



सत्यमेव जयते

ANNUAL REPORT 2016-17



National Commission For Minority Educational Institutions

Ministry of Human Resource Development
Government of India

5 Sansad Marg, Patel Chowk, New Delhi - 110 001





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CHAPTER 1

Introduction

1.1 PREAMBLE

Section 16 of the National Commission for Minority Educational Institutions (NCMEI) Act, 2004 obligates the Commission to lay its Annual Report giving the full account of its activities during the previous financial year and forward a copy of the same to the Central Government.

This is the 12th Annual Report of the Commission and is for the financial year 2016-17. The report provides a comprehensive account of all its activities during the financial year 2016-17.

1.2 HISTORICAL BACKGROUND

The long felt demand of the Minority communities to establish a Commission for Minority Educational Institutions that will provide direct affiliation for minority professional institutions to Central Universities, was underscored in a series of meetings held by the Ministry of Human Resource Development with educationists, eminent citizens and community leaders associated with minority education. In a meeting of the National Monitoring Committee for Minority Education held in August, 2004 similar views were voiced by many experts.

In view of the considerable preparatory work that would be involved to make the National Commission's functioning effective on and from the next academic session, recourse was taken to create the National Commission through the promulgation of the National Commission for Minority Educational

Institutions Ordinance, 2004. To replace the said Ordinance by an Act of Parliament, the National Commission for Minority Educational Institutions Bill was introduced in the Parliament.

1.3 ABOUT THE COMMISSION

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

The Commission shall consist of a Chairperson and three members to be nominated by the Central Government. A person shall not be qualified for appointment as the Chairperson unless he is a member of a minority community; and has been a Judge of a High Court. A person shall not be qualified for appointment as a Member unless he is a member of a minority community; and is a person of eminence, ability and integrity.

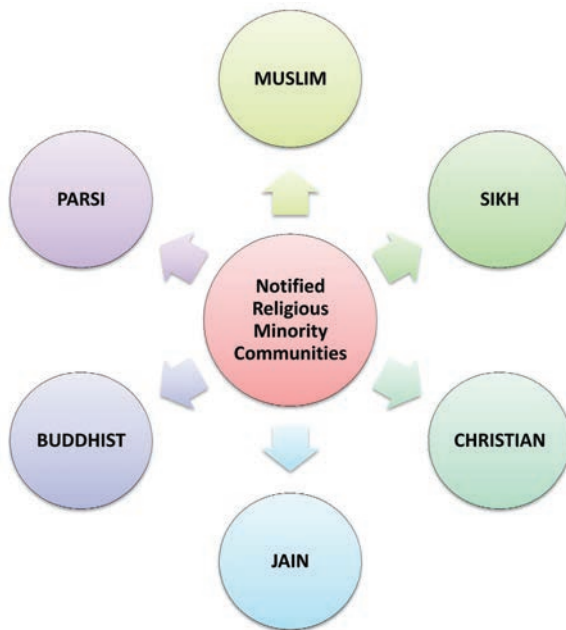
The salaries and allowances payable to the Chairperson and Members and the administrative expenses, including salaries, allowances and pensions payable to the Secretary, officers and other employees shall be paid out of the grants.



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.

From the said provision of the Act, it is clear that the vacancy in the Commission does not make the proceedings of the Commission invalid. Hence, the vacancy of the Chairperson shall have no effect on the proceedings of the Commission or shall not be invalid on the ground merely of the existence of vacancy of the Chairperson.

The Central Government has notified six minority communities viz. Muslim, Christian, Sikh, Buddhist, Parsi and Jain.



No linguistic minority has been notified by the Central Government till date. As such, only six religious minorities are covered under the NCMEI Act. It is crystal clear that the linguistic minorities are outside the purview of the Commission, as such, the Commission do not entertain any application from any linguistic minority and dismisses the petitions on the sole ground.

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 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.

The Commission is a quasi-judicial body and has been endowed with the powers of a Civil Court. This is the first time that a Commission has been established by the Central Government for protecting and safeguarding the rights of the minorities to establish and administer educational institutions of their choice.

Commission has adjudicatory functions and recommendatory powers. The mandate of the Commission is very wide. Its functions include, inter-alia, resolving the disputes regarding affiliation of minority educational institutions to a university, addressing the complaints regarding deprivation and violation of rights of minorities, to establish and administer educational institutions of their choice and to advise the Central Government and the State Governments on any question relating to the educational rights of the minorities referred to it.

1.4 NCMEI ACT, 2004:

The National Commission for Minority Educational Institutions Act, 2004 (2 of 2005) was notified on 6th January 2005. The National Commission for Minority Educational Institutions has been constituted under the Act.

The Act defines “Minority Educational Institution” means a college or an educational institution established and administered by a minority or minorities.

The main functions 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) enquire, *suomotu*, 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.

1.5 NCMEI (AMENDMENT) Act, 2006:

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

Salient Features Of The Amendment

The amendment under the National Commission for Minority Educational



Institutions Amendment Act, 2006 are discussed below:

- Brought all affiliating universities within the ambit of the Act to afford a wider choice to the minority educational institutions with regard to affiliation.
- New Sections were incorporated to maintain the sanctity of the proceedings of the Commission and to amplify the powers of the Commission to enquire into matters relating to deprivation of educational rights of the minorities by acquiring the services of any officer of the Central or State Governments.
- The Commission was empowered to decide on questions relating to Minority Status of educational institutions and to cancel the Minority Status of those institutions which had failed to adhere to the approved norms.
- A deeming provision with reference to obtaining 'No Objection Certificate (NOC)' by the minority educational institutions from the State Governments was also incorporated, where under, a Minority Educational Institution could proceed with the establishment of the same if the State Government did not communicate its decision on granting NOC within 90 days.
- The Commission was also granted appellate jurisdiction in matters of refusal by the State Governments to grant NOC for establishing a minority educational institution.
- The said amendment inserted, that the jurisdiction of all courts, except the Supreme Court and High Courts exercising writ jurisdiction, was barred to entertain any direct applications or other

proceeding in respect of any order of the Commission.

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

1.6 NCMEI AMENDMENT Act 2010

Subsequently, various suggestions were received about the provision in Section 12B (4) of the NCMEI Act suggesting deletion of the provision of consultation with the State Government. Many suggestions were received about the need to make amendment in Section 2(g) regarding the definition of minority educational institutions where universities were excluded. Suggestions were also made relating to the need to remove the ambiguity in the provision of Section 10 concerning grant of 'No Objection Certificate' for establishment of a minority educational institution. The suggestions were examined in the Commission. It was felt that the requirement of consultation with the State Government for deciding an appeal by the Commission as per Section 12B of the Act is against the principles of natural justice. It was viewed that the consultation with the State Government took away the substantive right of appeal created in favour of an aggrieved party.

Mere reading of the provision in Section 10(1) of the Act gave an impression that 'No Objection Certificate' was required for establishment of a minority educational institution in all cases. However, as per the provisions of various laws regulating the establishment of such institutions especially relating to technical and professional colleges,



it was not mandatory to get the 'No Objection Certificate' from the competent authority under the State Government. Therefore, necessary amendment of Section 10(1) was felt necessary.

Considering the steady increase in the workload of the Commission and to make the Commission more representative, a provision for an additional Member over and above

existing two Members was also felt necessary. Accordingly, on the recommendations of the Commission, the NCMEI Act, 2004 was amended to provide for the same. To make the Commission more representative, the Government amended National Commission for Minority Educational Institutions Act by Act 20 of 2010 w.e.f. 1.9.2010 increasing the number of members in the Commission from two to three.



CHAPTER 2

Structure And Functions Of The Commission

2.1 Composition Profile

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

The Government issued notification on 26th November 2004 appointing Justice M.S.A. Siddiqui as the first Chairperson. The Government appointed Justice M.S.A. Siddiqui as the Chairperson of the Commission for a further term of 5 years and he assumed charge on 18.12.2009. Dr. Mohinder Singh and Dr. Cyriac Thomas assumed charge as Members on 8th April 2010 and 12th April 2010 respectively for a term of five years each. Shri Zafar Agha assumed the charge of 3rd Member of the Commission on 26.3.2012 for a term of five years.

Dr. Mohinder Singh, Member submitted his resignation on 30.9.2014 on personal and domestic grounds and in his place for the remaining part of the tenure, Dr. Naheed Abidi, (Padma Shri) was appointed as a Member upto 7.4.2015. Five year tenure of Dr. Cyriac Thomas came to an end on 11.4.2015. Two

new Members joined the Commission against the two vacant posts namely, Dr. Baltej Singh Mann who joined the Commission on 4th December, 2015 and Dr. Naheed Abidi who joined for the second tenure on 7th December, 2015. Shri Zafar Agha, Member completed his tenure on 25.3.2017. The post of the Chairman was vacant during the entire year while for one member from 26.3.2017.

The Commission which started functioning from Shastri Bhavan, New Delhi moved to its own premises at Jeevan Tara Building located at Sansad Marg, New Delhi in August 2005. Presently, the Commission is functioning from its office at Jeevan Tara Building, 5, Sansad Marg, New Delhi. Initially, Government sanctioned 22 posts for the Commission for providing necessary administrative and office support. Later, 11 additional posts were sanctioned by the Government. At present, Commission has a total strength of 33 which includes, inter alia, one post each of Secretary, Deputy Secretary, Sr. PPS, Under Secretary and Section Officer.

The posts of Secretary, Deputy Secretary, Under Secretary and Section Officer have been filled up on deputation basis by the Central Government. A few staff members have been appointed through direct recruitment, while services of other supporting staff have been engaged on contract basis through EdCIL India Ltd (an undertaking of Government of India, Ministry of Human Resource Department). During the year, 8 persons have been appointed through EdCIL.



2.2 Functions Of The Commission

The Functions of the Commission as per Section 11 of the Act are as follows 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) enquire, suomotu, 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.

2.3 POWERS OF THE COMMISSION

The Powers of the Commission as per section 12 of the Act are as follows:-

- (a) 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.
- (b) The Commission shall, for the purposes of discharging its functions under this Act, have all the powers of a civil court trying a suit.
- (c) 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).
- (d) Any person aggrieved by the order of refusal to grant no objection certificate by the competent authority for establishing a Minority Educational Institution, may prefer an appeal against such order to the Commission.
- (e) 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.

- (f) An order made by the Commission shall be executable by the Commission as a decree of a civil court and the provisions of the Code of Civil Procedure, 1908 (5 of 1908), so far as may be, shall apply as they apply in respect of a decree of a civil court.
- (g) Where an authority* established by the Central Government or any State Government, 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 order of the authority to the Commission.
- (h) On receipt of the appeal, 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 direction as it may deem fit and, all such directions shall be binding on the parties.
- (i) 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 circumstances on grounds laid down in the Act.
- (j) The Commission shall have the power to investigate into the complaints relating to deprivation of the educational rights of minorities.
- (k) 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.

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

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 legal or administrative action against the concerned person or persons as it may deem fit.

* An authority means any authority or officer or commission which is established under any order of the appropriate Government, for the purpose of granting a certificate of minority status to an educational institution.

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

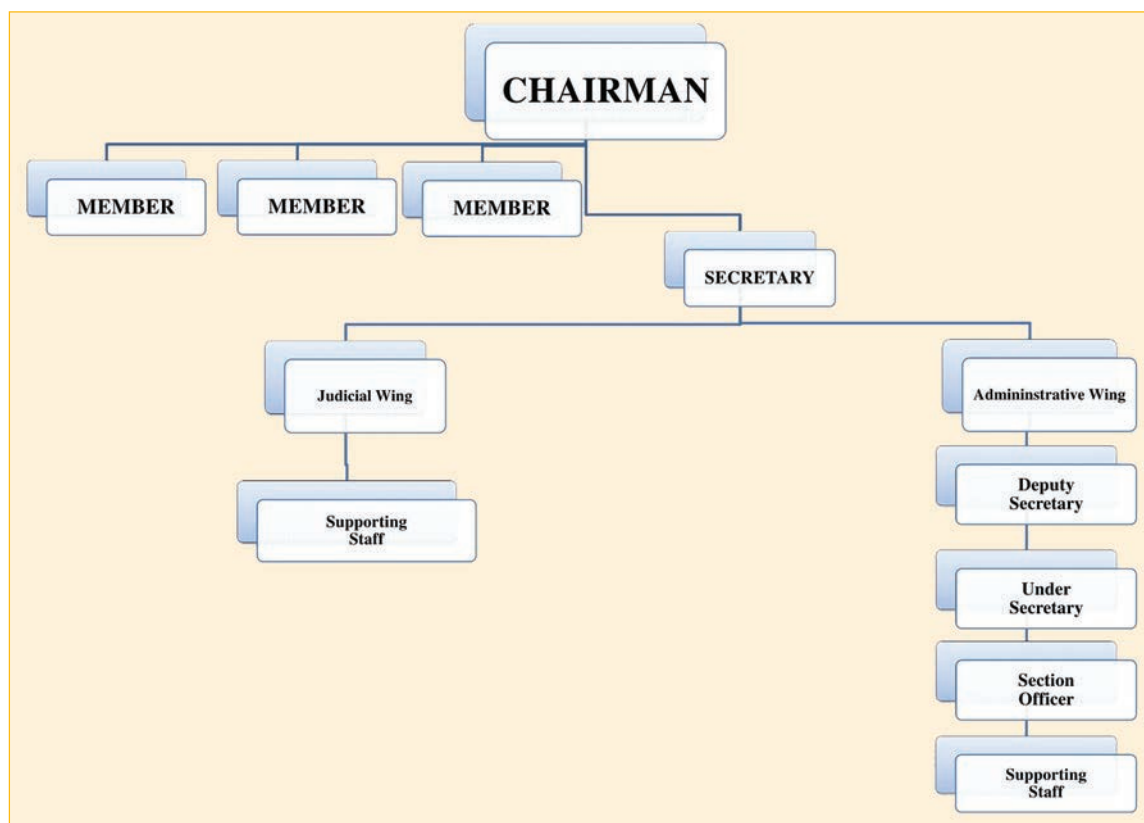
The Chairperson, Members, Secretary, Officers and other employees of the Commission are deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

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.

2.4 Financial and administrative powers of Chairperson:

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

Organisation Chart





CHAPTER 3

Sittings of the Commission

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

During the year 2016-17, the Commission conducted a total number of 177 sittings as a court and heard 4530 cases as per details given below:

Details of Court Sittings from 01.04.2016 to 31.03.2017

S. No.	Date of Sittings	Number of Cases
1	01.04.2016	22
2	04.04.2016	24
3	05.04.2016	27
4	06.04.2016	28
5	07.04.2016	50
6	11.04.2016	26
7	12.04.2016	17
8	13.04.2016	20
9	18.04.2016	25

S. No.	Date of Sittings	Number of Cases
10	19.04.2016	69
11	21.04.2016	22
12	22.04.2016	29
13	25.04.2016	22
14	26.04.2016	25
15	27.04.2016	19
16	28.04.2016	36
17	02.05.2016	29
18	03.05.2016	23
19	04.05.2016	23
20	05.05.2016	33
21	06.05.2016	31
22	09.05.2016	25
23	10.05.2016	25
24	11.05.2016	26
25	12.05.2016	23
26	16.05.2016	22
27	17.05.2016	23
28	18.05.2016	32
29	19.05.2016	32
30	23.05.2016	18



S. No.	Date of Sitzings	Number of Cases	S. No.	Date of Sitzings	Number of Cases
31	24.05.2016	25	56	01.08.2016	22
32	25.05.2016	25	57	02.08.2016	23
33	26.05.2016	31	58	03.08.2016	24
34	27.05.2016	4	59	04.08.2016	24
35	30.05.2016	18	60	08.08.2016	22
36	31.05.2016	92	61	09.08.2016	91
37	14.06.2016	6	62	10.08.2016	25
38	16.06.2016	6	63	11.08.2016	25
39	23.06.2016	8	64	12.08.2016	32
40	24.06.2016	8	65	16.08.2016	1
41	04.07.2016	22	66	17.08.2016	26
42	05.07.2016	29	67	18.08.2016	28
43	11.07.2016	25	68	19.08.2016	1
44	12.07.2016	24	69	22.08.2016	23
45	13.07.2016	21	70	23.08.2016	26
46	14.07.2016	24	71	24.08.2016	24
47	18.07.2016	25	72	29.08.2016	25
48	19.07.2016	25	73	30.08.2016	27
49	20.07.2016	32	74	31.08.2016	25
50	21.07.2016	22	75	01.09.2016	28
51	25.07.2016	21	76	05.09.2016	22
52	26.07.2016	23	77	06.09.2016	22
53	27.07.2016	21	78	07.09.2016	24
54	28.07.2016	26	79	08.09.2016	25
55	29.07.2016	21	80	14.09.2016	27



S. No.	Date of Sitzings	Number of Cases	S. No.	Date of Sitzings	Number of Cases
81	15.09.2016	24	106	09.11.2016	22
82	19.09.2016	24	107	10.11.2016	24
83	20.09.2016	25	108	11.11.2016	26
84	21.09.2016	24	109	15.11.2016	31
85	22.09.2016	23	110	16.11.2016	32
86	23.09.2016	30	111	17.11.2016	27
87	26.09.2016	29	112	18.11.2016	27
88	27.09.2016	26	113	21.11.2016	24
89	28.09.2016	25	114	22.11.2016	24
90	29.09.2016	24	115	23.11.2016	24
91	03.10..2016	23	116	24.11.2016	25
92	04.10.2016	23	117	25.11.2016	38
93	05.10.2016	22	118	28.11.2016	21
94	06.10.2016	23	119	29.11.2016	27
95	17.10.2016	25	120	30.11.2016	23
96	18.10.2016	25	121	01.12.2016	23
97	20.10.2016	27	122	02.12.2016	24
98	21.10.2016	23	123	05.12.2016	24
99	24.10.2016	33	124	06.12.2016	26
100	25.10.2016	21	125	07.12.2016	23
101	26.10.2016	28	126	08.12.2016	35
102	27.10.2016	22	127	14.12.2016	19
103	28.10.2016	44	128	15.12.2016	22
104	07.11.2016	23	129	03.01.2017	20
105	08.11.2016	33	130	04.01.2017	26



S. No.	Date of Sitzings	Number of Cases	S. No.	Date of Sitzings	Number of Cases
131	05.01.2017	22	155	20.02.2017	22
132	09.01.2017	26	156	21.02.2017	11
133	10.01.2017	25	157	22.02.2017	23
134	11.01.2017	30	158	23.02.2017	23
135	12.01.2017	25	159	27.02.2017	24
136	16.01.2017	27	160	28.02.2017	27
137	17.01.2017	25	161	01.03.2017	23
138	18.01.2017	24	162	02.03.2017	28
139	19.01.2017	23	163	06.03.2017	67
140	23.01.2017	24	164	07.03.2017	17
141	24.01.2017	22	165	08.03.2017	23
142	30.01.2017	29	166	09.03.2017	24
143	31.01.2017	23	167	14.03.2017	12
144	01.02.2017	22	168	15.03.2017	28
145	02.02.2017	20	169	16.03.2017	30
146	06.02.2017	33	170	20.03.2017	27
147	07.02.2017	28	171	21.03.2017	23
148	08.02.2017	23	172	22.03.2017	30
149	09.02.2017	27	173	23.03.2017	20
150	13.02.2017	20	174	27.03.2017	16
151	14.02.2017	26	175	28.03.2017	15
152	15.02.2017	27	176	29.03.2017	27
153	16.02.2017	24	177	30.03.2017	30
154	17.02.2017	47	Total	177	4530



In conclusion, the Commission conducted 177 number of sittings as compared to 170 during the previous year 2015-16 and heard 4530 number of cases as compared with the previous year which stood at 4487.

The details of Court sittings conducted and number of cases heard during the last 10 years are as under :-

Year	Sitting	Cases
2007-08	73	2916
2008-09	93	3506
2009-10	121	4377
2010-11	130	4774
2011-12	162	5022
2012-13	171	4269
2013-14	178	5042
2014-15	176	5602
2015-16	170	4487
2016-17	177	4530

During the formal court sittings, cases where notices have been issued were taken up. In addition to the formal number of sittings mentioned above, Commission also took fresh petitions on a daily basis and passed orders. For fresh petitions, the presence of petitioner or respondent is not necessary. The Commission lists requisite number of cases in each sitting to ensure expeditious disposal while ensuring that backlog of cases of previous years were given priority.

Maximum numbers of 20 sittings were held in the month of May, 2016 while 19 sittings were held in the month of August, 2016. Further, largest number of 560 cases were heard in May, 2016 followed by August, 2016 numbering 494 cases, April, 2016 – 461

cases, November, 2016 - 451 cases and March, 2017 – 440 cases. All efforts are made to ensure maximum number of sittings with as many number of days as possible while maximizing listing of cases in each of the sittings. Each Friday of the week is the judgment writing day; hence, normally, no sitting takes place on Friday.

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

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

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



3.2 LEGAL CHALLENGE

The Division Bench of Allahabad High Court held that the Commission holds original jurisdiction to declare minority status of an educational institution; while the Division bench of Calcutta High Court held that granting of minority status is not within the scope/power and jurisdiction of the National Commission for Minority Educational Institution as it holds singularly and merely appellate powers.

In respect of educational institutions of West Bengal, Calcutta High Court vide its order dated 01.04.2016 in W.P. No. 24847 (W) of 2015 Milli Al-Ameen College (for Girls) & Anr. Vs. the State of West Bengal & Ors. and connected matters, restrained the Commission from exercising any powers for grant of

Minority Status Certificate in the first instance.

In sum, the two different High Courts of Allahabad and Calcutta have taken diagonally opposite views on the Original as well as Appellate powers of the Commission. Since the Commission enjoins both the Original and Appellate jurisdiction to decide minority status, the Commission has filed Special Leave Petitions before the Supreme Court of India, against the judgement of Calcutta High Court, which are pending.

Being aggrieved of the decisions of the Calcutta High Court, the Commission filed SLPs before the Supreme Court of India which are pending. On account of this, the cases of West Bengal could not be heard and decided by the Commission, thereafter.



CHAPTER 4

Highlights of the Year

The Commission was constituted by Ministry of Human Resource Development on 16th November, 2004 with its Headquarters in New Delhi. The Commission completed 12 years of its existence in November, 2016.

4.1 STATUS OF MINORITY STATUS CERTIFICATES

Since inception, 12,929 Minority Status Certificates (MSCs) have been issued till 31.03.2017. The Commission issued **1094** Minority Status Certificates to Minority Educational Institutions during the year 2016-17. A state-wise list showing the Minority status certificates issued by the Commission during the years is detailed in **Annexure I**. The details of State-wise Minority Status Certificate issued upto 31.03.2017 are at **Annexure II**.

4.2 DIGITALIZATION OF RECORDS AND NEW NCMEI WEBSITE

The commission has digitalized its records/files in which minority status certificates have been granted upto 2015 and weeded out old files upto 2013 which provides more space for arranging new files.

For the furtherance of the vision of the Ministry, M/s Akiko Sherman Infotech, an empanelled vendor of NICS, was engaged by the Commission with the help of NIC for updating the website of the Commission. M/s. Akiko Sherman Infotech has developed a e-court programme which is under testing stage and will be operationalised shortly.

After detailed discussions with the

Commission, M/s. Akiko Sherman Infotech has developed new website of the Commission with dynamic vision. While developing the new website, the Commission stressed placing of all the information at one place which is commonly being asked by the applicants during the hearings of the Commission. For this purpose, the new website has been equipped with the format of application for Minority Status Certificate and appeal, details on rights of minority educational institutions, procedure for filing application for MSC and appeal, how to cancel MSC, aims and objects of the society/trust, details of the nodal officers and Competent Authorities declared by the State Governments. Both the English version and Hindi version of the website are functional.

While updating the website and keeping in view the vision of Hon'ble Prime Minister about Digital India, it was also decided to digitise all the files, wherein Minority Status Certificates have been granted by the Commission. For this purpose, the Commission engaged M/s. Enhira Software of Mumbai for scanning the old files with notes and correspondence portions. Manual files till the year 2015 have been digitised.

In order to start e-court, the Commission has put all the computers in the office on the LAN for which leased line has been taken from Power Grid and MTNL.

During the year, biometric system of attendance has also been installed in the office. In order to digitize the administrative work of the office, e-office has been



successfully launched in NCMEI and all files of administration division are now dealt in e-office.

The Commission holds random verification of the society/trust running a minority educational institution in order to enhance transparency in the decision making of award of MSC. Further, pursuant to Niti Aayog Letter No. M-11/16(2)/15-VAC dated 24.08.2016, all petitioners have been asked to furnish the unique-id allocated by the Niti

Aayog NGO darpan website www.ngo.india.gov.in. This web site is hosted by Niti Aayog which provides the name and address of the society/trust which runs the minority educational institutions and also the name of the office bearer of the society/trust. This, therefore, serve to facilitate cross verification of the corresponding details provided by the applicant in its application seeking Minority Status Certificate from the Commission.



CHAPTER 5

Tours and Visits

The basic purpose of undertaking visits by Hon'ble Chairman/Members is to interact with the stakeholders and members of the minority community with a view to understand problems/difficulties faced by the various stakeholders and to provide them with a platform for discussion of their problems. This also affords an opportunity to the Commission to apprise the members of the minority community about their Constitutional rights as

well as the role and responsibilities of the Commission. This opportunity is also made use of for interacting with some of the political functionaries and bureaucracies in various State Governments. The tours and visits of the Hon'ble Chairman and Members of the Commission have helped in sensitizing the officials of the State Governments about the rights of minorities enshrined in Article 30(1) of the Constitution of India.

5.1 Details Of The Tours Undertaken And Meetings Attended By Hon'ble Member Dr. Baltej Singh Mann

SNo	Date	Programme	Report
1.	07.04.2016	Participated in book release function of 'Statement of Indian Law' at Rashtrapati Bhawan, New Delhi	The Hon'ble President in his remarks highlighted salient features of our Indian constitution
2.	13.04.2016	Speaker at Baisakhi Celebration at Guru Tegh Bahadur Public School Model Town, Delhi	During this function, Dr. Mann addressed the children and motivated them to inculcate healthy habits of reading and writing.
3.		Baisakhi Celebration "Vaisakhi De Rang, Bhacheyan De Sang" at Guru Tegh Bahadur Public School, New Delhi	Exhorted the parents and children to focus on value based education
4.	17.04.2016	Discussions at Samajik Samarsata (National Amity) Lecture at Karnail Singh Stadium, Delhi	Dr. B.R. Ambedkar will remain an icon of national unity



S.No	Date	Programme	Report
5.	17.04.2016	Participated in Baisakhi Celebration at S.P. Park Ground, Pitampura, New Delhi Organised by Delhi Motor Association	Inculcation of Family values is paramount for the societal values
6.	22.04.2016	To address the Annual Prize Distribution Function as Chief Guest at Mata Sundri College for women, New Delhi	Gave a clarion call to youth to weed out corruption from the country by using RTI and other measures
7.	28.04.2016	Speaker at Career Guidance Fair – 2016 organised by Delhi Sikh Gurudwara Management Committee (DSGMC)	During this career fair, Dr. Mann visited the various stalls put up by various Sikh Minority Educational Institutions. He also appreciated the organizers and motivated them to organize workshops also alongwith career guidance fair.
8.	30.04.2016 to 01.05.2016	Visit to Patiala : To participate in All India Punjabi Conference at Guru Teg Bahadur Hall, Punjabi University, Patiala	Dr. Mann while addressing the delegates said that NCMEI will play a significant role to protect the interest of linguistic minorities.
9.	30.04.2016 to 01.05.2016	Speaker at All India Punjabi Conference at Guru Tegh Bahadur Hall Punjabi University, Patiala	Focused on role of linguistic minorities in the development of India
10.	06.05.2016	Special Lecture on Nationalism at Hans Raj College, Delhi organized by Group of Intellectuals and Academicians (GIA), New Delhi	Inculcation of Nationalism and patriotism among youth is paramount for India
11.	13.05.2016	Motivation Lecture at Sri Guru Granth Sahib VidyaKender, Chhatarpur, New Delhi	Dr. Mann delivered the motivational lecture in which he invoked the teachings of Sikh Gurus to educate masses to create a better world.



S.No	Date	Programme	Report
12.	15.06.2016	Speaker at San Jose State University, California	Role of Indian Diaspora is paramount for the economic development of India
13.	08.07.2016	Meeting with Vice Chancellor, Delhi University to resolve the issues of minority educational institutions of Delhi	Apprised the VC of rights of minority educational institutions to establish and administer their own MEIs.
14.	14.07.2016	Participated in French National Day Conference at French Embassy, Delhi	Interacted with HE Ambassador to know minority rights in France
15.	17.07.2016	Participated in Samkalp Leadership Camp, Dr. Shyama Prasad Mukherjee Civic Center, Minto Road, New Delhi	Interacted with Civil servants who are working to bring change in the society
16.	23.07.2016 to 25.07.2016	Speaker at Minority Seminar-cum-Workshop organized by Shri Ashapura Mataji Tirthdham Trust, Bangalore	While addressing the minority communities at Shri Ashapura Mataji Tirthdham Trust, Bangalore, Dr. Mann appreciated the efforts of Jain Muniji Jungle Wale to generate awareness about minority scholarship and other minority welfare programmes.
17.	26.07.2016	Book Launch function 'Compassion in the 4 Dharmic Traditions' at Constitution Club organised by Prabhat Prakashan, New Delhi	Dharmic traditions of India can steer India to assume world leadership
18.	15.08.2016	Joined Independence Day Ceremony at Red Fort on 15 Aug, 2016	Speech of our Hon'ble PM was thought provoking while he raised concerns of human rights violation in Baluchistan by Pakistan



S.No	Date	Programme	Report
19.	21.09.2016	Interaction with Vice Chancellor and faculty of National University of educational planning and Administration, (NUEPA) New Delhi	NUEPA VC and faculty are doing good work in their areas of specialization
20.	02.10.2016	Participated in the function on the eve of the Mahtama Gandhi Jayanti on Oct 2, 2016	Prayers for peace to amity held and Army salutes captured our imagination
21.	05.11.2016	Speaker at Annual Convocation of YMCA at New Delhi	Exhorted YMCA to impart skills to minority students.
22.	09.11.2016	Speaker at Annual Day Function at Mata Gujri Public School, New Delhi	Focused on healthy reading and writing skills among children
23.	25.11.2016	Participated in International Seminar on Guru Gobind Singh: "Life and Legacy" at IIC Organised by Bhai Vir Singh Sadan, New Delhi	Speakers at the Seminar Highlighted Universal teachings of Guru Gobind Singh Ji
24.	08.01.2017	Visited Sankalap Institute of Education at Ghaziabad	It was a unique visit to a minority educational institution which focused on social work
25.	12.01.2017	Speaker at UGC Sponsored National Seminar on "The Idea of Inclusive Development in India: Towards an Egalitarian Society and Nation" at Sri Guru Nanak Dev Khalsa College, New Delhi	Exhorted to students to avail benefits of minority schemes, scholarships and fellowships for higher studies.
26.	12.01.2017	Speaker at Orientation Course organised by Jan kalian Shiksha Samiti Delhi at Village Jhanjoli (Haryana)	Delivered lecture on Guru Gobind Singh and invoked his teachings and martyrdom.

S.No	Date	Programme	Report
27.	17.01.2017	Attended Annual Conference of State Minorities Commissions at Vigyan Bhawan, New Delhi organized by NCM, Delhi	Interacted with State minority commission members and exhorted them to create awareness among minority educational institutions about various schemes of scholarships.
28.	09.03.2017	Speaker at Seminar on Sikh Heritage at Constitution Club of India organised by World Punjabi Foundation, New Delhi	Sikh Community development initiatives with the help of Gurdwaras were highlighted
29.	20.03.2017	Speaker at Jathedar Santokh Singh Memorial (JSS) Function at Vigyan Bhawan, New Delhi	Jathedar Santokh Singh Memorial (JSS) worked immensely for the development of minority schools and Sikh Gurdwaras around Delhi



Hon'ble Member Dr. Baltej Singh Mann at prize distribution function at Mata Sundri College for Women, New Delhi



Hon'ble Member Dr. Baltej Singh Mann Speaker at San Jose State University, California (U.S.A)



Hon'ble Member Dr. Baltej Singh Mann delivered a motivational lecture at Sri Guru Granth Sahib Vidya Kender, Chattarpur, New Delhi



Hon'ble Member Dr. Baltej Singh Mann with the Governing Body at Sri Guru Granth Sahib Vidya Kender, Chattarpur, New Delhi



Hon'ble Member Dr. Baltej Singh Mann Participated in the function on the eve of the Mahatma Gandhi Jayanti (January 30 , 2016)



Hon'ble Member Dr. Baltej Singh Mann visited Sankalp Institute of Education (Minority Institution) at Ghaziabad



Hon'ble Member Dr. Baltej Singh Mann delivered Annual Convocation address of YMCA at New Delhi



Distribution of degrees to YMCA students by Hon'ble Member Dr. Baltej Singh Mann at YMCA at New Delhi



Hon'ble Member Dr. Baltej Singh Mann presided over the Annual Day function at Mata Gujri Public School, New Delhi



Hon'ble Member Dr. Baltej Singh Mann inaugurated UGC Sponsored National Seminar on "The Idea of Inclusive Development in India: Towards an Egalitarian Society and Nation" at Sri Guru Nanak Dev Khalsa College, New Delhi

5.2 Details of The Tours Undertaken And Meetings Attended By Hon'ble Member Dr. Naheed Abidi (Padma Sri and Yash Bharti awardee)

S.No	Date	Place of Visit	Purpose
1.	15th August, 2016	Attended Independence Day celebrations at Raj Bhawan, Lucknow, on invitation of his Excellency Shri Ram Naik Ji, Governor, Uttar Pradesh	The Hon'ble Governor called on the citizens to strive for their fundamental rights and duties as mentioned in the Constitution of India. Had a discussion with Hon'ble Governor regarding upholding and enforcement of constitutional rights of minority educational institutions in the state.



S.No	Date	Place of Visit	Purpose
2.	3rd September, 2016	National Law University, Delhi	Attended the 4th Annual Convocation- 2016 as an invitee.
3.	5th October, 2016	9th Annual Lecture of NCM 2016-17, Vigyan Bhawan, New Delhi	Attended a lecture on "Minority Rights and Democracy in India".
4.	25th October, 2016	64th Meeting of the Central Advisory Board of Education (CABE), Vigyan Bhawan, New Delhi	Attended and participated in the meeting on pre-determined agendas as a member of CABE.
5.	6th-8th December, 2016	A.O. Muslim Balika Inter College, Lallapura, Varanasi	Chief Guest in a three day seminar on "Educational Awareness"
6.	24th December, 2016	Presided an Educational Awareness Programme organized by the Islamic Society, Ahraura district, Mirzapur	Dr. Naheed Abidi emphasized on the need of Technical Education for Muslims.
7.	7th January, 2017	Attended the inaugural programme of New Delhi World Book Fair as guest, organized by the National Book Trust of India. Inaugurated by Dr. Mahendra Nath Pandey, MoS, HRD at Pragati Maidan, New Delhi	Hon'ble MoS, HRD emphasized on importance of books in our lives.
8.	17th January, 2017	Attended The Annual Conference of State Minority Commission held in Hall 6, Second Floor, Vigyan Bhawan, New Delhi	Minister of State for Minority Affairs and Parliamentary Affairs Shri M.A. Naqvi delivered the inaugural speech.
9.	26th January, 2017	Attended Republic Day ceremony at Rajpath and Rashtrapati Bhawan.	Attended the morning ceremonies at Rajpath and Dinner at Rashtrapati Bhawan in evening.

S.No	Date	Place of Visit	Purpose
10.	5th March, 2017	Aftab Hall, Aligarh Muslim University, Aligarh	Delivered a lecture on “Minority Rights”
11.	17th-19th March, 2017	World Urdu Conference, The Ashok Hotel & SCOPE Auditorium, SCOPE Complex, Lodhi Road, New Delhi	Attended a three day conference on “Urdu Language and Literature in India and abroad” organised by NCPUL, MoHRD, Govt. of India
12.	20th March, 2017	First Annual Convocation, Al-Falah University, Dhauj, Faridabad	Attended the annual convocation at Al-Falah University, Dhauj, Faridabad.

Details:

15th August, 2016: The Hon’ble Member Dr. Naheed Abidi (Padma Sri and Yash Bharti awardee) attended the Independence Day celebrations at Raj Bhawan, Lucknow. She was invited as Hon’ble Governor’s guest. The Hon’ble Governor called on the citizens to strive for fulfilment of their fundamental rights and duties as prescribed in the Constitution of India. Dr. Abidi had discussions with the Hon’ble Governor regarding existing condition of minority educational institutions in the state.

3rd September, 2016: The Hon’ble Member Dr. Naheed Abidi attended the 4th Annual Convocation- 2016 of National Law University, Delhi as an Invitee. It was conducted in the Auditorium of NLU, Delhi. Chief Guest was Hon’ble Mr. Justice T. S. Thakur, the then Chief Justice of India, he also delivered the Convocation Address. The convocation was presided over by Chief Justice of India, Hon’ble Mr. Justice J. S. Khehar.

5th October, 2016: The Hon’ble Member Dr. Naheed Abidi attended the 9th Annual Lecture 2016-17 of NCM (National Commission of Minorities) on invitation. The lecture was delivered on topic “Minority Rights

and Democracy in India” by Prof. Peter Ronald deSouza (University of Delhi) and was presided over by Shri Mukhtar Abbas Naqvi (Hon’ble MOS for Minority Affairs (Independent Charge) and Parliamentary Affairs). Dr. Abidi also participated in the discussion that followed on the same topic. The annual lecture was held Vigyan Bhawan, New Delhi.

25th October, 2016: The Hon’ble Member Dr. Naheed Abidi attended the 64th Meeting of the Central Advisory Board of Education (CABE). She is a nominated member of CABE as a Sanskrit litterateur. She attended the meeting and participated in the detailed agenda notes and discussion that followed along with the programme. The meeting was presided by Hon’ble Union Minister of HRD Shri Prakash Javadekar. The meeting was held in Vigyan Bhawan, New Delhi.





6th to 8th December, 2016: The Hon'ble Member Dr. Naheed Abidi was invited to attend a three (3) day seminar as "Chief Guest" arranged by Muslim Academy, Lallapura, Varanasi at seminar hall of A.O. Muslim Balika Inter College, Lallapura, Varanasi. Local muslim scholars, academicians and prominent school management representatives attended the seminar. Dr. Abidi in her address emphasized on the importance of exercising multifaceted education along with religious education. The seminar ended with students of the hosting body performing national anthem.



24th December, 2016: The Hon'ble Member Dr. Naheed Abidi presided over an Educational Awareness Programme organized by the Islamic Society, Ahraura district, Mirzapur. Dr. Abidi emphasized on the need of Technical Education for Muslims.

7th January, 2017: The Hon'ble Member Dr. Naheed Abidi attended the inaugural programme of New Delhi World Book Fair as guest, organized by the National Book Trust of India. The book fair was inaugurated by Dr. Mahendra Nath Pandey, MoS, HRD at Pragati Maidan, New Delhi.

17th January, 2017: The Hon'ble Member Dr. Naheed Abidi attended the Annual Conference of State Minority Commission held in Vigyan Bhawan, New Delhi. The Minister of

State for Minority Affairs and Parliamentary Affairs Shri M.A. Naqvi delivered the inaugural speech.

26th January, 2017 : The Hon'ble Member Dr. Naheed Abidi attended the Republic Day parade and ceremony at Rajpath and later a dinner that very evening at Rashtrapati Bhawan.

05th March, 2017 : The Hon'ble Member Dr. Naheed Abidi was invited to deliver a lecture on "Minority Rights" to the students of Aftab Hall, AMU, Aligarh. Dr. Abidi stressed on the importance of the students being aware of the educational rights available through Article 30 of the Constitution of India for minority students. The Provost Prof. Meraj Ahmed was present during the lecture and offered vote of thanks to conclude the programme.

17th to 19th March, 2017 : The Hon'ble Member Dr. Naheed Abidi attended the three day World Urdu Conference, organised by NCPUL (National Commission for Promotion of Urdu Language) at The Ashok Hotel (Inaugural Session) and SCOPE Auditorium, SCOPE Complex, Lodhi Road, New Delhi (remaining sessions). The conference was held on topic "Urdu Language and Literature in India and abroad". Inauguration was done by Sri Prakash Javadekar, Hon'ble Minister of HRD.

20th March, 2017 : The Hon'ble Member Dr. Naheed Abidi attended the First Annual Convocation of Al-Falah University, Dhauj, Faridabad.





Dr. Murali Manohar Joshi with his wife felicitating Hon'ble Member Dr. Naheed Abidi in a function



Hon'ble Member Dr. Naheed Abidi, Member-CABE, calling on the Hon'ble Minister HRD



Hon'ble Member Dr. Naheed Abidi congratulating Minister of State for Minority Affairs and Parliamentary Affairs Shri M.A. Naqvi on his elevation to Cabinet and discussing issues relating to minorities



Hon'ble Member Dr. Naheed Abidi attending a three day conference on "Urdu Language and Literature in India and Abroad" organized by NCPUL, MoHRD, Govt. of India



तो घबराएं नहीं, बल्कि बचाव का प्रयास करें। इस दौरान आपदा प्रबंधन के बारे में भी विस्तार से बताया गया। इस मौके पर उपनिदेशक अग्निशमन योगेंद्र बाबू द्विवेदी, राकेश राय, योगेंद्र चौरसिया, रमाशंकर तिवारी के अलावा विद्यालय के चेयरमैन विनीता चोपड़ा, मृदुलेश आदि मौजूद थे।

दाराशिकोह के नाम पर मार्ग बनने से खुशी

वाराणसी : राष्ट्रीय अल्पसंख्यक शैक्षिक संस्था आयोग की सदस्य व पद्मश्री डा. नाहीद आबिदी तथा राष्ट्रीय उर्दू विकास परिषद के सदस्य एड. एहतेशाम आबिदी ने बयान जारी कर पीएम मोदी की तारीफ की। कहा कि मीनाक्षी लेखी के प्रयास से आजादी के 70 वर्षों बाद भारतीय संस्कृति के पोषक शहजादा दाराशिकोह के नाम पर दिल्ली में डलहौजी रोड का नाम बदलकर दाराशिकोह मार्ग के रूप में किया गया है।

र्म, कंपनियों
श्न भी पूछे
र्ण नियमों को
खकर अभ्यास

करें तैयारी।
म।
से रहें दूर।
मान ध्यान

अमरउजाला



युवा वा

रविवार

वाराणसी | 31 जनवरी 2016

मुस्लिम युवाओं को तकनीकी शिक्षा की जरूरत

वाराणसी (व्यस)। राष्ट्रीय अल्पसंख्यक शैक्षिक संस्था आयोग की सदस्य डॉ. नाहीद आबिदी ने कहा कि मुस्लिम युवा तकनीकी शिक्षा ग्रहण करें। उन्होंने मुस्लिम अभिभावकों का आह्वान किया कि वे तकनीकी के साथ आधुनिक एवं उच्च शिक्षा अपने बच्चों को मुहैया कराएं। भारत में विभिन्न अल्पसंख्यक शैक्षिक संस्थानों में आयोजित कार्यक्रम में भाग लेने के दौरान उन्होंने ये बातें कही। उन्होंने कहा कि मुस्लिम समुदाय को शिक्षा के प्रति प्रेरित किया। उन्होंने कहा कि प्रधानमंत्री का मेधा संकाय और सबल विकास तभी सार्थक होगा जब मुसलमान अपने बच्चों को शिक्षित करेंगे। धार्मिक शिक्षा के साथ-साथ मुसलमान जब तक तकनीकी शिक्षा नहीं प्राप्त करेंगे तब तक उनके समाज और देश का विकास नहीं होगा। तभी वे सही मायने में तरक्की से जुड़ पाएंगे।



CHAPTER 6

Petitions and Complaints

Right from its inception, the Commission has been registering cases. During the period 1st April, 2016 to 31st March, 2017, the Commission registered 801 petitions for grant of Minority Status Certificates and disposed off 1660 petitions and issued **1094** Minority Status Certificates to Minority Educational Institutions.

The Commission registered cases on various issues such as;

- non-issue of No Objection Certificate (NOC) by the State Governments,
- delay in the issue of NOC, refusal and delay in the issue of minority status,
- refusal to allow opening of new colleges/schools/ institutions by minorities,
- refusal to allow additional courses in minority educational institutions,
- refusal/ delay in the release of grant-in-aid,
- refusal to give financial assistance,
- denial of permission to create new posts of teachers in minority educational institutions even though there was increase in number of students,
- approval of appointment of teachers being denied,
- inequality in pay scales of minority school teachers vis-à-vis government school teachers,
- denial of teaching aids/other facilities like computer, library, laboratory, etc. to minority educational institutions at par with government institutions,
- non-availability of books in Urdu on all subjects for students of Urdu schools,
- non-appointment of Urdu knowing teachers, madarsa teachers to be paid at par with minority school teachers, madarsa employees to be paid adequately, non-release of grants to madarasas,
- non-payment of retirement benefits to teachers and non-teaching staff of minority schools,
- Refusal of affiliation to MEIs by Universities,
- extension of Sarva Shiksha Abhiyan facilities to minority educational institutions especially



in far flung and remote rural areas, etc.

During the year, Commission also received some petitions/applications pertaining to issues and reliefs which were outside the purview of the Commission. These were forwarded to the concerned authorities for appropriate action under due intimation to the concerned petitioners.

Some of the cases decided during the year are discussed below:

6.1 F. No. 238 OF 2016

Subject : Reservation for economically weaker sections of Society

In the matter of :

G.S. Bakshi, St. Kabir Public School
....Petitioner

Versus

Assistant Estate Officer, U.T. Chandigarh
....Respondent

That the present proceedings arise out of representation dated 26.2.2016 filed by St. Kabir Public School, which is run by the Kabir Educational Society, and is a minority educational institution (granted by the NCMEI on 10.9.2014). The complaint, dated 26.2.2016, of the school is that they have received a show cause notice vide memo No.20227/G-III/RCE-340/2015 dated 26.8.2015 from the Estate Office, Chandigarh for alleged violation of the terms of the allotment letter. The notice has been sent under the "allotment of land to Educational Institutions (Schools) etc. on lease hold basis in Chandigarh Scheme, 1996 (hereinafter referred to as 1996 Scheme)/Chandigarh Estate Rules, 2007 (hereinafter referred to as the 2007 Rules) and Section 8A of the Capital

of Punjab (Development and Regulation) Act, 1952 (hereinafter referred to as the 1952 Act). The show cause notice dated 26.8.2015 reads as under:-

"Whereas you were allotted land for the construction of School in Sector 26, Chandigarh vide allotment letter No. 1778/RCE - 340/G -III/ dated 13.10.1988 on lease hold basis for 99 years.

Whereas as per the terms & condition no.29 of allotment letter, the admission to the institution shall be subject to such direction/instruction which the District Education Officer or the Director Public Instruction (School) Chandigarh Administration may issue from time to time.

And whereas vide notification no.31/1/291/UTFI(4)/2005/5441 dated 09.07.2005 Chandigarh Administration has allowed the benefit of reservation of seats for students belonging to economically weaker section of the Society. The clause is as under:-

"Reserve 15% seats, as may be determined by the Chandigarh Administration from time to time, in the society and the fee charged from those students be nominal preferable the same as is charged from students of a Government Institutions. Provided that if for certain reasons schools are unable to fill up these 15% seats reserved for economically weaker sections in any academic year, the same shall be brought to notice of the Chandigarh Administration and the concurrence of the competent authority shall be obtained with reasons to be recorded in writing for reducing/condoning this



reservation for the particular academic year.

And whereas, as per instruction/ letter of the Director Public Instructions (Schools) dated 19.9.2014, you have not complied with the said notification of Chandigarh Administration. Thus you have violated the condition No.29 of the allotment letter.

Now, therefore, the undersigned by virtue of power conferred upon under Section 8-A calls upon you to show cause within a period of 15 days from the date of issuance of this notice as to why the proceeding under Section 8-A of the Capital of Punjab Development & Regulation Act, 1952 read with Rule 14 of the Estate Rules be not contemplated and why the lease of the site may not be cancelled and the money upto 10% of the total amount of consideration money, interest and other dues payable in respect of the sale of the site be not forfeited under Section 8-A of the aforesaid Act.

You are hereby given an opportunity of being heard in person on 10.9.15 at 4 P.M. before the undersigned.

Please note that in case of you failure to appear in person on fixed date and time, the proceeding will be taken out ex parte.”

It is apparent from the notice that the school which is a minority institution is required to reserve 15 per cent seats for economically weaker section of society in its school in terms of condition No.29 of the allotment letter, which reads as under:-

“The admission to the institution shall

subject to such directions/instructions which the Director Public Instructions (Schools/Colleges), Chandigarh, may issue from time to time.”

2. The above notice dated 26.8.2015 was followed by second notice dated 15.9.2015 under Clause 20 of the Chandigarh Lease Hold of Sites and Building Rule, 1973 – violation of condition of allotment of land to schools under the 1996 Scheme/2007 Rules/Section 8-A of the 1952 Act.

3. On receipt of the complaint dated 26.2.2016 of the complainant, notice was issued to the Additional Director, School Education Department, Deluxe Building, Sector 9, Chandigarh stating that as per record the school has been granted minority status certificate on 10.4.2014; that the Hon’ble Supreme Court in **Pramati Educational & Cultural Trust and others vs. Union of India** reported as 2014 SIR SCW 2859 has held that Right to Children to free and compulsory Education Act, 2009 (hereinafter referred to as 2009 Act) would not be applicable to aided or unaided minority schools and that such schools cannot be obligated to reserve 25 per cent seats for students from socially economically weaker sections of the society. In view of the said judgment the minority institutions are not covered by the 2009 Act and EWS reservation. It was further stated in the notice that the complainant was allotted land on 13.10.1988 and as such is not covered by the allotment scheme of Chandigarh Administration of 2006. Accordingly, the Director was requested to appear before the Commission.

4. That the Assistant Estate Officer, U.T. Chandigarh filed reply stating that:-

(i) the jurisdiction of this Commission is barred in view of Section 19 of the 1952 Act.

- (ii) the reservation for economically weaker sections is being done under the Allotment and Land Rules, prevalent in the city of Chandigarh and not under the Right to Education Act. A copy of the Rules has been attached as Annexure R-1. The same are not Rules but is “allotment of land to Educational Institutions (Schools) etc. on lease hold basis in Chandigarh Scheme, 1996.
- (iii) the petitioner institute has been allotted land by Chandigarh Administration at concessional rates, therefore, the petitioner institute has to abide by the terms and conditions of the allotment order.
- (iv) the petitioner school is not being discriminated against and all schools in Chandigarh have been directed to make reservation for EWS.
- (v) the question of reservation for EWS came up before the High Court of Punjab and Haryana in CWP No.4909 of 2010 which has been disposed of with directions. One of the directions was that institutions, who have been allotted land at concessional rate, would have to make reservation for the economically weaker sections of the society not exceeding 25%. Hence, in case the petitioner is aggrieved against the judgment of the High Court dated 5.12.2013 in CWP No.4909 of 2010, the petitioner school should approach the Hon’ble Supreme Court.
5. A rejoinder has been filed by the complainant-school wherein it has been stated that:-
- (i) the scheme Annexure R-1 is dated 31.1.1996 whereas the allotment in favour of the petitioner was made as far back as 1988 and hence the same did not apply to the complainant.
- (ii) the allotment was not made at any concession rates. The letter of allotment Annexure R-1 does not mention any concessional rates or the extent of concession. There is no condition in the allotment letter regarding reservation of seats for economically weaker section of the society.
- (iii) the power to frame Rules is contained in Section 22 of the 1952 Act. It does not contain any provision to make reservation of seats. Further Scheme Annexure R-1 is not a Rule as per Section 22 of the 1952 Act.
- (iv) there is no averment in reply of the Assistant Estate Officer, U.T. Chandigarh that other schools mentioned therein are also minority institutions and in any case, acceptance of an illegal order by other schools would not debar the filing of the present complaint.
- (v) the instructions Annexure R-5 dated 15.2.2008 are issued by the Director Public Instruction and not by the Government. Power to issue instructions vests in the Government and not the Director Public Instruction.
- (vi) in the case of **Brig Gurcharan Singh Gosal and others vs. The Assistant Estate Officer, U.T.Chandigarh** (Annexure A1 with the rejoinder), it has been held that the 2007 Rules apply to fresh auction/allotments made on or after 7.11.2007.
- (vii) the school was not allotted land at any concessional rate.
- (viii) the school at no stage submitted that they



would comply with the instructions dated 15.2.2008. No statement of this effect of the petitioner has been produced. Rather a specific statement was made on behalf of the petitioner that the school is being run by minority institution and that the school is exempt from EWS quota. The petitioner after receiving the minutes of the hearing, wrote letter dated 29.1.2016 (**Annexure A-2**) that nowhere has the school accepted the conditions mentioned in the notice in writing or verbally.

- (ix) the matter is covered by the judgment of the Hon'ble Delhi High Court in CWP No.131/2014 in **St. Columbus School vs. Lt. Governor of Delhi &ors (copy Annexure A-3)**.

6. Arguments of both sides were heard by the Commission and we are of the view that:-

- (i) the petitioner school is a minority school which has been duly certified as such by the Commission vide its certificate dated 10.9.2014. As such it is entitled to protection under Article 30 of the Constitution of India, which reads as under:-

“30. Right of minorities to establish and administer educational institutions.-(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(1-A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed

by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under the clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.”

Further Article 15(5) of the Constitution of India reads as under:-

“Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth:-

(1) to (4) x xx xxx x xx

(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 specific 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.”

It is thus apparent that Article 15(5) of the Constitution specifically bars the State from making any provision of law for advancement of socially and educationally backward classes of citizens relating to their admission to educational institutions, which are minority institutions. In view of the said provision of the Article it is not open to

the State to make any provision for admission of children of economically weaker section of society in minority educational institution as the petitioner institute. Further the matter has been considered by the Hon'ble Supreme Court in **Pramati Educational & Cultural Trust's** case (supra). Para 46 of the said report reads as under:-

“46. When we look at the 2009 Act, we find that Section 12(1)(b) read with Section 2(n) (iii) provides that an aided school receiving aid and grants, whole or part, of its expenses from the appropriate Government or the local authority has to provide free and compulsory education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent. Thus, a minority aided school is put under a legal obligation to provide free and compulsory elementary education to children who need not be children of members of the minority community which has established the school. We also find that under Section 12(1)(c) read with Section 2(n)(iv), an unaided school has to admit into twenty-five per cent of the strength of class I children belonging to weaker sections and disadvantaged groups in the neighborhood. Hence, unaided minority schools will have a legal obligation to admit children belonging to weaker sections and disadvantaged groups in the

neighborhood who need not be children of the members of the minority community which has established the school. While discussing the validity of clause (5) of Article 15 of the Constitution, we have held that members of communities other than the minority community which has established the school cannot be forced upon a minority institution because that may destroy the minority character of the school. In our view, if the 2009 Act is made applicable to minority schools, aided or unaided, the right of the minorities under Article 30(1) of the Constitution will be abrogated. Therefore, the 2009 Act in so far it is made applicable to minority schools referred in clause (1) of Article 30 of the Constitution is ultra vires the Constitution. We are thus of the view that the majority judgment of this Court in *Society for Unaided Private Schools of Rajasthan v. Union of India & Anr.* (supra) in so far as it holds that the 2009 is applicable to aided minority schools is not correct.”

Thus the Hon'ble Supreme Court has quashed the Act of Legislature which require minority schools to admit students belonging to EWS of society.

- (ii) That so far as the judgment of the Hon'ble High Court of Punjab and Haryana in CWP No.4909 of 2010 decided on 5.12.2013 is concerned, it is stated that a bare reading of the said judgment makes it apparent that it dealt with schools generally and the issues of right of minority educational institutions have not



been adjudicated in the said judgment. Accordingly, the said judgment is not applicable to minority educational institutions such as the petitioner school. In any case, the said judgment itself states that reservation for economically weaker sections of society would be applicable to the provisions of the 2009 Act. It is the conceded position that the 2009 Act is not applicable to the minority educational institutions which is the pleaded case of the respondent-UT which has categorically stated in para 3 of its reply that:-

“the reservation for economically weaker section of the society is being done under the Allotment and Land Rules prevalent in the city of Chandigarh **and not under the Right to Education Act.**”

Thus the High Court judgment is not applicable to the petitioner school because the 2009 Act is not applicable to the school and EWS reservation is not being imposed under the said Act.

- (iii) That further in para 4, the Chandigarh Administration submits that the petitioner had been allotted land at concessional rate. However, no material has been placed on record to demonstrate what concession was given. Neither the market rate available at that time has been placed on record nor any order demonstrating concession to be given to the petitioner school has been placed on record. The school was at no point made aware of the concession being given at the time of issuance of allotment letter. The allotment letter which has been placed on record (**Annexure R-2**) does not demonstrate that any concession has been given to the petitioner institute.

There is no recital to this effect in the allotment letter. Thus boggy of confession rate is merely ipsi dixit of the respondent with no supporting material placed on record.

- (iv) That the 1996 Scheme states that it has been issued in exercise of the powers conferred by Sections 3 and 22 of the 1952 Act. It is a matter of record that scheme is dated 31.1.1996 and the allotment to the petitioner school was made on 13.10.1988. Thus the scheme was not in existence at the time of allotment of land to the petitioner school. The Rule making power is contained in Section 22 of the 1952 Act and reads as under:-

22. Power to make rules. –

(1) The Central Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act. 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 terms and conditions on which any land or building may be transferred by the Central Government under this Act;
- (b) the manner in which consideration money for any transfer may be paid;
- (c) the rate of interest payable, and the procedure for payment of installments, interest, fees, rents or other dues payable under this Act ;
- (d) the terms and conditions under which the transfer of any right in

- any sit or building may be permitted;
- (e) erection of any building or the use of any site;
 - (f) levy of fees or taxes under section 7;
 - (g) the terms and conditions for the breach of which any site or building may be resumed;
 - (h) the conditions with regard to the buildings to be erected on sites transferred under this Act ;
 - (i) the form of notice and the manner in which notices may be served.
 - (j) the form and manner in which appeals and application under this Act may be filed and the court fees leviable on such appeals and applications;
 - (k) the matters referred to in sub-section (2) of section 5.”

It is thus apparent that the 1996 scheme (even if termed as a rule) is to come into force by notification in the official gazette. The scheme was notified on 31.1.1996. It, therefore, cannot operate prior to the date of notification. Further there is no provision in the Act to make Rules with retrospective effect. Thus Rules cannot be made by the respondent with retrospective effect. Section 48 of the Life Insurance Corporation Act, 1956 contains the rule making power. Section 48(2)(b)(i) grants the power to give retrospective effect to Rules framed under Section 48 of the Act.

Further Section 25 of the University Grants Commission Act, 1956 contains the power to frame Rules. Rule 2(3) specifically gives the power to frame Rules with retrospective effect. However, the same is with a rider that no retrospective effect shall be given to any Rule so as to prejudicially affect the interest of any such person to whom such rule is applicable.

It is apparent from a perusal of Section 3 read with Section 22 of the 1952 Act that there is no power to frame rules with retrospective effect. Thus the allotment of land under the 1996 Scheme (which has been termed as a Rule by the respondent) cannot apply prior to 31.1.1996 the date of its publication in the official gazette.

- (v) That still further instructions for EWS quota admissions dated 8.5.2014 (**Annexure VIII**) have been issued by the Director Public Instruction (Chandigarh Administration). It specifically records that reservation for economically weaker sections shall be governed by the provisions of the said Act. Thus reliance on the allotment of 1996 scheme is totally misplaced as in fact the basis for the reservation for economically weaker sections of society is the instruction dated 8.5.2014 which in turn relies upon the 2009 Act. As already held above, the 2009 Act is not applicable to the minority institution.

The power to issue executive instructions does not vest in the Director Public Instruction. The Director Public Instruction is not competent to issue instructions. The instructions can be issued only by the State. Article 162 of the Constitution of India reads as under:-



“162. Extent of executive power of State.- Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to and limited by, the executive power expressly conferred by this Constitution or by way any law made by Parliament upon the Union or authorities thereof.”

The Director of Public Instruction is a subordinate officer and cannot exercise powers of the State legislature which vests only on the executive. The matter has been considered in **Shardul Singh vs. State of Punjab** reported as 1970 S.L.R.505 and it has been held that the power of the government under Article 162 of the Constitution cannot be exercised by the Director General of Police. Similar is the position in the present case where executive power of the government (Chandigarh Administration) is sought to be exercised by a middle rank functionary (DPI (Schools)). He is not competent to do so as executive powers under Article 162 of the Constitution of India vests only with the government.

(vi) That even otherwise the 2009 Act contains provisions making reservation to the extent of 25 per cent. The said Act is not applicable to minority educational institutions as already held above. Thus once the 2009 Act is not applicable, it is not open, to the Chandigarh Administration to make any reservation for economically weaker sections of society in minority educational institutions.

The same would be violative of Article 30 of the Constitution of India and violative of Article 15(5) of the Constitution of India as held above and as held by the Hon'ble Supreme Court in **Pramati Educational & Cultural Trust's** case (supra). The attempt of the respondent amounts to abrogation of the right of minorities to establish and administer schools of their choice as granted by Article 30(1) of the Constitution. Further, merely a lease deed (which as stated above) does not apply to a minority educational institution. In the above-mentioned facts and circumstances, the respondent does not enjoy the right to impose EWS quota upon the said school.

Accordingly, the complaint dated February 26, 2016 is allowed and the respondent is restrained from imposing upon the petitioner school any reservation for economically weaker sections of society in the petitioner school.

**ZAFAR AGHA
MEMBER**

**DR. BALTEJ SINGH MANN
MEMBER**

**DR. NAHEED ABIDI
MEMBER**

6.2 F. NO. 1393 OF 2015

Subject : Grant of NOC

Present: Mr. Jose Abraham,
Advocate for the petitioner.

None for the respondent.

By this petition, the petitioner, a minority educational institution covered under Article 30(1) of the Constitution, seeks a declaration in terms of Sub-Section (3) of Section 10 of

the National Commission for Minority Educational Institutions Act (for short the 'Act') that the competent authority has deemed to have granted NOC to the petitioner institution for it's affiliation with the CBSE. Indisputably, the petitioner institution is a minority educational institution covered under Article 30(1) of the Constitution. It is pleaded that on 19.6.2013, the petitioner had applied to the competent authority for grant of NOC for it's affiliation with the CBSE and even after expiry of the statutory period of 90 days the competent authority did not pass any order thereon. That being so, the petitioner is entitled to invoke the deeming provisions of Sub-Section (3) of Section 10 of the Act.

Learned counsel for the petitioner has filed affidavit of Mr. Jalaludeen in support of the averments made in the petition. Consequently, we have no option but to act upon the affidavit of Mr. Jalaludeen. Relying upon the affidavit of Mr. Jalaludeen, we find and hold that on 19.6.2013 the petitioner institution had applied to the competent authority of the State Government for grant of NOC for it's affiliation with the CBSE and even after expiry of the statutory period of 90 days, the competent authority did not pass any order thereon. That being so, the petitioner institution is entitled to invoke Sub-Section (3) of Section 10 of the NCMEI Act, which reads as under: -

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

(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.”

Having regards to the facts and circumstances of the case, we find and hold that since the respondent has not passed any order on the petitioner's application dated 19.6.2013 for grant of NOC for it's affiliation with the CBSE even after expiry of the statutory period of 90 days, we have no option but to declare that the competent authority has deemed to have granted the NOC as sought by the petitioner institution for it's affiliation with the CBSE. A certificate be issued accordingly and the CBSE is directed to act upon the said certificate issued by the Commission in terms of Sub-Section (3) of Section 10 of the NCMEI Act for processing the petitioner's application for grant of affiliation with the CBSE.

**ZAFAR AGHA
MEMBER**

**DR. BALTEJ SINGH MANN
MEMBER**

**DR. NAHEED ABIDI
MEMBER**

6.3 F. NO. 809 OF 2016

Subject : Grant of NOC

Present: Mr. Jose Abraham,
Advocate for the petitioner.

None for the respondent.

No reply has been filed on behalf of the respondent.

Learned counsel for the petitioner filed the affidavit of Mr. E. Thomas Jeyapaul, Chairman of petitioner institution. He has also filed photographs of the petitioner institution. Arguments are heard.



By this petition, the petitioner, a minority educational institution covered under Article 30(1) of the Constitution seeks a declaration in terms of Sub-Section (3) of Section 10 of the National Commission for Minority Educational Institutions Act (for short the 'Act') that the competent authority has deemed to have granted NOC to the petitioner institution for its affiliation with the CBSE. Indisputably, the petitioner institution is a minority educational institution covered under Article 30(1) of the Constitution. It is pleaded that on 10.10.2013, the petitioner had applied to the respondent for grant of NOC for its affiliation with the CBSE and even after expiry of the statutory period of 90 days the competent authority did not pass any order thereon. That being so, the petitioner is entitled to invoke the deeming provisions of Sub-Section (3) of Section 10 of the Act.

Mr. E. Thomas Jeyapaul, Chairman of petitioner institution, has filed his affidavit in support of the averments made in the petition. It needs to be highlighted that the aforesaid averments made in the petition has not been controverted by the respondent. Consequently, we have no option but to act upon the affidavit of Mr. E. Thomas Jeyapaul, Chairman of petitioner institution. Relying upon the affidavit of Mr. E. Thomas Jeyapaul, Chairman of petitioner institution, we find and hold that on 10.10.2013 the petitioner institution had applied to the competent authority of the State Government for grant of NOC for its affiliation with the CBSE and even after expiry of the statutory period of 90 days, the competent authority did not pass any order thereon. That being so, the petitioner institution is entitled to invoke Sub-Section (3) of Section 10 of the NCMEI Act, which reads as under: -

“(3) Where within a period of ninety days from the receipt of the application under sub-

section (1) for the grant of no objection certificate,-

(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.”

Having regards to the facts and circumstances of the case, we find and hold that since the respondent has not passed any order on the petitioner's application dated 10.10.2013 for grant of NOC for its affiliation with the CBSE even after expiry of the statutory period of 90 days, we have no option but to declare that the competent authority has deemed to have granted the NOC as sought by the petitioner institution for its affiliation with the CBSE. A certificate be issued accordingly and the CBSE is directed to act upon the said certificate issued by the Commission in terms of Sub-Section (3) of Section 10 of the NCMEI Act for processing the petitioner's application for grant of affiliation with the CBSE.

**ZAFAR AGHA
MEMBER**

**DR. BALTEJ SINGH MANN
MEMBER**

**DR. NAHEED ABIDI
MEMBER**

6.4 F. NO. 808 OF 2016

Subject : Grant of NOC

Present: Mr. Jose Abraham,
Advocate for the petitioner.

None for the respondent.



No reply has been filed on behalf of the respondent.

Learned counsel for the petitioner filed the affidavit of Mr. A. Godwyn Michael Cornelius. He has also filed photographs of the petitioner institution. Arguments are heard.

By this petition, the petitioner, a minority educational institution covered under Article 30(1) of the Constitution seeks a declaration in terms of Sub-Section (3) of Section 10 of the National Commission for Minority Educational Institutions Act (for short the 'Act') that the competent authority has deemed to have granted NOC to the petitioner institution for its affiliation with the CBSE. Indisputably, the petitioner institution is a minority educational institution covered under Article 30(1) of the Constitution. It is pleaded that on 27.01.2011, the petitioner had applied to the respondent for grant of NOC for its affiliation with the CBSE and even after expiry of the statutory period of 90 days the competent authority did not pass any order thereon. That being so, the petitioner is entitled to invoke the deeming provisions of Sub-Section (3) of Section 10 of the Act.

Mr. A. Godwyn Michael Cornelius, Correspondent, has filed his affidavit in support of the averments made in the petition. It needs to be highlighted that the aforesaid averments made in the petition has not been controverted by the respondent. Consequently, we have no option but to act upon the affidavit of Mr. A. Godwyn Michael Cornelius. Relying upon the affidavit of Mr. A. Godwyn Michael Cornelius, we find and hold that on 27.01.2011 the petitioner institution had applied to the competent authority of the State Government for grant of NOC for its affiliation with the CBSE and even after expiry of the statutory period of 90 days, the competent authority did not pass any order thereon. That being so, the

petitioner institution is entitled to invoke Sub-Section (3) of Section 10 of the NCMEI Act, which reads as under: -

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

(b) 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.”

Having regards to the facts and circumstances of the case, we find and hold that since the respondent has not passed any order on the petitioner's application dated 27.01.2011 for grant of NOC for its affiliation with the CBSE even after expiry of the statutory period of 90 days, we have no option but to declare that the competent authority has deemed to have granted the NOC as sought by the petitioner institution for its affiliation with the CBSE. A certificate be issued accordingly and the CBSE is directed to act upon the said certificate issued by the Commission in terms of Sub-Section (3) of Section 10 of the NCMEI Act for processing the petitioner's application for grant of affiliation with the CBSE.

**ZAFAR AGHA
MEMBER**

**DR. BALTEJ SINGH MANN
MEMBER**

**DR. NAHEED ABIDI
MEMBER**



6.5 F. NO. 1306 OF 2016

Subject : Grant of NOC

Present: Mr. Jose Abraham,
Advocate for the petitioner.

Mr. Manu Srinath,
Proxy Counsel for the respondent.

No reply has been filed on behalf of the respondent.

Arguments are heard.

By this petition, the petitioner, a minority educational institution covered under Article 30(1) of the Constitution seeks a declaration in terms of Sub-Section (3) of Section 10 of the National Commission for Minority Educational Institutions Act (for short the 'Act') that the competent authority has deemed to have granted NOC to the petitioner institution for its affiliation with the CBSE. Indisputably, the petitioner institution is a minority educational institution covered under Article 30(1) of the Constitution. It is pleaded that on 13.03.2013, the petitioner had applied to the respondent for grant of NOC for its affiliation with the CBSE and even after expiry of the statutory period of 90 days the competent authority did not pass any order thereon. That being so, the petitioner is entitled to invoke the deeming provisions of Sub-Section (3) of Section 10 of the Act.

Mr. Abdul Rashid K.V., Manager of the T.K. Trust Public School has filed his affidavit in support of the averments made in the petition. It needs to be highlighted that the aforesaid averments made in the petition has not been controverted by the respondent. Consequently, we have no option but to act upon the affidavit of Mr. Abdul Rashid K.V. Relying upon the affidavit of Mr. Abdul Rashid K.V., we find and hold that on 13.03.2013 the petitioner institution had applied to the competent authority of the State Government for grant of NOC for its affiliation with the CBSE and even after expiry of the

statutory period of 90 days, the competent authority did not pass any order thereon. That being so, the petitioner institution is entitled to invoke Sub-Section (3) of Section 10 of the NCMEI Act, which reads as under: -

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

(c) 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.”

Having regards to the facts and circumstances of the case, we find and hold that since the respondent has not passed any order on the petitioner's application dated 13.03.2013 for grant of NOC for its affiliation with the CBSE even after expiry of the statutory period of 90 days, we have no option but to declare that the competent authority has deemed to have granted the NOC as sought by the petitioner institution for its affiliation with the CBSE. A certificate be issued accordingly and the CBSE is directed to act upon the said certificate issued by the Commission in terms of Sub-Section (3) of Section 10 of the NCMEI Act for processing the petitioner's application for grant of affiliation with the CBSE.

**ZAFAR AGHA
MEMBER**

**DR. BALTEJ SINGH MANN
MEMBER**

**DR. NAHEED ABIDI
MEMBER**



6.6 F. NO. 1301 OF 2016

Subject : Grant of NOC

In the matter of:

Delhi Institute of Technology and Management,
NH-1, Chirasm Road Gannaur,
District Sonapat, Haryana- 131 101.
... Petitioner.

Versus

Director General,
Department of Higher Education,
Government of Haryana,
Chandigarh,
Haryana.

... Respondent

ORDER

(Delivered on the 14th of December, 2016)

Zafar Agha

By this petition, the petitioner, a minority educational institution covered under Article 30(1) of the Constitution seeks a declaration in terms of Sub-Section (3) of Section 10 of the National Commission for Minority Educational Institutions Act (for short the 'Act') on the ground that the competent authority has deemed to have granted NOC to the petitioner institution for its affiliation with the Guru Gobind Singh Indraprastha University, Delhi. Indisputably, the petitioner institution is a minority educational institution covered under Article 30(1) of the Constitution. It is pleaded that on 19.10.2010, the petitioner had applied to the respondent for grant of NOC for it's affiliation to the Guru Gobind Singh Indraprastha University (GGSIU), Delhi and the respondent has rejected the petitioner's application on the ground that the institution is situated outside the State of Haryana. That being so, the petitioner is entitled to invoke

the deeming provisions of Sub-Section (3) of Section 10 of the Act, which reads as under: -

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

(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.”

Indisputably, the petitioner institution is a minority educational institution and Section 10A of the NCMEI Act confers the right on a minority educational institution to seek affiliation to a university of its choice but with a qualification that it is subject to the law under which the university is constituted. At this juncture, we also refer to Section 4 of the GGSIU Act, which reads as under: -

“**4. Jurisdiction:

(1) Save as otherwise provided by or under this Act, the limits of the area within which the University shall exercise its powers, shall be those of the National Capital Region as defined in the National Capital Region Planning Board Act, 1985 (2 of 1985)

(2) No college or institution situated within the jurisdiction of the University shall be compulsorily affiliated to the University, and affiliation shall be granted by the University only to such college or institution as may agree to accept the Statutes and the Ordinances.”

(emphasis supplied)



Section 4 clearly permits affiliation of an educational institution located within the territorial limit of the National Capital Region with GGSUUP. It is beyond the pale of controversy that Faridabad is within the territorial limits of the National Capital Region as defined in the National Capital Region Planning Board Act, 1985, That being so, the petitioner institution, which is a minority educational institution, located within the territorial limits of the National Capital Region, has a legal right to seek affiliation to the university.

It may be pointed out that a minority educational entity does not fall into general category of educational institutions. Under article 30(A) of Constitution of India, minority educational institutions enjoy special rights and for the protection of those rights Indian Parliament has constituted National Commission for Minority Educational Institutions (NCMEI) through an Act passed in 2004. This Act under Section 10A has conferred special rights upon minority institutions in regard with affiliation to a minority educational institution. It says:-

“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”.

Section 4(1) of the GGSUUP Act which says: -

“The affiliation of an educational institution within the territorial limit of National Capital Region as defined in the National Capital Region Planning Board Act, 1985 (2 of 1985) is permissible”.

As already stated, it is indisputably a known fact that Faridabad lies within the limits of National Capital Region according to NCR Act 1985. The affiliating University, i.e. GGSUUP, in its statute very clearly permits the affiliation of a college within NCR Region. So the petitioner is entitled to affiliation with the GGSUUP.

Having regards to the facts and circumstances of the case, we find and hold that since the respondent has rejected the application of the petitioner for grant of NOC for it's affiliation with the Guru Gobind Singh Indraprastha University, Delhi, we have no option but to declare that the competent authority has deemed to have granted the NOC as sought by the petitioner institution for it's affiliation to the Guru Gobind Singh University, Delhi. A No Objection Certificate is hereby granted to the petitioner institution for it's affiliation to the Guru Gobind Singh Indraprastha University, Delhi. The University is directed to act upon the N.O.C. granted to the petitioner institution by this Commission.

**ZAFAR AGHA
MEMBER**



CHAPTER 7:

Cases Regarding Deprivation of Rights of Minority Educational Institutions and Affiliation to Universities

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

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

The Commission subscribes to the view that the minority educational institutions should not fall below the standards of excellence expected of educational institutions under the guise of exclusive right of management. Regulatory measures for ensuring educational

standards and maintaining excellence thereof are no anathema to the protection conferred by Article 30 (1) of the Constitution.

The following case was decided during the year :

F.NO. 633 OF 2016

Arguments are heard.

Petitioner Nafisa Bano, mother of the Class 9th standard student, namely Master Zeeshan Khan, of the St. Lawrence School, Unnao, Uttar Pradesh, has alleged that the said school authorities have expelled her son from the School without any reasonable ground. She has stated that the said school is a minority educational school enjoying the minority status granted by the NCMEI. Hence, it is her prayer to the Commission to intervene in the matter and let the concerned authorities of the school continue her son his studies in 9th standard of the School.

The respondent initially refused to response to the repeated notices served on him by the Commission. He, however, reluctantly responded and stated that there are several serious allegations of misconduct and indiscipline on the part of the said student. When asked to furnish any proof regarding his charges against the student, the respondent failed to furnish any proof in this regard.



In this light and circumstances, the respondent is directed to let the concerned student continue his studies in the said school so that his academic year is not wasted. The said student is also directed to behave and follow the discipline of the school in every manner.

The petition is disposed of accordingly. Inform the parties.

**ZAFAR AGHA
MEMBER**

**DR. BALTEJ SINGH MANN
MEMBER**



CHAPTER 8

References From Central Government and State Governments and Commission's Recommendations

As per Section 11 (a) of the Act, the Commission will 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 year, few references from the Central Government and State Government were received and reply thereto is reproduced below in two cases:

8.1 No. 7-13/2016-NCMEI

Government of India
National Commission for Minority
Educational Institutions
Gate No. 4, 1st Floor, Jeevan Tara
Building,
Parliament Street, New Delhi – 110001
Dated the 13th May, 2016

To
Shri C.P. Joy,
Section Officer (MC),
Ministry of Human Resource Development,
Department of Higher Education,
Shastri Bhavan, New Delhi – 110001

Subject: Seeking clarification on status and certification of minority institutions as applicable under RTE – Reg.

Sir,

Please refer to your endt. on OM NO. 1-28/2011-EE.4(Pt. I) dated 06.05.2016 of Ms. Sharda Sharma, US seeking clarification on Sl. No. 3 of Secretary, Deptt. Of Education,

Govt. of Chattisgarh's d.o. letter dated 04.05.2016.

2. In this connection, it may be mentioned that the Commission has prepared Guidelines for determination of Minority Status, Recognition, Affiliation and related matters in respect of Minority Educational Institutions under the Constitution of India. These guidelines are available on the website of the Commission at www.ncmei.gov.in. As per these guidelines, the criteria for determination of minority status of an educational institution, is as under:

“On a reading of Article 30(1) of the Constitution read with several authoritative pronouncements of the Supreme Court and the definitions of Minority Educational Institution in Section 2(g) of the Act and Section 2(f) of the Central Educational Institutions (Reservation in Admission) Act, 2006, the following facts should be proved for grant of minority status to an educational institution on religious basis:

(i) that the educational institution was established by a member/members of the religious minority community;

(ii) that the educational institution was established for the benefit of the minority community; and

(iii) that the educational institution is being administered by the minority community.



2.2 The aforesaid facts may be proved either by direct or circumstantial evidence. There must be some positive index to enable the educational institution to be identified with religious minorities. There should be nexus between the means employed and the ends desired. If the minority educational institution concerned is being run by a trust or a registered society, then majority of the trustees of the trust or members of the society, as the case may be, must be from the minority community and the trust deed/Articles of Association or any other document duly executed in this regard must reflect the objective of sub-serving the interest of the minority community. In the absence of any documentary evidence some clear or cogent evidence must be produced to prove the aforesaid facts. There is no bar to the members of other communities to extend their help to the member of a minority community to establish an educational institution of its choice. (See S.K. Patro vs. State of Bihar AIR 1970 SC 259)."

3. In views of above, it may be clarified that if the majority of members of the society/trust/company belongs to a particular minority community and the institution was established and being administered by majority of members of such community, the institution is entitled to get minority status subject to fulfillment of other conditions as indicated above.

4. In addition to above, it may also be mentioned that in case of change of management after establishment of educational institution, the institution is not entitle for declaration as minority institution as it was not established by minority and does not fulfill the condition mentioned above at para 2 (i).

Yours faithfully,
(Rita Chatterjee)
Secretary
Ph.: 23367759

8.2 No. 7-16/2015 – NCMEI

Government of India
National Commission for Minority
Educational Institutions
Gate No. 4, 1st Floor, Jeevan Tara Building,
Parliament Street, New Delhi – 110001
Date: 06/5/2016

To

Ms. Jayashree Mukherjee,
Principal Secretary,
Government of Maharashtra,
Minority Development Department,
Mantralaya, (Annexe Building),
7th Floor, Rajguru Chawk, Madam Cama Road,
Mumbai – 400032, Maharashtra.

Subject: Clarification on Section 12C (b) and Sec.2 (a) of NCMEI Act- reg.

Madam,

Please refer to your email dated 23rd Mach, 2016 on the above subject. The clarification on a right solution of fixing bulk quota on Minority Educational Institutions is as following:

2. In this connection attention is drawn to the T.M.A. Pai judgment of the Supreme Court which inter-alia states that ".....If, such an institution is under an obligation to admit the bulk of the students fitting into the description of the minority community, the students of that group residing in the State in which the institution is located have to be necessarily admitted in a larger measure because they constitute the linguistic minority group as far as that State is concerned. In other words the pre-dominance of linguistic minority students hailing from the State in which the minority educational institution, is established should be present. The Management bodies of such institutions cannot resort to the device

of admitting the linguistic students of the adjoining states in which they are in a majority, under the facade of the protection given under Article 30(1)". In Inamdar's case (supra) the said proposition of law has been applied to religious minority. According to their Lordships, "if any other view was to be taken the very objective of conferring the preferential right of admission by harmoniously construing Article 30(1) and 29(2) may be distorted". It was further observed in Inamdar's case that "it necessarily follows from the law laid down in T.M.A Pai Foundation that to establish a minority institution the institution must primarily cater to the requirements of that minority of that State else its character of minority institution is lost. However, to borrow the words of Chief Justice S.R. Dass in Kerala Education Bill, "a sprinkling of that majority from the other States on the same footing as a sprinkling of non minority students would be permissible and would not deprive the institution of its essential character of being a minority institution, determined by reference to that State as a unit". As regards the prescription of a percentage governing admissions in a minority educational institutions, it would be useful to excerpt the following observations of their lordships of the Supreme Court in T.M.A. Pai foundation Case vs. State of Karnataka (2002) 8 SCC 481. ".....The situation would vary according to the type of institution and the nature of education that is being imparted in the institution. Usually, at the school level, although it may be possible to fill up all the seats with the students of the minority group, at the higher level, either in colleges or in technical institutions, it may not be possible to fill up all the seats with the students of the minority group. However, even if is possible to fill up all the seats with students of the minority group, the moment the institution is granted aid; the institution will have to admit students of the non minority group to a

reasonable extent, whereby the character of the institution is not annihilated, and at the same time, the rights of the citizen engrafted under Article 29(2) are not subverted." The State Government can prescribe percentage of the minority community to be admitted in a minority educational institution taking into account the population and educational needs of the area in which the institution is located. There cannot be a common rule or regulation or order in respect of types of educational institutions from primary to college level and for the entire State fixing the uniform ceiling in the matter of admission of students in minority educational institutions. Thus a balance has to be kept between two objectives – preserving the right of the minorities to admit students of their own community and that of admitting "sprinkling of outsiders" in their institutions subject to the condition that the manner and number of such admissions should not be violative of the minority character of the institution. It is significant to mention here that Section 12C (b) of the Act also empowers the State Government to prescribe percentage governing admissions in a minority educational institution. Thus the State Government has to prescribe percentage governing admissions of students in the minority educational institutions in accordance with the aforesaid principles of law enunciated by their lordships of the Supreme Court in the cases of T.M.A. Pai Foundation and P.A. Inamdar.

3. The NCMEI in its judgement in Case No. 1320 of 2009 in the matter of Buckley Primary School, Cuttack, Orissa Vs. Principal Secretary, School & Mass education Department had stated that we must make it clear that this Commission does not have power to fix a percentage governing admission of students of the minority group in a minority educational institution. This is the function of the State Government concerned. There is no



complaint whatsoever against the petitioner institution to show or suggest that it had denied admission to any student of the Christian community for the purpose of accommodating a student of the non-minority community. In the absence of prescription of a workable and reasonable percentage governing admission of students of the Christian community in a minority educational institution by the State Government in the manner indicated above, we are unable to hold that the petitioner institution has lost its minority character.

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

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

Yours Faithfully,

(Rita Chatterjee)

Secretary,

Tel: 23367759; Fax: 23343766



CHAPTER- 9:

Recommendations for the Integrated Development of Education of the Minorities

The functions of the Commission as inter-alia enumerated in Section 11 of NCMEI Act are reproduced below :-

- (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.”

During the period, no such recommendations were made.



CHAPTER 10

Instances of Violation of Educational Rights of the Minorities

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

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

10.3 In the case of *Ahmadabad 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.

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

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

10.6 *Therefore, a balance has to be kept*



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

10.7 From the year 2014 onwards, the Commission came across several instances of encroachment on the educational rights of the Minority Institutions by the Education Departments of many State Governments. In

Karnataka, a large number of minority institutions mostly belonging to linguistic minorities moved the High Court of Karnataka at Bangalore on the grounds that the State Education Department was enforcing the provisions of Right to Education Act, 2009 on these institutions.

NCMEI also made a party by the High Court. It has been held by the Supreme Court that the Right of Children to free and compulsory Education Act, 2009 cannot be made applicable to a minority educational institution covered under Article 30(1) of the Constitution. Their lordships of the Supreme Court have held that the Act in so far it is made applicable to minority schools referred in clause (1) of Article 30 of the Constitution is ultra vires the Constitution. Finally, High Court of Karnataka at Bangalore admitted in their judgment dated 30th April, 2014 on cases filed by 5 institutions on that the petitioner institution cannot be compelled to admit children under the Right of Children to Free and Compulsory Education Act, 2009.



CHAPTER 11

Right to Information (RTI)

Section 12 (B) of NCMEI Act mandates that every proceeding before the Commission shall be deemed to be a judicial proceeding and the Commission shall be deemed to be a Civil Court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure 1973 (2 of 1974). The Commission being a quasi judicial organisation interacts with a number of petitioners, advocates and other stakeholders. As a result, the number of RTI applications received by the Commission is increasing every year.

With a view to promote transparency and accountability in the functioning of the Commission by securing to the citizens the right to access the information under the control of public authority, the Commission has

placed all obligatory information under Section 4(i) of the RTI Act, 2005 on its Website at www.ncmei.gov.in

During 2016-17, Shri Sandeep Jain, Deputy Secretary functioned as Public Information Officer (w.e.f. 21.08.2014 till date). Smt. Rita Chatterjee, Secretary of the Commission functioned as the First Appellate Authority w.e.f. 01.04.2016 to 31.8.2016. Shri Madhu Ranjan Kumar who joined as Secretary to the Commission on 22.9.2016 was the First Appellate Authority from 22.9.2016 to 31.3.2017.

During the year under report, the Commission received 160 RTI applications and 2 appeals. All the applications/appeals were disposed of within the prescribed time limit.

CHAPTER 12

Conclusion

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

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

The Central Government has notified 6 communities, namely Muslims, Christians, Sikhs, Buddhists, Jains and Zoroastrians (Parsees) as the 6 minority communities. Therefore, linguistic minorities at present do not fall within the ambit of the NCMEI Act.

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

12.3 Right to establish a Minority Educational Institution

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

2. The Competent authority shall :-

- On perusal of documents, affidavits or other evidence, if any; and
- 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:-

- The Competent authority does not grant such certificate; or
- Where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate,

It shall be deemed that the Competent authority has granted a no objection certificate to the applicant.

After obtaining minority status certificate, the institutions have the following rights in terms of Article 30 (1) of the Constitution and



Section 2(g) of the NCMEI Act.

1. To choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution.
2. To appoint teaching and non-teaching staff.
3. To admit the students of its community. Non-minority students cannot be forced upon it. Neither the policy of reservation on admission can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriate by the State in a minority education institution. But if the institution is receiving any financial aid from the State then Sub-Article (2) of Article 29 of Constitution obligates the management to admit non-minority students to a reasonable extent.
4. To receive a reasonable fee structure of its own.
5. To take disciplinary action against any member of its erring staff.

It has been held by the Supreme Court in Case of P.A. Inamdar Vs. State of Maharashtra [2006 (6) SCC 537] that:

- (i) The policy of reservation in admission cannot be made applicable to a minority institution.
- (ii) The policy of reservation in employment cannot be made applicable to a minority institution.

Further, a minority educational institution covered under Article 30(1) of the Constitution including a Madarsa is exempted from the purview of the Right of Children to Free and Compulsory Education Act.

12.4 Grounds for Cancellation of Minority Status Certificate

The minority status certificate granted by this Commission or by any authority can be cancelled under Section 12C of the Act on violation of any of the conditions enumerated therein.

If a minority status certificate has been obtained by practicing fraud or if there is any suppression of any material fact or any fundamental change of circumstances warranting cancellation of the earlier order, the authority concerned would be within its powers to cancel the minority status certificate after affording an opportunity of being heard to the management of the institution concerned, in conformity with the principles of natural justice.

It is now well settled that any administrative order involving civil consequences has to be passed strictly in conformity with the principles of natural justice (See AIR 1978 S.C. 851). If any order relating to cancellation of minority status granted to a minority educational institution has been passed without affording an opportunity of being heard to such educational institution, it gets vitiated.

12.5 The Commission feels all the State Government and Union Territories should establish a single-window system for grant of minority status certificate. Decentralisation can be considered for receipt of applications at

District/Zilla Parishad/Taluka level where, after receipt of application, scrutiny/inspection can be done within a time-bound manner before forwarding the application to the nodal authority for grant of minority status certificate. All State Governments and Union Territories should set up such a mechanism and give wide publicity to it.

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

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

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

12.7 For the purpose of Section 10 of the National Commission for Minority Educational Institutions (NCMEI) Act 2004,

- all State Governments are required to appoint a competent authority to grant no objection certificate for the establishment of any educational institution and for the purpose of Section 12 (B),
- State Governments are required to appoint an authority for the grant of minority status to any education institution.

12.8 It was, however, found that many State Governments had not set up any mechanism to consider the request for grant of minority status certificate. The result had been that the Commission received large number of applications from the educational institutions for grant of minority status certificate.

As per the Section 2 (ca) of NCMEI Act:

“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.”

And as per the Section 2 (ca) of NCMEI Act, “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 programmed of studies under any State Act, a State Act a State Government in whose jurisdiction such institution is established.

12.9 In order that Commission could initiate invitation of on-line applications for grant of Minority Status Certificates and issue of on-line notices to the competent authorities,

the Commission requested all the state Governments and UTs to nominate competent authorities and inform the e-mail addresses of the competent authorities/ Nodal Officers for getting their response. Issue was taken up with the Chief Secretary of respective states/ UTs. Only 17 State Governments and UTs have given complete information. Correspondences with rest of the states have been made to intimate details at the earliest so that the Commission could start invitation of online applications. A list of the Competent authorities of the various States is detailed in Annexure III.



ANNEXURES TO THE REPORT





ANNEXURE-I

STATE-WISE DETAILS OF MINORITY STATUS CERTIFICATES ISSUED DURING THE YEAR 2016-17

S.No	State	Total No. of MSC	S.No	State	Total No. of MSC
1	Andaman	0	19	Madhya Pradesh	39
2	Andhra Pradesh	29	20	Maharashtra	17
3	Arunachal Pradesh	1	21	Manipur	1
4	Assam	6	22	Meghalaya	1
5	Bihar	21	23	Mizoram	0
6	Chandigarh	0	24	Nagaland	0
7	Chhattisgarh	2	25	Orissa	2
8	D&N Haveli	0	26	Puducherry	5
9	Daman	0	27	Punjab	3
10	Delhi	21	28	Rajasthan	4
11	Goa	1	29	Sikkim	0
12	Gujarat	10	30	Tamil Nadu	270
13	Haryana	11	31	Telangana	45
14	Himachal Pradesh	2	32	Tripura	0
15	Jharkhand	7	33	Uttar Pradesh	363
16	Karnataka	79	34	Uttarakhand	7
17	Kerala	147	35	West Bengal	0
18	Lakshadweep	0		Total	1094

ANNEXURE-II

STATE-WISE AND YEAR-WISE DETAILS OF MINORITY STATUS CERTIFICATES ISSUED AS ON 31.03.2017

State	Year-wise Breakup													Total No. of MSC	
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017		
1 Andaman	0	3	2	0	0	0	1	0	1	0	1	0	0	0	8
2 Andhra Pradesh	4	9	24	6	30	2	17	35	71	113	75	28	5	419	
3 Arunachal Pradesh	0	0	2	0	6	0	0	12	1	0	1	1	0	23	
4 Assam	0	2	0	17	2	13	111	32	16	9	7	5	2	216	
5 Bihar	1	2	20	17	3	3	27	6	15	10	12	14	9	139	
6 Chandigarh	0	2	3	1	1	1	3	1	4	2	0	2	0	20	
7 Chhattisgarh	0	1	4	5	7	55	91	3	24	28	10	3	0	231	
8 D&N Haveli	0	2	2	0	0	0	0	0	0	0	0	0	0	4	
9 Daman	0	1	0	0	0	0	0	0	0	0	0	0	0	1	
10 Delhi	2	36	8	15	10	14	33	37	28	27	12	23	2	247	
11 Goa	0	9	31	28	81	4	3	3	0	2	0	3	0	164	
12 Gujarat	0	3	3	5	8	5	5	0	2	4	7	13	1	56	
13 Haryana	0	20	12	3	4	0	24	23	27	13	16	18	2	162	

14	Himachal Pradesh	0	9	3	4	0	1	3	3	0	0	1	2	0	26
15	Jharkhand	0	2	15	13	3	1	4	15	21	11	6	10	0	101
16	Karnataka	0	4	26	15	11	9	12	43	105	186	157	84	14	666
17	Kerala	0	9	78	97	524	822	852	843	492	453	263	147	37	4617
18	Lakshadweep	0	0	0	0	0	0	0	0	0	0	0	0	0	0
19	Madhya Pradesh	0	15	19	12	23	23	58	73	64	62	49	43	12	453
20	Maharashtra	11	22	28	21	7	3	2	17	37	21	4	15	2	190
21	Manipur	0	1	0	1	0	0	32	0	1	0	0	1	0	36
22	Meghalaya	0	1	4	0	0	1	0	0	0	0	0	1	0	7
23	Mizoram	0	0	0	0	0	0	0	0	0	0	0	0	0	0
24	Nagaland	0	0	0	0	0	0	0	0	0	0	0	0	0	0
25	Orissa	0	14	16	23	6	12	6	2	4	4	1	21	1	110
26	Puducherry	0	2	13	0	3	0	0	1	1	0	1	3	2	26
27	Punjab	0	11	39	4	0	9	5	7	13	14	14	3	2	121
28	Rajasthan	0	2	22	37	20	4	2	0	4	8	1	3	1	104
29	Sikkim	0	3	13	0	1	0	0	0	1	0	0	0	0	18
30	Tamil Nadu	1	9	19	13	14	16	12	23	66	88	200	240	79	780
31	Telangana	0	0	0	0	0	0	0	0	0	8	60	67	0	135



State	Yearwise Breakup											Total No. of MSC		
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015		2016	2017
32 Tripura	0	0	0	1	6	0	0	4	0	2	0	0	0	13
33 Uttar Pradesh	1	107	99	48	59	114	253	692	593	435	183	366	73	3023
34 Uttarakhand	0	36	17	8	4	3	11	4	6	8	10	6	3	116
35 West Bengal	1	85	215	113	15	7	89	86	74	7	5	0	0	697
Total	21	422	737	507	848	1122	1656	1965	1671	1515	1096	1122	247	12929



ANNEXURE-III

LIST OF COMPETENT AUTHORITIES

S.No.	State	Competent Authority under Section 10	Authority under Section 12(B)
1.	Andhra Pradesh		Principal Secretary to Govt. (Ex-officio) Minorities Welfare Department A.P. Secretariat, Hyderabad (Andhra Pradesh) T : 040-2345 9290 Prisecy-mw@ap.gov.in
2.	Arunachal Pradesh	Deputy Secretary (Education) Govt. of Arunachal Pradesh Civil Secretariat, Education Branch, Block No. 1, 3 rd Floor, PO Itanagar-791 111 M : 096121 05080 dysecyedn@gmail.com	Deputy Secretary (Education) Govt. of Arunachal Pradesh Civil Secretariat, Education Branch, Block No. 1, 3 rd Floor, PO Itanagar-791 111 M : 096121 05080 dysecyedn@gmail.com
3.	Assam		Joint Secretary Education Department (Higher), Assam Secretariat, Block C, Secretariat Complex, Dispur, Guwahati-6 Assam
4.	Bihar		Secretary Human Resource Development Department, Government of Bihar, Secretariat, Patna, Bihar



S.No.	State	Competent Authority under Section 10	Authority under Section 12(B)
5.	Chhattisgarh	Joint Secretary House No. 42, Floral City, DUNDA, Old Dhamtary Road, Raipur (Chhattisgarh) T : 0771-2510088 M : 094255 98888	Joint Secretary House No. 42, Floral City, DUNDA, Old Dhamtary Road, Raipur (Chhattisgarh) T : 0771-2510088 M : 094255 98888
6.	Goa	Secretary (Home) Secretariat, Porvorim – Goa T : 0832-2419401 F : 0832-2415201 M: 07030297860 CS-goa@nic.in	Secretary (Home) Secretariat, Porvorim – Goa T : 0832-2419401 F : 0832-2415201 M: 07030297860 CS-goa@nic.in
7.	Gujarat		Commissioner of Schools, Commissionerate of Mid Day Meals and Schools, Government of Gujarat, Sector 10, Gandhinagar Commissioner of Technical Education 2 nd Floor, Block No. 2, Dr. Jivraj Mehta Bhavan, Gandhinagar-382 010 T : 079-2325 3546 F : 079-2325 3539 dteguj@yahoo.co.in
8.	Haryana	Nodal officer Deputy Director Directorate of Secondary Education, Haryana, Shiksha Sadan, 2 nd Floor, Sector-5, Panchkula (Haryana) dseps13@gmail.com	Finance Commissioner & Principal Secretary Education Department, Government of Haryana, Civil Secretariat, Chandigarh, Haryana – 160 001



S.No.	State	Competent Authority under Section 10	Authority under Section 12(B)
9.	Himachal Pradesh	Director of Higher Education Shimla –I Himachal Pradesh T : 0177-2656621 Dir.edu@rediffmail.com	Director Higher Education Department, Government of Himachal Pradesh, Shimla – 1, dir.edu@rediffmail.com
10.	J&K	NCMEI Act not applicable	
11.	Jharkhand	Director, Primary Education Jharkhand, Ranchi Directorate of Primary Education School Education & Literacy Department, Jharkhand, Ranchi T : 0651-2401797, 2401733 M : 09431108397 Primaru896@gmail.com	Director, Secondary Education Directorate of Secondary Education School Education & Literacy Department, Jharkhand, Ranchi T : 0651-2400973 M : 09431114939, 09430177777 dirseccednjhk@rediffmail.com
12.	Karnataka		The Principal Secretary or Secretary to Govt. Higher Education Department Govt. of Karnataka Karnataka Government Secretariat Multi Storeyed Building, Bangalore (Karnataka) (For Collegiate Education Institutions and Technical Education Institutions) Sowjanya, IAS Commissioner Department of Public Instruction, Nrupatunga Road, Bangalore-560001 T : 080-22214350 / 080- 22213766



S.No.	State	Competent Authority under Section 10	Authority under Section 12(B)
			<p>F : 080-22212137 M : 09448999302 Cpi.edu.sgkar@kar.nic.in</p> <p>The Principal Secretary Education Department (Higher Education) Room No. 645, 6th Floor, M.S. Building, Bangalore-560001</p> <p>The Principal Secretary Medical Education Department Room No.610, 6th Floor, 4th Gate, M.S. Buildings, Bangalore (Karnataka)</p>
13.	Kerala		<p>SecretaryGeneral Education Department, Government of Kerala, Thiruvananthapuram, Kerala</p> <p>Principal Secretary Higher Education Department, Government of Kerala, Thiruvananthapuram, Kerala</p>
14.	Madhya Pradesh		<p>Commissioner Backward Classes & Minority Welfare Department, Government of Madhya Pradesh, Satpura Bhawan, 2nd Floor, Arera Hills, Bhopal, Madhya Pradesh</p>
15.	Maharashtra		<p>Deputy Secretary Minorities Development Department Room No. 715,</p>



S.No.	State	Competent Authority under Section 10	Authority under Section 12(B)
			Mantralaya (Annexe), Mumbai-32T : 022-22830031 F : 022-22830626 M : 09967311158 Sandesh.tadvi@nic.in
16.	Manipur		Principal Secretary School Education Department, Government of Manipur
17.	Meghalaya	Shri W.R. Lyngdoh, IAS Secretary, Education Department Govt. of Meghalaya	Shri W.R. Lyngdoh, IAS Secretary, Education Department Govt. of Meghalaya
18.	Mizoram	Home Secretary Mizoram Secretariat, NCCT : 0389-2322411 F : 0389-2322745 M : 7085055193 cs_miz@rediffmail.com	Home Secretary Mizoram Secretariat, NCCT : 0389-2322411 F : 0389-2322745 M : 7085055193 cs_miz@rediffmail.com
19.	Nagaland	Addl. Director (HOD), School Education, Nagaland Directorate of School Education, Nagaland, Kohima – 797001 M : 094366 08991 T : 0370-2260110 (R) F : 0370-2260041 wonthungo@gmail.com	Addl. Director (HOD), School Education, Nagaland Directorate of School Education, Nagaland, Kohima – 797001 M : 094366 08991 T : 0370-2260110 (R) F : 0370-2260041 wonthungo@gmail.com
20.	Orissa		Principal Secretary School & Mass Education Department, Government of Orissa, Secretariat, Bhubaneshwar, Orissa – 751 001



S.No.	State	Competent Authority under Section 10	Authority under Section 12(B)
21.	Punjab		Secretary, Higher Education Department, Room No. 510, 5th Floor, Mini Sectt., Sector 9, Chandigarh
22.	Rajasthan	Addl. Chief Secretary to Govt. of Rajasthan Department of Minority Affairs & Waqf Room No. 8145, SSO Building, State Secretariat, Jaipur-302005 Rajasthan T : 0141-2227635 psmarajasthan@gmail.com	Addl. Chief Secretary to Govt. of Rajasthan Department of Minority Affairs & Waqf Room No. 8145, SSO Building, State Secretariat, Jaipur-302005 Rajasthan T : 0141-2227635 psmarajasthan@gmail.com
23.	Sikkim		The Director Academics, MDM and Languages Govt. of Sikkim Human Resource Development Department Gangtok, TASHillong-737101
24.	Tamil Nadu	Medical Education: Principal Secretary to Government, Health and Family Welfare Department Secretariat, Chennai, Tamil Nadu	Principal Secretary School Education Department, Government of Tamil Nadu, Fort St. George, Secretariat, Chennai, Tamil Nadu – 9 Principal Secretary Higher Education Department, Government of Tamil Nadu, Fort St. George, Secretariat, Chennai, Tamil Nadu – 9 Medical Education : Principal Secretary to Government, Health and Family Welfare



S.No.	State	Competent Authority under Section 10	Authority under Section 12(B)
			Department Secretariat, Chennai, Tamil Nadu
25.	Tripura		Secretary, Minorities Welfare Department, Govt. of Tripura Civil Secretariat, Capital Complex, Agartala, Tripura T : 0381-2412943 F : 0381-2412943 M : 09436167018 Secretary_Tripura@yahoo.in
26.	Telangana	Secretary to Govt.Minorities Welfare Department D-Block, Ground Floor, Telangana Secretariat, Hyderabad-500 022 T : 040-23452983 F : 040-23459906 M : 09441481455 Secy.mwts@gmail.com	Secretary to Govt. Minorities Welfare Department D-Block, Ground Floor, Telangana Secretariat, Hyderabad-500 022 T : 040-23452983 F : 040-23459906 M : 09441481455 Secy.mwts@gmail.com
27.	Uttar Pradesh	Principal Secretary, Higher Education, Department of Education Government of UP (For Higher Educational Institutions) Shri Anil Garg Secretary Department of Higher Education Government of UP 11, Naveen Bhawan, Secretariat, Lucknow (UP)	Deputy Director Minorities Welfare Department, 6th Floor, Indira Bhavan, Lucknow Uttar Pradesh



S.No.	State	Competent Authority under Section 10	Authority under Section 12(B)
		Principal Secretary, Technical Education, Department of Education Government of UP (For Technical Educational Institutions)	
		Mrs. Monika S. Garg, Principal Secretary Technical Education Government of UP 03, Naveen Bhawan, Secretariat, Lucknow (UP)	
		Principal Secretary, Professional Education, Department of Education Government of UP (For Professional Educational Institutions)	
		Shri Bhuvnesh Kumar Secretary Professional Education Government of UP R.N.-19. 3 rd Floor, Sachiv Bhawan Secretariat, Lucknow (UP)	
		Principal Secretary, Secondary Education, Department of Education Government of UP (For Affiliation of the school with the Central Board of Secondary Education)	
		Shri Jitendra Kumar Principal Secretary Secondary Education	



S.No.	State	Competent Authority under Section 10	Authority under Section 12(B)
		CBSER.N. 15, Naveen Bhawan Secretariat, Lucknow (UP)	
28.	Uttarakhand		Secretary School Education Department, Government of Uttarakhand, Mayor Vihar, Sahastra Dhara Road, Dehradun, Uttarakhand
29.	West Bengal	WBCS (Exe) Joint Secretary Minority Affairs & Madrasah Education Department, Govt. of West Bengal Nabanna, 325, Sarat Chatterjee Road, Howrah – 711102 T : 033-2253 5086 M : 09433154182 jssamamewb@gmail.com	WBCS (Exe) Joint Secretary Minority Affairs & Madrasah Education Department, Govt. of West Bengal Nabanna, 325, Sarat Chatterjee Road, Howrah – 711102 T : 033-2253 5086 M : 09433154182 jssamamewb@gmail.com
30.	Andaman & Nicobar		Principal Secretary (Edn.) / Chairman MEI A&N Administration Secretariat, Port Blair T : 03192-233364 F : 03192-232236 M : 9434287044 Udevelop.and@nic.in Secretary-cum-Director (Edn.) A&N Administration Secretariat, Port Blair T : 03192-230661 F : 03192-230101 M : 9434282040 secedn@nic.in



S.No.	State	Competent Authority under Section 10	Authority under Section 12(B)
31.	Chandigarh	Director School Education, Chandigarh Additional Deluxe Building, 1st Floor, Sector- 9, Chandigarh-160009 T : 0172-2740411 F : 0172-2740695 M : 9781331102 dpi-chd@nic.in	Director School Education, Chandigarh Additional Deluxe Building, 1st Floor, Sector-9, Chandigarh-160009 T : 0172-2740411 F : 0172-2740695 M : 9781331102 dpi-chd@nic.in
32.	Dadar & Nagar Haveli		
33.	Daman & Diu	Director (Education) Secretariat, Moti Daman T : 0260-2231170 / 2230088 F : 0260-2231170 M : 9873550675 Adedn-dmn-dd@nic.in	Asstt. Director (Education) Directorate of Education, Nani Daman T : 0260-2255126 F : 0260-2255126 M : 09979496181 Daman.education@gmail.com
34.	Delhi		Assistant Director of Education (ACT) Directorate of Education, Government of NCT of Delhi, R. No. 214-A, Old Secretariat, Delhi – 110 054
35.	Lakshadweep		
36.	Puducherry	For School level educational institutions The Secretary to Govt. (Education), Puducherry Thiru G. Ragesh Chandra, IAS Secretary to Government (Education) Chief Secretariat No. 1, Goubert Avenue, Beach Road,	Director of Education Higher Education Department, Govt. of NCT of Delhi, 5, Shyamnath Marg, Delhi-110054



S.No.	State	Competent Authority under Section 10	Authority under Section 12(B)
		<p>Puducherry – 605001 T : 0413-2233308 Secyedn.pon@nic.in</p> <p>For Higher level educational institutions - The Administrator Puducherry Lt. General Ajay Kumar Singh PVSM, AVSM, SM (Retd.) Hon'ble Lieutenant Governor Raj Nivas, No. 1, Ranga Pillai Street, Puducherry-605 001 T : 0413-2334 051 lg.pon@nic.in</p>	

