment of the said dental college before the date of refusal for affiliation by the respondent university.

ARGUMENTS:

It was seriously contended by Shri P. A. Inamdar that any minority could establish a minority educational institution and had the right to do so under Article 30 (1) of the Constitution and neither the State Government nor the university could deny that right of the minority to establish and administer the minority educational institution at the very threshold. It was further contended that the recognition/affiliation operates in the area of standard of excellence and is unquestionable if it does not seriously curtail or destroy rights of the minorities to establish and administer educational institutions of their choice. Only for maintaining standard of education, the State Government can insist on framing regulations that they be followed but in all other areas the rights of minorities must be protected. It was further contended that the provision of a perspective plan under Section 64 (1) of the Act is not a reasonable restriction. Such a provision is virtual negation of the constitutional protection to minorities in establishing educational institutions of their choice as guaranteed under Article 30 (1) of the Constitution.

On the contrary, it was contended on behalf of the respondent university that this Commission has no jurisdiction to entertain the petition, inasmuch as the respondent university is not a scheduled university and any dispute relating to affiliation with a non-scheduled university is outside the jurisdiction of this Commission. It was also contended that the provisions of Section 64 (1) of the Act are in the nature of regulatory measures and as such the perspective plan prepared by the university is binding on the petitioner. Reliance has been placed on a decision of the Supreme Court in State of Maharashtra Vs. Indian Medical Association & Ors. (2002) 1 SCC 589 in support of the contention that the petitioner’s application for affiliation was rightly rejected by the respondent university.

FINDINGS :

At the outset, we must make it clear that the other Member of this Commission, Shri Valson Thampu could not hear the matter as he was on leave.

The first point for determination is whether the action of the respondent university in rejecting the petitioner’s application for affiliation amounts to deprivation or violation of rights of minorities to establish and administer educational institutions of their choice within the meaning of Section 11 (b) of the NCMEI Act. Section 11 (b) *ibid* reads as under :-

“11. Functions of Commission.- Notwithstanding anything contained in any other law for the time being in force, the Commission shall –

(a) x x x x x x x x x x

(b) look into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating affiliation to a Scheduled University and report its findings to the Central Government for its implementation; and

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. (Civil Appeal No.5041 of 2005) decided on 12th August 2005 by the 7-Judges Bench of the Supreme Court has settled the law for the present. The whole edifice of case law on Article 30 (1) of the Constitution has been bed rocked in Kerala Education 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. They, being part of the fundamental rights, are invested with a sanctity and a status higher than that of the ordinary the law and, consequently, every legal provision or executive action must conform to the mandates implied in them. The prohibition is contained in Article 13 which bars the State from making any law abridging or limiting any of these provisions and threatens to veto any law found inconsistent with. The term "law" includes within its amplitude any ordinance, order, bye-law, rule, regulation, notification, custom or usage having the force of law and the prohibition binds all such instrumentalities within the State as have legal authority to formulate such law. 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 separate. 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, CJ, observed :-

"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 the recent case of P. A. Inamdar & Ors. Vs. State of Maharashtra & Ors. (supra), their Lordships of the Supreme Court observed as under :-

".....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.”

It would be wrong to assume that an unrestricted right as in Article 30 (1) of the Constitution postulates absence of regulations. It has been held in St. Xavier College case (supra) and the case of T.M.A. Pai Foundation Vs. State of Karnataka (2002) 8 SCC 481 that regulations can be prescribed in spirit of the unrestricted nature of the right. Such regulations must satisfy a dual test; the test of reasonableness, and the test that it is regulative of the educational character of the institution. A regulation would be deemed unreasonable only if it was totally destructive of the right of the minority to establish and administer educational institutions. Thus, a benignly regulated liberty which neither abridges nor exaggerates autonomy but promotes better performance is the right construction of the constitutional provisions. Such an approach enables the fundamental right meaningfully to fulfill its trust with the minorities' destiny in a pluralist polity. That is the authentic voice of our democracy. To regulate, be it noted, is not to restrict but to facilitate effective exercise of the very right. The constitutional estate of the minorities should not be encroached upon, neither allowed to be neglected nor mal-administered.

At this juncture, we may also usefully excerpt the following observations of their lordships in the case of P. A. Inamdar & Ors. (supra) :-

“.....Therefore, the State may prescribe reasonable regulations to ensure the excellence of the educational institutions to be granted aid or to be recognised. To wit, it is open to the State to lay down conditions for recognition such as, an institution must have a particular amount of funds or properties or number of students or standard of education and so on. The dividing line is that in the name of laying down conditions for aid or recognition the State cannot directly or indirectly defeat the very protection conferred by Article 30 (1) on the minority to establish and administer educational institutions..... The dividing line between how far the regulation would remain within the constitutional limits and when the regulations would cross the limits and be vulnerable is fine yet perceptible and has been demonstrated in several judicial pronouncements which can be cited as illustrations. They have been dealt with meticulous precision coupled with brevity by S. B. Sinha, J. in his opinion in Islamic Academy.”

In Ahmedabad St. Xavier College case (supra), it was observed that :-

“The right under Article 30 cannot be exercised in vacuo. Nor would it be a right to refer to affiliation or recognition as privileges granted by the State. In a democratic system of Government with emphasis on education and enrichment of its citizens, there must be elements which give protection to them. 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 a right will be a mere husk.”

The Supreme Court has clearly recognised that running a minority educational institution is also as fundamental and important as other rights conferred on the citizens of the country [Managing Board of Delhi, Bihar, Ranchi & Ors. Vs. State of Bihar & Ors. (1984) 4 SCC 500]. Any state action which anyway destroys, curbs or interferes with such right would be violative of Article 30.”

Bearing in mind the said proposition of law, we shall proceed to examine the question as to whether the action of the respondent university in refusing to grant affiliation to the petitioner constitutes an infringement of the rights of the minorities guaranteed under Article 30 (1) of the Constitution.

It is undisputed that the petitioner had applied to the respondent university for affiliation of a dental college proposed to be established at Pune and paid a sum of Rs.5.00 lakhs to the respondent university as affiliation fee. It is also undisputed that by the order dated 8th July 2004, the State Government (respondent No.2) granted permission to the petitioner under Section 64 (5) of the Act for establishment of a new dental college at Pune with intake capacity of 100 students per annum, subject to approval by the Central Government and affiliation by the respondent university. It is also undisputed that by the order dated 4th August 2004, the respondent university refused to affiliate the said dental college on the following grounds :-

- (i) that the perspective plan for granting permission to the new colleges prepared by the university does not provide the need of the new dental college at Pune city; and
- (ii) that the petitioner does not have its own functioning hospital for the last three years.

Learned counsel for the respondent university strenuously urged that the petitioner's application for opening of a new dental college was not in conformity with the perspective plan prepared by the university under sub-section (1) of Section 64 of the Act and as such the respondent university had no other option but to reject the said application. He further contended that the perspective plan prepared by the respondent university is binding on the petitioner. Strong reliance has been placed on a decision of the Supreme Court in State of Maharashtra Vs. Indian Medical Association & Ors. (supra) in support of the said contention.

Section 64 of the Act reads as under :-

"64. (1) The University shall prepare a perspective plan for educational plan for educational development for the location of institutions of higher learning in a manner ensuring equitable distribution of facilities of Health Sciences Education having due regard, in particular, to the needs of unserved and under developed areas within the jurisdiction of the University. Such plan shall be prepared by the Academic Council and shall be placed before the Senate through the Management Council and shall be updated every five years.

(2) No application for opening a new college or institution of higher learning which is not in conformity with such plan, shall be considered by the University.

(3) The management seeking permission to open a new college or institution of higher learning shall apply in the prescribed form to the Registrar of the University before the last day of October of the year preceding the year from which the permission is sought.

(4) All such applications received within the aforesaid prescribed time-limit shall be scrutinized by the Planning Board and be forwarded to the Government with the approval of the Management Council on or before the last day of December of the year, with such recommendations (duly supported by relevant reasons) as are deemed appropriate by the Management Council.

(5) Out of the applications recommended by the University, the Government may grant permission to such institutions as it may consider right and proper in its absolute discretion, taking into account the Government's budgetary resources, the suitability of the management seeking permission to open new institutions and the State level priorities with regard to location of institutions of Health sciences learning.

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 Health Sciences learning.

(6) No application shall be entertained directly by the Government for the grant of permission for opening a new college or institution of Health Sciences learning."

At this juncture, Mr. P. A. Inamdar submitted that the ratio decidendi of the aforesaid case does not govern the case like in hand. He has invited our attention to para 1 of the judgment which is as under :-

"This appeal which is directed against the judgment of the Bombay High Court passed in the writ petition gives rise to following two questions for our decision: (1) whether State Government is required to submit an application to Maharashtra University of Health Sciences (hereinafter referred to as "the University") under Section 64 of the Maharashtra University of Health Sciences Act, 1998 (hereinafter referred to as "the Act") for obtaining permission from itself, when it decides to establish a government-run medical college within the State; and (2) whether the perspective plan prepared by the University under the Act for educational development for the location of higher learning is binding on the State Government when the State Government resolves to set up a government-run medical college within the State."

Our attention has also been invited to the following sub-paragraphs of para No. 18 of the said judgment which are as under :-

(F) that, the perspective plan prepared by the University binds the State Government qua private management or anybody else excepting the State Government applying for permission of the State Government to open a medical college;

(I) that, the decision in the present appeal is confined to the question of establishment of a government-run medical college in the State."

It is well settled that a decision is an authority for what it decides and not what can be logically deduced therefrom, [Union of India Vs. Chhajiv Rao (2003) 5 SCC 568]. It is also well settled that the ratio decidendi of a judgment is its reasoning which can be deciphered only upon reading the whole judgment in its entirety. The ratio decidendi of a case or the principles on which it is based is distinct from the relief finally granted or the manner adopted for its disposal, [Executive Engineer Dehram Kand Minority Vs. Budharaj (2001) 2 SCC 721]. In the Indian Medical Association case (supra), the Supreme Court was concerned with the Maharashtra University of Sciences Act, 1998 wherein the question revolved around as to whether the essentiality certificate would be necessary for the State to establish a Government run medical college and it was held that the perspective plan prepared by the university is not binding on the State Government when it takes a decision to establish a new government medical college. It is significant to note that sub-para (I) of para No.18 of the aforesaid judgment clearly mentions that “the decision in the present appeal is confined to the question of establishment of a government run medical college in the State”. In the case in hand, the question is whether the university can refuse to grant affiliation to a medical college when the State Government grants permission under sub-section (5) of Section 64 of the Act for establishment of a new medical college in the State. Thus, the question which arises for consideration herein did not arise before the Apex Court. We cannot read the said judgment out of context. Consequently, the decision rendered in the Indian Medical Association case (supra) does not help the respondent university.

It is well settled that any law which provides for affiliation on terms which will involve abridgement of the right of minorities to administer and establish educational institutions of their choice will offend Article 30 (1). The educational institutions established by the minorities will be robbed of their utility if students cannot be trained in such institutions for university degrees. Minorities will virtually lose their right to equip their children for ordinary careers if affiliation be on terms which would make them lose their rights to establish and administer educational institutions of their choice under Article 30. The establishment of a minority educational institution is not only ineffective but also unreal unless such institution is affiliated to a university for the purpose of conferment of degrees on students.

It must be stressed that the refusal to give affiliation by the university without just and sufficient grounds amounts to violation of the educational rights of the minorities guaranteed under Article 30 (1) of the Constitution. If a university refuses to grant affiliation, the direct consequence would be to destroy the very existence of the institution itself because a large number of students admitted to these institutions, in the absence of affiliation, will be deprived of acquiring higher academic status which will not only be a loss to the institution but a loss to the nation itself.

Admittedly, the State Government (respondent No.2) had granted permission to the petitioner under sub-section (5) of Section 64 of the Act to set up a new dental college at Pune before the date of refusal for affiliation by the respondent university. It was contended by the learned counsel for the respondent university that the permission was granted by the Government without recommendation by the respondent university, and as such the said permission of the State Government is ineffective and invalid. We are not impressed by the aforesaid submission of the learned counsel for the respondent. The reason being that proviso to sub-section (5) of Section 64 of the Act clearly empowers the State Government to grant permission for starting a new college or institution even without recommendation of the university.

Sub-section (5) of Section 64 of the Act is reproduced below :-

“64 (5) Out of the applications recommended by the University, the Government may grant permission to such institutions as it may consider right and proper in its absolute discretion, taking into account the Government’s budgetary resources, the suitability of the management seeking permission to open new institutions and the State level priorities with regard to location of institutions of Health Sciences learning :

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 Health Sciences learning.”

It is well settled that the scope of the proviso is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect. [A. N. Sehgal Vs. Raje Ram Sheoran, 1992 Supp. (1) SCC 304; Tribhovandas Haribhai Tamboli AIR 1991 SC 1538).

Thus, the proviso to sub-section (5) of Section 64 of the Act has to be read as an exception to the main provision meaning that in exceptional cases, the State Government may grant permission for setting up a new medical college was without recommendation by the concerned university. A careful perusal of Section 64 of the Act clearly shows that Section 64 of the Act confers exclusive power on the State Government to grant permission for setting up a new medical college in the State. The perspective plan prepared by the university under Section 64 (1) merely serves as a guideline for deciding the desirability of setting up a medical college by the State Government in a particular region or area of the State and it cannot impair the fundamental rights guaranteed under Article 30 (1) of the Constitution . Moreover, in Indian Medical Association’s case (supra), their lordships of the Supreme Court have held that “the grant of approval or permission as contemplated under Section 64 of the Act is nothing but substantially a grant of Essentiality Certificate under para 3 of the Regulation insofar as it relates to location of the proposed medical college. The State Government while granting an Essentiality Certificate or permission to establish a new medical college acts as a sovereign and discharges its constitutional obligation.” In this context, we may usefully excerpt the following observations of their lordships of the Supreme Court in Indian Medical Association’s case (supra):-

“A perusal of para 3 of the Regulation shows that it is mandatory on the part of an institution or a management desirous of establishing a medical college to obtain Essentiality Certificate from the respective State Government or the Union Territory Administration, as the case may be. The requirement of Union Territory Administration, as the case may be. The requirement of Essentiality Certificate provided under para 3 of the Regulation concerns with among other requirements the desirability of having the proposed medical college at the proposed location.

The desirability of having the medical college at the proposed location under para 3 of the Regulation is required to be decided by the State Government. Excepting the desirability of location of the proposed medical college and certificate that adequate clinical material is available as per the Medical Council of India at the proposed medical college, which are to be decided by the State Government all other aspects regarding establishment of a new medical college and imparting of the education therein are covered by the Central Act and Regulation framed thereunder. In other words, in the matter of establishment of a medical college and medical education, the field that is open where a State government has any role to play is only in regard to decide the desirability of the location of the proposed medical college and grant of certificate that adequate clinical material is available as per the Medical Council at the proposed medical college. Thus, the State government is the only authority under the Regulation with which we are concerned to decide the location of a new proposed medical college within the State. The State government, therefore, is the only judge to decide where the proposed medical college is to be located. For that purpose, the State government can neither delegate its function to any other authority nor can it create a statutory authority under a State Act. If it does so, it would be repugnant to the Central Act. However, it is true that the State Government in order to maintain inter- or intra-regional imbalances within the State and to remove the chances or arbitrariness, can lay down guidelines or prepare a perspective plan for its own guidance for selecting locations for a proposed new medical college within the State.

A perusal of Section 64 shows that it provides for procedure for obtaining permission by the State Government for setting up a new medical college and confers exclusive power on the State Government for grant of permission to a management to establish a new medical college. The power of the State Government to grant permission to set up a new medical college under Section 64 of the Act is substantially the power of the State Government to grant Essentiality Certificate to a management or an institution who intends to establish a new medical college at a proposed location. If Section 64 of the Act is read along with para 3 of the Regulation it would show that the requirement of Essentiality Certificate or approval by the State Government is required when a private management or any other person other than the State government intends to set up a medical college. The State Government being the authority to accord approval for setting up a medical college within the State cannot apply to itself for grant of approval when it proposes to establish a new medical college within the State. Its decision to set up to set up a government-run medical college tantamounts to an approval or permission as contemplated under Section 64 of the Act and grant of Essentiality Certificate to the extent of location of the proposed medical college which is required to be furnished under para 3 of the Regulation. The language of Section 64 is plain and simple. The expression 'management' occurring in Section 64 shows that it refers to a private management other than the State Government when it seeks permission of the State Government to open a new medical college within the State."

(emphasis supplied)

Thus, the desirability of having the medical college at the proposed location under para 3 of the Regulation is required to be decided by the State Government and

not by the concerned university. It is also relevant to mention that imparting education is a state function. The state, however, having regard to its financial constraints is not always in a position to perform its duties. The function of imparting education has been to a large extent taken by the citizens themselves. 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/professional education to its children. In the instant case, the State Government (respondent No.2), while granting permission to the petitioner to set up a new dental college at Pune acted as a sovereign and discharged its constitutional obligation. In this view of the matter, the respondent university had no authority to refuse affiliation of the petitioner's college on the ground that the application for affiliation is not in conformity with the perspective plan prepared by the respondent university. Moreover, the respondent university had no power to set at naught the permission granted by the State Government (respondent No.2) under sub-section (5) of Section 64 of the Act. That being so, refusal by the respondent university to grant affiliation virtually makes the petitioner to surrender and lose its right to establish and administer educational institutions of its choice under Article 30. The minorities cannot be deprived of their constitutional rights to establish and administer educational institutions of their choice under the guise of non-inclusion of their educational institutions in the perspective plan prepared by the university under Section 64 (1) of the Act.

For the reasons discussed above, we find and hold that the action of the respondent university in refusing affiliation to the petitioner constitutes an infringement of the fundamental rights of the minorities guaranteed under Article 30 (1) of the Constitution.

The next question which arises for determination is whether the petitioner has been discriminated against by the respondent university. Mr. Inamdar has invited our attention to the xerox copies of the followings letters of affiliation issued by the respondent university in support of his contention that the action of the respondent university in refusing affiliation to the petitioner is hit by the doctrine of hostile discrimination :-

“ MAHARASHTRA UNIVERSITY OF HEALTH SCIENCES
ANGAPUR ROAD, ANAND VALLI, NASHIK –422 013

Dr. N.R. Bhadane
Registrar

Phone : 346402

No. MUHS/E-01.2/967/2001

Date 30.05.2001

To

The President
Maharashtra Cosmopolitan Education Society's
2390-BKB, Hidayatullah Road,
Camp, Pune –411 001.

Sub: Provisional Affiliation to the proposed Dental College at Pune.

Ref: Your letter No. MCES/MUHS/affi:Dental/5/2001 Dtd. 30.05.2001.

Sir,

With reference to the above, I am to inform you that the report of the Inspection Committee appointed by the University to inspect your proposed Dental College was considered by the Academic Council of the University at its meeting held on 24.05.2001. The Academic Council decided to grant provisional affiliation for 1st Year of BDS course with intake capacity of 100 students to the proposed Maharashtra Cosmopolitan Education Society's M.A. Rangoonwala College of Dental Sciences and Research Centre at Pune subject to the permission from Dental Council of India, Central Govt. & State Govt. and also subject to fulfillment of the conditions and norms laid down by the Dental Council of India/ State Govt. / University.

Kindly note that after the permission from Dental Council of India, Central Government and State Government is obtained the first affiliation will be granted by the University under Section 65 of Maharashtra University of Health Sciences Act 1998. No student should be admitted till first affiliation is granted by this University.

Thanking you,

Yours faithfully,
Sd/-
(Dr. N.R. Bhadane)
Registrar.

MAHARASHTRA UNIVERSITY OF HEALTH SCIENCES
GANGAPUR ROAD, ANAND VALLI, NASHIK –422 013

J.D. Patil
Dy. Registrar

Phone : 346402

No. MUHS/E-2203/13/2002

Date 16.02.2002

To,

The Dean,
M.A. Rangoonwala Dental College & Hospital,
Pune.

Sub: First Affiliation

Sir,

As per provision laid down under Section 65(4) of Maharashtra University of Health Sciences, Act, 1998, I am directed to communicate the decision of the Academic Council of this University, in its meeting held on 08.01.2002. The Academic Council unanimously resolved to grant first affiliation for the academic year 2001-2002 subject to the following conditions:-

1. The intake capacity shall be 100 students.
2. Fulfillment of the norms and condition laid down by the Dental Council of India.
3. Rules and regulations made by the State Govt. and the University, as amended from time to time, will be binding on the college.

Kindly acknowledge the receipt.

Yours faithfully,

Sd/-

(J. D. Patil)

Dy. Registrar “

The aforesaid letters of affiliation issued by the respondent university are conspicuous by the absence of conditions enumerated in the letter dated 4th August 2004 of the respondent university rejecting the petitioner's application for affiliation. Needless to add here that the petitioner is not to be treated differently while granting affiliation by the respondent university as Article 14 of the Constitution requires that persons similarly situated must be treated equally. Article 14 embodies a guarantee against arbitrariness and it strikes at arbitrariness in state action and ensures fairness and equality of treatment. The gravamen of the said Article is equality of treatment. In the instant case, the respondent university ought to have granted provisional affiliation to the petitioner as was done in the aforesaid cases. That being so, the hostile discrimination against the petitioner by the respondent university in refusing to grant provisional affiliation has been established; consequently, there was denial of equality.

The cumulative effect of our findings recorded above is that the respondent university has clearly violated the educational rights of the minorities guaranteed under Article 30 (1) of the Constitution and as such the Commission has jurisdiction to entertain the petitioner's application under Section 11 (b) of the NCMEI Act.

Consequently, we direct that our aforementioned findings be sent to the State Government (respondent No.2), Vice-Chancellor of the respondent university and the University Grants Commission for their implementation in terms of Section 11 (b) of the NCMEI Act. According to Section 11 (b) *ibid*, the authorities concerned are under statutory obligation to implement the findings of this Commission. We would, however, like to add that if there are cogent reasons and sufficient material before the respondent university to show that the petitioner has not fulfilled the conditions which may be imposed, it is open to withdraw the affiliation provided the conditions imposed are reasonable and justifiable.

**JUSTICE M.S.A. SIDDIQUI
CHAIRMAN**

**B.S.RAMOOWALIA
MEMBER**

30.8.2005