

## **CHAPTER 1 – INTRODUCTION**

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 8<sup>th</sup> Annual Report of the Commission for the financial year 2012-13. The report gives a complete account of all its activities during the previous financial year.

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 HRD 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.

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

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

**NCMEI (Amendment) Act, 2006:** On the basis of the suggestions received from various quarters for making the Commission more proactive and its functioning more specific, recommendations were made by the Commission to the

Government for carrying out amendments to the Act. The Government introduced the National Commission for Minority Educational Institutions (Amendment) Bill 2005 in Parliament. However, in the wake of 93<sup>rd</sup> 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 23<sup>rd</sup> 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 29<sup>th</sup> March, 2006.

The amendment under the National Commission for Minority Educational Institutions Amendment Act, 2006 brought all affiliating universities within the ambit of the Act to afford a wider choice to the minority educational institutions with regard to affiliation. New Sections were incorporated to maintain the sanctity of the proceedings of the Commission and to amplify the powers of the Commission to enquire into matters relating to deprivation of educational rights of the minorities by drafting the services of any officer of the Central or State Governments. The Commission was empowered to decide on questions relating to Minority Status of educational institutions and to cancel the Minority Status of those institutions which had failed to adhere to the approved norms. A deeming provision with reference to obtaining 'No Objection Certificate(NOC)' by the minority educational institutions from the State Governments was also incorporated, 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, among others, Section 12F under which the jurisdiction of all courts, except the Supreme Court and High Courts exercising writ jurisdiction, was barred to entertain any direct applications or other proceeding in

respect of any order of the Commission. Section 12F of NCMEI Act, 2004 reads as under:

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

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

## **NCMEI Amendment Act 2010**

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

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

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

<b>S. No.</b>	<b>Name of Post</b>	<b>Number</b>
1.	Secretary	1
2.	Deputy Secretary	1
3.	Sr. PPS	1
4.	Under Secretary	1
5.	Section Officer	1
6.	Private Secretary	5
7.	Assistant	1

8.	Personal Assistant	5
9.	Librarian	1
10.	Accountant	1
11.	Urdu Translator	1
12.	Stenographer Gr. 'D'	3
13.	Reader/ UDC	1
14.	LDC	2
15.	Staff Car Driver	1
16.	Daftry	1
17.	Peon	6
	<b>Total</b>	<b>33</b>

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

## **CHAPTER 2 – COMPOSITION AND FUNCTIONS OF THE COMMISSION**

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

The Government issued notification on 26th November 2004 appointing Justice M.S.A. Siddiqui as the first Chairperson and Shri B.S. Ramoowalia and Shri Valson Thampu as the first Members of the Commission. Shri Valson Thampu resigned as Member of the Commission w.e.f. 11th September 2007. Thereafter, Smt. Vasanthi Stanley was appointed as the Member and on her resignation on 5th March, 2008, Sr. Jessy Kurian was appointed as Member on 27th, March 2008. Shri B.S. Ramoowalia resigned as Member on 31.3.2009. On completion of the tenure of 5 years, Justice M.S.A. Siddiqui, Chairman relinquished the charge on 28.11.2009 and Sr. Jessy Kurian completed her tenure on 5.12.2009. The Government appointed Justice M.S.A. Siddiqui as the Chairperson of the Commission for a further term of 5 years and he assumed charge on 18.12.2009. Dr. Mohinder Singh and Dr. Cyriac Thomas 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.

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

- (a) Government or any State Government on any question relating to the education of minorities that may be referred to it;
- (b) enquire, *suo motu*, or on a petition presented to it by any Minority Educational Institution, or any person on its behalf into complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of

their choice and any dispute relating to affiliation to a University and report its finding to the appropriate Government for its implementation;

(c) intervene in any proceeding involving any deprivation or violation of the educational rights of the minorities before a court with the leave of such court;

(d) review the safeguards provided by or under the Constitution, or any law for the time being in force, for the protection of educational rights of the minorities and recommend measures for their effective implementation;

(e) specify measures to promote and preserve the minority status and character of institutions of their choice established by minorities;

(f) decide all questions relating to the status of any institution as a Minority Educational Institution and declare its status as such;

(g) to the appropriate Government for the effective implementation of programmes and schemes relating to the Minority Educational Institutions; and

(h) do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission. The Commission is a quasi judicial body and has been endowed with the powers of a Civil Court for the purpose of discharging its functions under the Act. The powers of the Commission includes:-

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

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

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

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

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

The Commission has also powers to call for information while enquiring into the complaints of violation or deprivation of the educational rights of the minorities. Where an enquiry establishes violation or deprivation of educational rights of the minorities by a public servant, Commission may recommend to the concerned Government or authority to initiate disciplinary proceedings or such other legal or administrative action against the concerned person or persons as it may deem fit.

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



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

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

### **CHAPTER 3 – SITTINGS OF THE COMMISSION**

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

During the year 2012-13 the Commission conducted a total number of 171 sittings as a court and heard 4269 cases as per details given below:

#### **Details of Court Sitting from 01.04.2012 to 31.03.2013**

<b>S. No.</b>	<b>Date of Sittings</b>	<b>Number of Cases</b>
1	02.4.2012	23
2	03.4.2012	22
3	04.4.2012	21
4	10.4.2012	25
5	11.4.2012	28
6	12.4.2012	22
7	16.4.2012	32
8	17.4.2012	22
9	18.4.2012	21
10	19.4.2012	22
11	23.4.2012	23
12	24.4.2012	21
13	25.4.2012	32
14	30.4.2012	26
15	01.5.2012	18
16	02.5.2012	1
17	03.5.2012	21
18	07.5.2012	10
19	08.5.2012	21
20	09.5.2012	23

21	10.5.2012	24
22	14.5.2012	24
23	15.5.2012	26
24	16.5.2012	27
25	17.5.2012	29
26	21.5.2012	25
27	22.5.2012	20
28	23.5.2012	30
29	24.5.2012	25
30	28.5.2012	26
31	29.5.2012	28
32	30.5.2012	26
33	31.5.2012	23
34	01.6.2012	1
35	04.6.2012	22
36	05.6.2012	20
37	06.6.2012	19
38	11.6.2012	26
39	12.6.2012	21
40	13.6.2012	39
41	02.7.2012	25
42	03.7.2012	19
43	04.7.2012	23
44	05.7.2012	19
45	09.7.2012	24
46	10.7.2012	18
47	11.7.2012	21
48	12.7.2012	22
49	13.7.2012	18
50	16.7.2012	19
51	17.7.2012	21
52	18.7.2012	26
53	19.7.2012	19
54	23.7.2012	30
55	24.7.2012	21
56	25.7.2012	28

57	26.7.2012	16
58	30.7.2012	20
59	31.7.2012	22
60	01.8.2012	29
61	06.8.2012	35
62	07.8.2012	17
63	08.8.2012	24
64	09.8.2012	21
65	13.8.2012	3
66	14.8.2012	20
67	16.8.2012	18
68	21.8.2012	19
69	22.8.2012	27
70	23.8.2012	5
71	27.8.2012	36
72	28.8.2012	19
73	29.8.2012	26
74	30.8.2012	22
75	03.9.2012	26
76	04.9.2012	19
77	05.9.2012	21
78	10.9.2012	27
79	11.9.2012	22
80	12.9.2012	26
81	13.9.2012	22
82	17.9.2012	29
83	18.9.2012	19
84	19.9.2012	23
85	20.9.2012	32
86	24.9.2012	39
87	25.9.2012	23
88	26.9.2012	26
89	27.9.2012	23
90	01.10.2012	21
91	03.10.2012	29
92	04.10.2012	24

93	08.10.2012	29
94	09.10.2012	23
95	10.10.2012	23
96	11.10.2012	22
97	15.10.2012	21
98	16.10.2012	22
99	17.10.2012	26
100	18.10.2012	22
101	22.10.2012	27
102	23.10.2012	23
103	05.11.2012	43
104	06.11.2012	25
105	07.11.2012	24
106	08.11.2012	27
107	12.11.2012	26
108	14.11.2012	32
109	15.11.2012	49
110	19.11.2012	24
111	20.11.2012	36
112	21.11.2012	27
113	22.11.2012	20
114	26.11.2012	24
115	27.11.2012	23
116	29.11.2012	22
117	03.12.2012	21
118	04.12.2012	45
119	05.12.2012	23
120	06.12.2012	25
121	10.12.2012	28
122	11.12.2012	28
123	12.12.2012	25
124	13.12.2012	28
125	17.12.2012	28
126	18.12.2012	23
127	19.12.2012	24
128	20.12.2012	46

129	02.1.2013	22
130	03.1.2013	35
131	07.1.2013	36
132	08.1.2013	27
133	09.1.2013	28
134	10.1.2013	24
135	14.1.2013	27
136	15.1.2013	29
137	16.1.2013	22
138	17.1.2013	29
139	18.1.2013	1
140	21.1.2013	31
141	22.1.2013	30
142	23.1.2013	24
143	24.1.20.13	21
144	28.1.2013	47
145	29.1.2013	29
146	30.1.2013	29
147	31.1.2013	34
148	04.2.2013	29
149	05.2.2013	27
150	06.2.2013	22
151	07.2.2013	27
152	11.2.2013	26
153	13.2.2013	30
154	14.2.2013	41
155	20.2.2013	48
156	21.2.2013	30
157	25.2.2013	25
158	26.2.2013	23
159	27.2.2013	24
160	28.2.2013	21
161	04.3.2013	48
162	05.3.2013	22
163	06.3.2013	27
164	12.3.2013	27

165	13.3.2013	22
166	14.3.2013	22
167	19.3.2013	24
168	20.3.2013	26
169	21.3.2013	20
170	25.3.2013	30
171	26.3.2013	21
	<b>Total</b>	<b>4269</b>

The Commission conducted more sittings as compared to the previous year 2011-12 and also heard more cases than the previous year.

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

<b>Year</b>	<b>Sitting</b>	<b>Cases</b>
2005-06	45	1404
2006-07	80	3932
2007-08	73	2916
2008-09	93	3506
2009-10	121	4377
2010-11	130	4774
2011-12	162	5022
2012-13	171	4269

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

Maximum number of 19 sittings was held in the month of May and July 2012 and January 2013. This was followed by 15 sittings in the month of August and

September 2012. Every endeavor has been made to conduct as many number of sittings on as many number of days as possible and also to list maximum number of cases in each of its sittings.

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

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



## **CHAPTER 4 – 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 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 the Website of NCMEI viz [www.ncmei.gov.in](http://www.ncmei.gov.in) under the Right to Information Act, 2005. During 2012-13, Shri D.R. Bhalla, Deputy Secretary, NCMEI functioned as 'Public Information Officer' and Hon'ble Chairman, NCMEI was the 'Appellate Authority'.

During the year under report the Commission received 101 RTI application and 9 appeals. All the applications/appeals were disposed of within the prescribed time limit.

## **CHAPTER 5 – HIGHLIGHTS OF THE YEAR**

The Commission being a quasi-judicial autonomous tribunal, the core function of the Commission relates to adjudicatory and appellate jurisdiction.

During the year under report, the Commission registered 2770 petitions and issued 1790 Minority Status Certificate to Minority Educational Institutions. Details of State-wise minority status certificate issued is at **Annexure-I**.

The Commission felt that the education of minorities in general and minority girls in particular needs focused attention. Educational backwardness particularly in the Muslim community is one of the main causes for the real and perceived alienation of Muslims. With a view to create awareness among the minorities and to give fillip to minority education, the Commission constituted a Committee on Girls Education. The Committee was mandated to look into the pros and cons of the issue to evolve the modalities for providing education of the girl child more effectively and also look into the ways for improving the educational standard of girl child which continues to suffer neglect particularly in the case of Muslim girls. The Committee was directed to recommend ways and means to ameliorate the bleak situation of the general education of girl child keeping in view the provisions of the Right of Children to Free and Compulsory Education Act, 2009.

The Committee held regional seminars in different cities and prepared a report titled “Report and Recommendations on Minority Girls’ Education”. The said report of the Committee on Girls Education was presented to the Government on the Eighth Foundation Day function of the Commission held on 28.12.2012 at Mavalankar Auditorium Rafi Marg, New Delhi. The function was presided over by Dr. M.M. Pallam Raju, Hon’ble Minister for Human Resource Development, Government of India as the Chief Guest. Other dignitaries included Dr. K. Rahman Khan, Hon’ble Minister for Minority Affairs as the Special Guest and Shri Jitin Prasada, Hon’ble Minister of State for Human Resource Development, Government of India.

The report of the Committee has been lauded by media and the press equivocally. A copy of the report is available on the website of the Commission.

In the wake of disturbances in Jammu & Kashmir State resulting in the closure of educational institutions for a long time and students particularly from the Kashmir Valley suffering educational discontinuity, Hon'ble Chairman visited Kashmir and had interaction with the students and other stakeholders from the valley. It was observed that the students were not only feeling depressed and alienated but also terribly frustrated due to continued disturbances in the valley.

In view of the appalling conditions prevailing in the valley, Hon'ble Chairman took up the issue with Hon'ble Prime Minister of India. Copy of the letter written by Hon'ble Chairman to the Hon'ble Prime Minister of India is at **Annexure-II**.

Acting on the suggestion made by Hon'ble Chairman, Prime Minister's Office took up the issue with the Ministry of Human Resource Development. Ministry of Human Resource Development vide their letter dated 6.1.2012 informed the Hon'ble Chairman about the remedial measures taken by them and Educational Schemes launched by Central Government. Copy of the letter of the Ministry of Human Resource Development is at **Annexure-III**.

On the initiative of the Commission, National Institute of Open Schooling (NIOS) undertook accreditation to those Madarsas for running NIOS Academic, Vocational and Open Basic Education Programme, who have been granted minority status by the Commission.

On 7.3.2013, Hon'ble Chairman met Shri Ajay Vishnoi, Hon'ble Minister for Minority Welfare, Government of Madhya Pradesh and Shri Raghuveer Shrivastav, Commissioner, Backward Classes and Minority Welfare, Madhya Pradesh. During the discussion the issue of temporary minority status certificate to minority educational institution was discussed. Hon'ble Minister was apprised of the various judicial pronouncements by the apex Courts. The Hon'ble Minister for Minority Welfare assured that the practice of issuing temporary minority status certificates will be discontinued and such of the minority educational institutions declared as minority educational institutions by the Commission shall be treated as minority educational institutions by the Government of Madhya Pradesh. Copy of the Minutes of the meeting is at **Annexure-IV**.

In the backdrop of communal riots, the Committee on Girls' Education under the aegis of National Commission for Minority Educational Institutions organized a seminar on 'Educational Rehabilitation of Strife Affected Students of BTAD' on 8.9.2012 at Guwahati. The Seminar was inaugurated by the Hon'ble Chairman and attended by the managers of all premier Muslim educational institutions of the country.

As a result of the appeal made by Hon'ble Chairman, the managers of the minority educational institutions adopted a resolution. The main features of the resolution were as under.

- i. Students affected by the strife should be divided into 3 categories:
  - a. Students studying in primary schools;
  - b. Students studying in higher educational institutions;
  - c. Girl students.
- ii. All the educational institutions established by the Muslim Community, shall adopt students affected by the strife, irrespective of their caste, creed and religion, according to their intake capacity for educational rehabilitation of students affected by strife. Even the Bodo children shall be adopted by these institutions, if desired by their parents or their wards.
- iii. If the adopted child does not want to go out of his home district, local arrangements shall be made by the educational institution concerned, for providing education to them at their expenses.
- iv. If any student affected by the strife has been pursuing higher studies at any place in the State of Assam, all the expenses relating to his educational activities shall be borne by the educational institution concerned.
- v. The RD Foundation shall help educational institutions concerned in securing requisite documents for admission of the adopted students.

- vi. As far as possible, the educational institutions concerned shall try to keep the family bond of the adopted students live through regular correspondence and other available modes of communication.
- vii. Some of the minority professional institutions of Maharashtra, Karnataka and Kerala had offered to reserve a few seats in medical colleges, dental colleges, engineering colleges and other similar professional colleges for the students affected by the strife.
- viii. Two CBSE affiliated schools shall be established at Guwahati or in the strife affected areas to cater to the needs of the students affected by the harvest of hate. This project shall be funded by some Muslim philanthropists. Some of the participants had announced their share of good will contributions for such a project.

Subsequently, the Hon'ble Chairman had a meeting with the Hon'ble Chief Minister of Assam where he apprised him about the need to educate the Muslims of Assam in general and girls in particular. The Hon'ble Chief Minister, Assam assured that adequate and prompt steps will be taken to rehabilitate such persons affected by the strife. He also assured that the Government will construct a hostel at Guwahati to cater to the educational needs of the girls belonging to the minority communities of the State.

The Complete Report of the Hon'ble Chairman is at **Annexure-V**.

## **CHAPTER 6 – TOURS AND VISITS**

The basic purpose of undertaking visits by Hon'ble Chairman/Members is to interact with the stakeholders and members of the minority community with a view to understand problems/difficulties faced by the various stakeholders and to provide them with a forum for discussion of their problems. This also affords an opportunity to the Commission to apprise the members of the minority community about their Constitutional rights as well as the role and responsibilities of the Commission. This opportunity is also made use of for interacting with some of the political functionaries and the bureaucracies in various State 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.

### **Details of the tours undertaken by the Hon'ble Chairman to various places during the year 2012-13 are as under:-**

<b>S. No.</b>	<b>Dates of Tour</b>	<b>Stations visited</b>
1.	1 <sup>st</sup> to 4 <sup>th</sup> March 2012	Kochi
2.	7 <sup>th</sup> to 9 <sup>th</sup> March 2012	Kolkata
3.	10 <sup>th</sup> to 12 <sup>th</sup> March 2012	Lucknow, Barabanki
4.	22 <sup>nd</sup> to 24 <sup>th</sup> March 2012	Kurukshetra
5.	31 <sup>st</sup> March to 1 <sup>st</sup> April 2012	Kanpur
6.	8 <sup>th</sup> to 9 <sup>th</sup> April 2012	Moradabad, Amroha
7.	12 <sup>th</sup> to 15 <sup>th</sup> April 2012	Lucknow
8.	26 <sup>th</sup> to 27 <sup>th</sup> April 2012	Aligarh
9.	29 <sup>th</sup> April 2012	Faridabad
10.	5 <sup>th</sup> May 2012	Jaipur
11.	26.5.2012	Meerut
12.	7 <sup>th</sup> to 9 <sup>th</sup> June 2012	Aurangabad
13.	14 <sup>th</sup> to 16 <sup>th</sup> June 2012	Kozhikode
14.	13 <sup>th</sup> to 16 <sup>th</sup> July 2012	Kochi
15.	2 <sup>nd</sup> September 2012	Nuh, Haryana
16.	5 <sup>th</sup> to 9 <sup>th</sup> September 2012	Kolkata, Murshidabad, Guwahati

17.	17 <sup>th</sup> to 19 <sup>th</sup> September 2012	Moradabad, Rampur
18.	30 <sup>th</sup> September to 2 <sup>nd</sup> October 2012	Coimbatore, Mannarcad
19.	5 <sup>th</sup> to 7 <sup>th</sup> October 2012	Bagdogra, Siliguri
20.	12 <sup>th</sup> to 14 <sup>th</sup> October 2012	Lucknow, Sultanpur
21.	19 <sup>th</sup> to 20 <sup>th</sup> October 2012	Aligarh, Hathras
22.	20 <sup>th</sup> October 2012	Aligarh
23.	24 <sup>th</sup> to 31 <sup>st</sup> October 2012	Jabalpur
24.	4 <sup>th</sup> to 5 <sup>th</sup> November 2012	Lucknow
25.	9 <sup>th</sup> to 13 <sup>th</sup> November 2012	Kolkata, Silchar
26.	14 <sup>th</sup> November 2012	Guwahati
27.	17 <sup>th</sup> to 19 <sup>th</sup> 2012	Kochi, Trivandrum
28.	29 <sup>th</sup> to 31 <sup>st</sup> December 2012	Hyderabad
29.	2 <sup>nd</sup> January 2013	Moradabad, Rampur
30.	22 <sup>nd</sup> to 24 <sup>th</sup> 2013	Chennai
31.	9 <sup>th</sup> February 2013	Aligarh
32.	11 <sup>th</sup> to 12 <sup>th</sup> February 2013	Ajmer
33.	14 <sup>th</sup> to 16 <sup>th</sup> February 2013	Bhopal
34.	15 <sup>th</sup> to 19 <sup>th</sup> February 2013	Mangalore, Vadakara, Kozhikode
35.	28 <sup>th</sup> February to 3 <sup>rd</sup> March 2013	Aurangabad
36.	6 <sup>th</sup> to 8 <sup>th</sup> March 2013	Bhopal
37.	9 <sup>th</sup> to 11 <sup>th</sup> March 2013	Kolkata

**Details of the tours undertaken by the Hon'ble Members to various places during the year 2012-13 are as under:-**

**Dr. Mohinder Singh, Hon'ble Member**

<b>S. No.</b>	<b>Dates of Tour</b>	<b>Stations visited</b>
1.	3 <sup>rd</sup> to 4 <sup>th</sup> September 2012	Chandigarh, Punjab
2.	21 <sup>st</sup> January 2013	Allahabad, Uttar Pradesh
3.	8 <sup>th</sup> February 2013	Chandigarh, Punjab
4.	15 <sup>th</sup> to 17 <sup>th</sup> March 2013	Patiala, Punjab

**Dr. Cyriac Thomas, Hon'ble Member**

<b>S. No.</b>	<b>Dates of Tour</b>	<b>Stations visited</b>
1.	10 <sup>th</sup> April 2012	Trichur, Kerala
2.	5 <sup>th</sup> June 2012	Palai, Kerala
3.	18 <sup>th</sup> June 2012	Mavelikkarra and Palai, Kerala
4.	25 <sup>th</sup> June 2012	Thamarassery (Calicut) and Rajapuram (Kannur), Kerala.
5.	15 <sup>th</sup> July 2012	Trivandrum, Kerala
6.	4 <sup>th</sup> to 5 <sup>th</sup> September 2012	Jalandhar, Punjab
7.	2 <sup>nd</sup> October 2012	Keezhvaypoor, Thiruvalla, Kerala.
8.	31 <sup>st</sup> October 2012	Kottayam, Kerala.
9.	7 <sup>th</sup> November 2012	Gorakhpur, Uttar Pradesh
10.	26 <sup>th</sup> November 2012	Kanjirappally, Kerala
11.	1 <sup>st</sup> December 2012	Mysore, Karnataka
12.	23 <sup>rd</sup> December 2012	Kochi, Mavelikkara, Kerala
13.	29 <sup>th</sup> December 2012	Thodupuzha, Kerala
14.	8 <sup>th</sup> February 2013	Angamaly, Kochi, Kerala
15.	9 <sup>th</sup> February 2013	Thankamani, Kattappana, Kerala
16.	14 <sup>th</sup> February 2013	Calicut, Kerala
17.	15 <sup>th</sup> February 2013	Palai, Kerala
18.	17 <sup>th</sup> February 2013	Pune, Maharashtra
19.	7 <sup>th</sup> March 2013	Aruvithura, Kerala
20.	15 <sup>th</sup> March 2013	Puttady, Idukki Distt. and Pathanamthitta Distt., Kerala.

**Shri Zafar Agha, Hon'ble Member**

<b>S. No.</b>	<b>Dates of Tour</b>	<b>Stations visited</b>
1.	9 <sup>th</sup> February 2013	Aligarh, Uttar Pradesh
2.	15 <sup>th</sup> to 17 <sup>th</sup> February 2013	Kasargode and Vadakara, Kerala
3.	17 <sup>th</sup> March 2013	Moradabad, Uttar Pradesh
4.	22 <sup>nd</sup> March 2013	Faridabad, Haryana



1. On 7<sup>th</sup> April 2012, Dr. Mohinder Singh, Hon'ble Member was invited to chair a meeting of the Punjabi Academy, Punjabi Promotion Council and other organizations where he discussed difficulties being faced in the implementation of Delhi Government's decision of promoting Punjabi and Urdu languages as optional subjects for schools where students were opting for these languages. During a meeting, the Hon'ble Member mentioned how the National Commission for Minority Educational Institutions was helping in the implementation of the Delhi Government's decision to promote Urdu and Punjabi as optional languages for school children.
2. Hon'ble Member Dr. Cyriac Thomas addressed a Media Seminar at Trichur (Kerala) on 10<sup>th</sup> April 2012, organized in connection with the 120<sup>th</sup> year celebration of Deepika, the first Malayalam daily and the first Catholic Print Media founded by the Congregation of the Mary Immaculate (CMI). Hon'ble Member delivered the Key note Address on "Democratic Society and Value Concepts: the Role of the Media".
3. On 13<sup>th</sup> April 2012, Dr. Mohinder Singh, Hon'ble Member spoke at a Panel on Minority Educational Rights in the Constitution Club, New Delhi.
4. On 5<sup>th</sup> May 2012, on the invitation from All India Muslim Educational Society, Jaipur, Hon'ble Chairman attended the inaugural session of the All India Muslim Educational Society at Jaipur.
5. On 5<sup>th</sup> May 2012, the Dr. Mohinder Singh, Hon'ble Member was invited to chair a meeting jointly organized by Punjabi Academy Delhi and Bhai Vir Singh Sahitya Sadan which was attended by prominent scholars and writers for promoting Punjabi language and literature.
6. On 5<sup>th</sup> June 2012 Dr. Cyriac Thomas, Hon'ble Member inaugurated a National Seminar organized by University Grants Commission at St. Thomas Training College, Palai, Kerala and spoke on topic "Indian Democracy and Minority Rights". On 18<sup>th</sup> June, delivered "Raja Ravi Varma Memorial Lecture at Mavelikkarra (Kerala) on "Dimensions of Secularism: The Indian Realities". Also addressed the Meeting of the Elders Forum, Palai and spoke on "Secular India".

7. On 25<sup>th</sup> June 2012, Dr. Cyriac Thomas, Hon'ble Member addressed a Regional Seminar organized by the St. Thomas Academy of Research and Training (under the diocese of Thamarassery, Calicut) on "The Indian Constitution and the Sanctity of the Rights of Minorities". And on the 26<sup>th</sup> addressed a Teachers Seminar at the B.Ed College, Rajapuram (Kannur).
8. On 15<sup>th</sup> July 2012 Dr. Cyriac Thomas, Hon'ble Member visited Trivandrum and delivered "PattomThanu Pillai Memorial Lecture" organized by the Pattom Memorial Committee, (PattomThanu Pillai was one of Kerala's foremost Freedom Fighter and first Chief Minister) on "Indian Secularism: the Contemporary Relalities".
9. On 4<sup>th</sup> August 2012, Dr. Mohinder Singh, Hon'ble Member was invited as Guest of Honour at the monthly literary meet of the Punjabi Academy where eminent short story writers presented their new stories. During the follow-up discussion various scholars suggested that to promote Punjabi language, a concerted efforts should be made to ensure that Punjabi language was encouraged by both private and government schools in the national capital.
10. On 4<sup>th</sup> September 2012, Dr. Cyriac Thomas, Hon'ble Member visited Jalandhar (Punjab) and addressed the Priests Conference of the Catholic Diocese of Jalandhar. On the 5<sup>th</sup> addressed the Teachers Day Celebrations of the Jalandhar Catholic College and spoke on the "Pains and Pleasures of Teaching".
11. On 3<sup>rd</sup> to 4<sup>th</sup> September 2012, Dr. Mohinder Singh, Hon'ble Member visited Chandigarh where he was invited to address the Research Committee of Punjab Heritage and Tourism Promotional Board for Conserving Educational and Cultural Heritage of Punjab. During the meeting the Hon'ble Member discussed the evolution of education among Sikh community which combined traditional moral values and modern learning.
12. On 6<sup>th</sup> September 2012 on an invitation of the Managing Committee of All Bengal Federation of Minorities' Educational Institution, West Bengal, The Hon'ble Chairman attended a symposium on 'The Problems of Minorities in West Bengal and Remedial Measures'. On 8<sup>th</sup> September 2012, on an invitation from Mr. Mahbubul Hoque, Chairman, ERD Foundation, Guwahati, the Hon'ble Chairman had a meeting

with ERD Foundation to discuss the educational rehabilitation of students affected by strife in Bodoland Territorial Council areas of Assam.

13 On 1<sup>st</sup> October 2012, on the invitation of the Chairman, Indian Education Trust, Mannarkkad, Palakkad, Kerala, Hon'ble Chairman participated as the Chief Guest and inaugurated the Seminar on 'Empowerment of Minorities through Education; With Special Focus on Modernisation of Madrasa Education' at Mannarkkad.

14. On 2<sup>nd</sup> October 2012, Dr. Cyriac Thomas, Hon'ble Member addressed the Kerala Regional Conference of Principals of CBSE Schools of Ernakulam, Kochi and on 9<sup>th</sup> October 2012 participated at a Public Reception accorded to Hon'ble Shri P J Kurien, Deputy Chairman, Rajya Sabha at Keezhvaypoor (Thiruvalla).

15. On 16<sup>th</sup> October 2012, a book on Mother Teresa and Saint Sister Alphonsa, authored by Dr. Cyriac Thomas, Hon'ble Member was formally released by Hon'ble Shri Althamas Kabir, Chief Justice of India at Teen Murthi Auditorium, New Delhi presided over by Hon'ble Justice M S A Siddiqui, Chairman, NCMEI.

16. On 31<sup>st</sup> October, Dr. Cyriac Thomas, Hon'ble Member addressed the Indira Gandhi Seminar at D C Auditorium, Kottayam (Kerala) and spoke on the "Secular Legacy of Smt. Indira Gandhi."

17. On 7<sup>th</sup> November 2012 Dr. Cyriac Thomas, Hon'ble Member attended the Annual Day Celebrations of ST Joseph's School, Gorakhpur (UP) and addressed the parents and teachers.

18. On 10<sup>th</sup> November 2012, on invitation by Education, Research & Development Foundation, Guwahati, Hon'ble Chairman attended the laying Foundation Stone of Women College at Karimganj, Assam.

19. On 14<sup>th</sup> November 2012 on the invitation of Mr. Hambubul Hoque, Chairman, ERD Foundation, Guwahati, Hon'ble Chairman attended the flag off ceremony of the project of 'Educational Rehabilitation of students of Bodoland Territorial Area District (BTAD), Guwahati, Assam.

20. On 24<sup>th</sup> November 2012, Dr. Cyriac Thomas, Hon'ble Member was Chief Guest at the Parents Day, St Francis School, Janakpuri, New Delhi.

21. On 26<sup>th</sup> November 2012, Dr. Cyriac Thomas, Hon'ble Member attended the Presentation of Religious Fellowship Award to Dr APJ Abdul Kalam, Former President at Kanjirappally (Kerala) and spoke on "Secularism and Religious Harmony" at a meeting organized by the Eccumenical Forum.

Dr. Cyriac Thomas, Hon'ble Member also attended a Reception accorded by the Diocese of Palai on being conferred the title 'Star of the Church' by the Synod of Bishops headed by His Eminence Cardinal Mar George Alencherry.

22. On 1<sup>st</sup> December 2012 Dr. Cyriac Thomas, Hon'ble Member attended a Conference of Priests and Religious of the Catholic Diocese of Mandya (Mysore), Karnataka and spoke on Education and Minority Rights as also on the functioning of the NCMEI.

23. On 23<sup>rd</sup> December 2012 Dr. Cyriac Thomas, Hon'ble Member attended a public Reception to His Eminence Cardinal Baselios Cleemis, Vice President of the Catholic Bishops Conference of India on his elevation as Cardinal at Kochi and inaugurated the Meeting as Chief Guest. On the 27<sup>th</sup> attended the Consultation organized by His Excellency Joshua Mar Ignathios, Chairman, Education Commission of the Catholic Bishops Conference of India at Mavelikkara (Kerala) and also delivered the Christmas Message at a joint Christian Christmas Celebration.

24. On the 29<sup>th</sup> December 2012, Dr. Cyriac Thomas, Hon'ble Member inaugurated a Seminar on Natural Farming in the Kerala Agricultural Fest at Thodupuzha (Kerala) organized by Hon'ble Minister Shri P. J. Joseph, Chairman, Gandhiji Study Centre, Kerala.

25. On 29<sup>th</sup> December 2012 on the invitation received from Dr. Fakhruddin Mohammed, Hon. Secretary, MESCO, Hon'ble Chairman attended the Seminar on 'India Education Conclave 2012' as the Chief Guest.

26. On 2<sup>nd</sup> January 2013, on the invitation of Mr. Afaq Ahmad of Rampur, Hon'ble Chairman attended a Seminar on Minority Education at Rampur.

27. On 21<sup>st</sup> January 2013, Dr. Mohinder Singh, Hon'ble Member attended an academic meeting at G.B. Pant Social Science Institute, Allahabad on the invitation from University Grants Commission. During the meeting, Hon'ble Member mentioned how the Commission had become an instrument of social change by protecting the rights of the minorities enshrined in the Constitution of India.

28. On 8<sup>th</sup> February 2013, while addressing a meeting of the Directorate of Education of the Chandigarh office of the S.G.P.C., Dr. Mohinder Singh, Hon'ble Member mentioned about various schemes for the benefit of the minority communities and how the Commission was helping the minorities in getting their genuine grievances redressed.

29. On 8<sup>th</sup> February 2013 Dr. Cyriac Thomas, Member inaugurated the new building and campus of the Emirose Institute of Management of the Bharathiar University Centre at Angamaly (Kochi) and delivered the Keynote Address on Democracy and Qualities of Leadership.

On the 9<sup>th</sup> February 2013, Dr. Cyriac Thomas, Hon'ble Member addressed the teachers convention of the Catholic Diocese of Idukki at Thankamani (Kattappana) and spoke on the topic "Role of the Minority Institutions and Educational Excellence".

30. On the 14<sup>th</sup> February 2013 Dr. Cyriac Thomas, Hon'ble Member delivered a Lecture series in the St Thomas Academy of Research and Training, Calicut on Professional Options and Career Building in Personality Formation.

On the 15<sup>th</sup> February 2013, he addressed a Media Seminar organized by the Dept. of Malayalam in the St Thomas College, Palai on "Democracy and the Role of Media".

On the 17<sup>th</sup> February 2013, he attended an Educational Seminar organized by the Rosary Group of Educational Institutions, Pune (Maharashtra) and addressed the Conference on "Quality Education in Nation Building".

31. On 9<sup>th</sup> February 2013, Shri Zafar Agha, Hon'ble Member visited Aligarh, Uttar Pradesh to participate as the Chief Guest of the Seminar on "Promotion of education and proper guidance of the weaker sections of the Society" organized by the Get Well Charitable Society, Zohra Bagh, Aligarh, Uttar Pradesh. The above meeting was attended by stakeholders of Educational Institutions, educationalists, social activists, journalists, teachers etc. The Hon'ble Member also had a meeting with the Vice Chancellor of Aligarh Muslim University.

32. On 15<sup>th</sup> February 2013, Shri Zafar Agha, Hon'ble Member visited Kasarkode and Vadakara in Kerala to attend a Seminar on "Upliftment and Welfare of the minority managed institution" organized by the Minority Institutions Management Association, Kasarkode. On 16<sup>th</sup> February 2013, Hon'ble Member attended a leadership programme of Minorities organized by the Muslim Service Society, Kozhikode at Vadakara, Kozhikode. Eminent personalities from different parts of Kerala, particularly representatives of minority educational institutions attended the programme.

During the address, the Hon'ble Member explained the scope and objects of the National Commission for Minority Educational Institutions and also advised the minority educational institutions to uplift the quality of their education and teaching skills.

33. During the year long celebration of 150<sup>th</sup> years of Swami Vivekananda's birth, Dr. Mohinder Singh, Hon'ble Member was invited to present the Sikh Perspective on educational and moral values on 7<sup>th</sup> to 9<sup>th</sup> March 2013. The function was inaugurated by Shri Pranab Mukherjee, the President of India, in Rashtrapati Bhavan. Hon'ble Member was also invited to speak in functions in Delhi, Jaipur and other places where he emphasized the role of moral values in education. He stressed the need to combine higher professional qualifications with moral values in education which were essential for growth and development of the youth.

34. On 7<sup>th</sup> March 2013, Dr. Cyriac Thomas, Hon'ble Member inaugurated the Publications Department of St George College, Aruvithura (Kerala) and addressed a Seminar on 'Importance of Print Media and Democratic Society'.

35. On the 15<sup>th</sup> March 2013 Dr. Cyriac Thomas, Hon'ble Member attended a seminar in the Holy Cross College of Management, Puttady (Idukki dt.), Kerala on "The new dimensions of management education" and on the 16<sup>th</sup> addressed the Alumni Meeting of Bishop Abraham Memorial College, Thuruthikad (Pathanamthittadt.) and spoke on "The role of value education in contemporary social situations".

36. On 15<sup>th</sup> to 17<sup>th</sup> March 2013, at the invitation of the Punjabi University, Patiala, Dr. Mohinder Singh, Hon'ble Member addressed the Punjab History Conference as a Guest of Honour where he highlighted educational consciousness created by the Singh Sabha Movement.

37. On 17<sup>th</sup> March 2013, Shri Zafar Agha, Hon'ble Member visited Moradabad, Uttar Pradesh to be the Chief Guest of a Seminar on "Role and Importance of National Commission for Minority Educational Institutions for the upliftment of Minorities' at Muslim Degree College, Moradabad organized by Sir Syed Welfare Society, Moradabad. The said programme was attended by the managers, principals and other representatives of various minority educational institutions.

On 17<sup>th</sup> March 2013, Shri Zafar Agha, Hon'ble Member visited Faridabad, Haryana to be the Chief Guest of a Convocation and Degree Distribution Programme organized by Al-Falah School of Engineering and Technology, Dhauj, Faridabad, Haryana.

In the above two programmes, the Hon'ble Member deliberated the following: -

1. The importance of educational guidance to the Minorities.
2. The problems faced by the Muslim Minority Educational Institutions.
3. The real problem among Muslim minorities for the development is the lack of awareness about the minority rights.
4. details of various schemes provided by the Central Government for the development of Minority Educational Institutions and minority community.
5. Rights enshrined under Article 30(1) of the Constitution of India
6. Provisions of National Commission for Minority Educational Institutions Act and the Functions of the Commisison.
7. Importance of Minority Status certificate
8. Guidelines formulated by National Commission for Minority Educational Institutions regarding Recognition, Affiliation and Grant of Minority Status Certificate
9. Lack of awareness among the people is one of the major hurdles for the non implementation of the schemes



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

Right from its inception the Commission has been registering cases calendar year wise. During the year under report, the Commission registered 2770 petitions and issued 1790 Minority Status Certificate to Minority Educational Institutions.

The Commission registered cases on various issues such as; non-issue of NOC by the State Governments, delay in the issue of NOC, refusal and delay in the issue of minority status, refusal to allow opening of new colleges/schools/ institutions by minorities, refusal to allow additional courses in minority educational institutions, refusal/ delay in the release of grant-in-aid, refusal to give financial assistance, denial of permission to create new posts of teachers in minority educational institutions even though there was increase in number of students, approval of appointment of teachers being denied, inequality in pay scales of minority school teachers vis-à-vis government school teachers, denial of teaching aids/other facilities like computer, library, laboratory, etc. to minority educational institutions on par with government institutions, nonavailability 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, extension of Sarva Shiksha Abhiyan facilities to minority educational institutions especially in far flung and remote rural areas, etc.

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

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

### **Case No. 1679 of 2011**

#### **Petition to seek direction to the State Government to increase the units by sanctioning additional posts**

**Petitioner:** Islamia Urdu Middle School, Phulwari Sharif, Patna, Bihar

**Respondent:** 1. District Education Officer, District Patna, At Collectorate, Bihar.  
2. The Director, Primary Education, Department of HRD, Government of Bihar, New Secretariat, Bikas Bhawan, Patna, Bihar.  
3. The Secretary, Human Resource Development Department, Government of Bihar, New Secretariat, Vikas Bhavan, Patna, Bihar

By this petition, the petitioner institution seeks a direction to the State Government to increase the units by sanctioning additional posts of 17 teachers on the basis of increased enrolment and also to accord approval to fill up the vacant posts of two teacher namely, Mr. Naseem Ansari and Mr. Nayeemuddin who had superannuated on 31.3.2011 and 31.8.2011 respectively. The petitioner institution is a minority educational institution covered under Article 30(1) of the Constitution.

It is alleged that as per the policy decision of the State Government in minority educational institutions, the ratio of the teachers and students in the middle schools ought to be 1:40, but in the petitioner school, strength of the teachers has not been increased nor it has been maintained as per policy decision of the State Government. The petitioner institution has filed a writ petition No. CWJC 1380/99 in the High Court of Patna seeking a direction to the State Government to increase the units by sanctioning 13 additional posts on the basis of increased enrolment in the school. The said writ petition was disposed of by the order dated 4.5.2000, directing the Director, Primary Education and Secretary, Secondary, Primary and Adult Education to decide the petitioner's claim on the basis of the report as may be obtained. Pursuant to the said direction, the petitioner's claim was examined by the Special Director (Secondary Education), Government of Bihar and the matter was referred to the State Government for taking final decision as the power to sanction grant-in-aid vested with

the State Government vide Government Notification No. 2501 dated 31.12.1982. Thereupon, the matter was examined by the Minister concerned, who opined that a decision on the petitioner's claim can be taken after obtaining approval from the Finance Department. While the matter was pending before the Finance Department, the petitioner institution filed another Writ Petition C.W.J.C. No. 1408 of 2003 in the High Court of Patna, seeking a direction to the State Government to increase the teaching units as per policy decision of the State Government dated 31.12.1982. By the order dated 13.1.2004, the Writ Petition was disposed of with the direction to the Commissioner-cum-Secretary, Finance Department, government of Bihar to decide the petitioner's claim on the basis of the recommendation of the Minister concerned within a period of four weeks. Pursuant to the said direction, the Finance Department considered and rejected the petitioner's claim vide orders dated 18.3.2004. Feeling aggrieved by the said order, the petitioner filed another Writ Petition No. C.W.J.C. No. 4456/2004 in the High court of Patna, which was dismissed as withdrawn vide order dated 17.8.2006.

It is alleged that the impugned action of the State Government in rejecting the petitioner's claim for increasing the teaching units of the school is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. It is also alleged that the State Government is not even allowing replacement of two retired teachers, namely Mr. Naseem Ansari and Mr. Nayeemuddin against the sanctioned posts. According to the petitioner, the aforesaid action of the State Government is also violative of the fundamental right guaranteed under Article 30(1) of the Constitution. Hence this petition.

Despite services of notices, none entered appearance on behalf of the respondents. It needs to be highlighted that pursuant to the order dated 31.1.2012, the Registrar of the Commission wrote a DO letter to the Secretary, HRD, Government of Bihar requesting him to file reply to the petition filed by the petitioner. Surprisingly it did not evoke any response from the said Secretary.

The point which arises for consideration is whether the impugned actions of the State Government are violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

As regards filling up vacant posts of teachers, the petitioner's case is that two teachers namely Mr. Naseem Ansari and Mr. Nayeemuddin were appointed against the sanctioned posts and since both the teachers have retired, management of the petitioner institution is entitled to appoint two teachers. In our considered opinion, the petitioner's case on this point merits acceptance. Admittedly, the petitioner institution is a minority educational institution and as such the petitioner is entitled to select and appoint its teaching and non-teaching staff. The role of the State Government or any statutory authority is limited to the extent of ensuring that teachers selected by management of a minority educational institution fulfill the requisite qualifications of eligibility prescribed therefor. (T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481). No prior approval of the State Government is needed for filling up a sanctioned post. It has been held by the Supreme court in Secretary Malankara Syrian Catholic College vs. T. Jose 2007 AIR SCW132 that " even if the institution is aided, there can be no interference with the said right. Subject to the eligibility conditions/ qualifications prescribed by the State or Regulating Authority being met, the minority educational institution will have the freedom to appoint Teachers/ Lecturers/

Headmasters/Principals by adopting any rational procedure of selection. The imposing of any trammel thereon except to the extent of prescribing the requisite qualifications and experience or otherwise fostering the interest of the institution itself cannot but be considered as a violation of the right guaranteed under Article 30(1) of the Constitution”

Article 30(1) of the Constitution is intended to instill confidence in minorities against any executive or legislative encroachment on their right to establish and administer educational institution of their choice. Article 30(1) though styled as a right, is more in the nature of protection of minorities. Article 30(1) was engrafted in the Constitution as a guarantee to the minorities. Needless to add here that the right to appoint teaching and non-teaching staff of a minority educational institution is a vital facet of the right to administer a minority institution.

Thus, the petitioner institution is entitled to select and appoint two teachers against the sanctioned posts, which have fallen vacant on superannuation of Mr. Naseem Ansari and Mr. Nayeemuddin. The sphinx silence of the respondent on the request of the management of the petitioner institution for selection and appointment of two teachers against the sanctioned posts is virtual negation of the constitutional protection enshrined in Article 30(1) of the Constitution.

As regards the petitioner’s second prayer for increasing teaching units, as per policy decision of the State Government dated 31.12.1982, it has to be borne in mind that it is a minority aided educational institution and recognized as such by the State government vide orders dated 23.2.1970. Thereafter, the students’ population in the petitioner school increased and the petitioner approached the State Government to

increase its teaching units in accordance with the policy decision, but in vain. Aggrieved by the decision of the State Government, the petitioner filed the W.P. No. 1380 of 1999 in the Patna High Court which was disposed of with the direction to the Director, Primary and Adult Education to take a decision in respect of the petitioner's claim within six months vide orders dated 4.5.2000. It transpires from the record that the petitioner's claim was accepted by the Minister concerned and he referred the matter to the Finance Department for approval. It is not in dispute that the petitioner's claim was neither approved nor rejected by the Finance Department. The petitioner, therefore, again approached the High court of Patna by filing the Writ Petition No. 1408/2003 which was disposed of with a direction to the Commissioner-cum-Secretary, Finance Department to take a decision upon the recommendation of the Minister concerned within a period of four weeks vide orders dated 13.1.2004. It appears that the since no order was passed by the Finance Department within the period prescribed by the Patna High Court, third writ petition (CWJC No. 4456 of 2004) was filed in the High Court, which was disposed of as withdrawn vide orders dated 17.8.2006. In the meantime, the Finance Department passed the order dated 18.3.2004 rejecting the petitioner's claim for increasing 23 additional teaching units.

It is alleged that on 17.12.2009, the Ministry of HRD, Government of Bihar had taken a decision fixing the upper limits of 12 teaching units for granting aid. It is beyond the pale of any controversy that the petitioner institution was recognized with grant in aid to eight teachers. As per the aforesaid decision of the State Government, the petitioner is entitled for at least 4 additional teaching units.

The issue raised herein can be examined primarily in the light of the observations made by the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8

SCC 481 it is therefore advisable to refer to the relevant observations of the Supreme Court in the aforesaid case touching upon the question of grant-in-aid. We may usefully excerpt the following observations :-

“As we look at it, Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities, thereby preserving the secularism of the country. Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-a-vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time there also cannot be any reverse discrimination. It was observed in St. Xavier’s College case at SCR p. 192 that: (SCC p.743, para9)

“the whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection they will be denied equality.”

In other words, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. No one type or category of institution should be disfavoured or, for that matter, receive more favourable treatment than another. Laws of the land, including rules and regulations must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non-minority institutions are permitted to do.”

The Supreme Court then proceeded to examine the question whether Article 30 gives the right to ask grant-in-aid from the government and proceeded to answer in the following words.

“The grant of aid is not a constitutional imperative. Article 337 only gives the right to assistance by way of grant to the Anglo-Indian community for a specified period of time. If no aid is granted to anyone, Article 30(1) would not justify a demand for aid and it cannot be said that the absence of aid makes the right under Article 30(1) illusory. The founding fathers have not incorporated the right to grants in Article 30, whereas they have done so under Article 337; what, then, is the meaning, scope and effect of Article 30(2)? Article 30(2) only means what it states viz. that a minority institution shall not be discriminated against where aid to educational institutions is granted. In other words the State cannot, when it chooses to grant aid to educational institutions, deny aid to a religious or linguistic minority institution only on the ground that the management of that institution is with the minority. We would, however, like to clarify that if an abject surrender of the right to management is made a condition of aid, the denial of aid would be violative of Article 30(2). However, conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some facet of administration. If, however, aid were denied on the ground that the educational institutions under the management of a minority, then such a denial would be completely invalid.



The implication of Article 30(2) is also that it recognizes that the minority nature of the institution should continue, notwithstanding the grant of aid. In other words, when a grant is given to all institutions for imparting secular education, a minority institution is also entitled to receive it, subject to the fulfillment of the requisite criteria, and the State give the grant knowing that a linguistic or minority educational institution will also received the same. Of course, the State cannot be compelled to grant aid, but the receipt of aid cannot be a reason for altering the nature or character of the recipient educational institution.

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

It cannot be argued that no conditions can be imposed while giving aid to a minority institution. Whether it is an institution run by the

majority or the minority, all conditions that have relevance to the proper utilization of the grant-in-aid by an educational institution can be imposed. All that Article 30(2) states is that on the ground that an institution is under the management of a minority, whether based on religion or language, grant of aid to that educational institution cannot be discriminated against, if other educational institutions are entitled to receive the aid. The conditions for grant or non-grant of aid to educational institutions have to be uniformly applied, whether it is a majority-run institution or a minority-run institution. As in the case of a majority-run institution, the moment a minority institution obtains a grant of aid, Article 28 (1) does not state that it applies only to educational institutions that are not established or maintained by religious or linguistic minorities. Furthermore, upon the receipt of aid, the provisions of Article 28(3) would apply to all educational institutions whether run by the minorities or the non-minorities. Article 28(3) is the right of a person studying in a State-recognized institution or in an educational institution receiving aid from State funds, not to take part in any religious instruction, if imparted by such institution, without his/her consent (or his/her guardian's consent if such a person is a minor). Just as Articles 28(1) and (3) become applicable the moment any educational institution takes aid, likewise, Article 29(2) would also be attracted and become applicable to an educational institution maintained by the State or receiving aid out of State funds. It was strenuously contended that the right to give admission is one of the essential ingredients of the right to administer conferred on the religious or linguistic minority, and that this right

should not be curtailed in any manner. It is difficult to accept this contention. If Articles 28(1) and (3) apply to a minority institution that receives aid out of State funds, there is nothing in language of Article 30 that would make the provisions of Article 29(2) in applicable. Like Article 28(1) and Article 28(3), Article 29(2) refers to “any educational institution maintained by the State or receiving aid out of State funds”. A minority institution would fall within the ambit of Article 29(2) in the same manner in which Article 28(1) and Article 28(3) would be applicable to an aided minority institution. It is true that one of the rights to administer an educational institution is to grant admission to the students. As long as an educational institution, whether belonging to the minority or the majority community, does not receive aid, it would, in our opinion, be its right and discretion to grant admission to such students as it chooses or selects subject to what has been clarified before. Out of the various rights the minority institution has in the administration of the institution, Article 29(2) curtails the right to grant admission to a certain extent. By virtue of Article 29(2), no citizen can be denied admission by an aided minority institution on the grounds only or religion, race, caste, language or any of them. It is no doubt true that Article 29(2) does curtail one of the powers of the minority institution, but on receiving aid, some of the rights that an unaided minority intuition has, are also curtailed by Articles 28(1) and 28(3). A minority institution has a right to impart religious instruction – this right is taken away by Article 28(1), if that minority institution is maintained wholly out of State funds. Similarly on receiving aid out of State funds or on being

recognized by the State, the absolute right of a minority institution requiring a student to attend religious instruction is curtailed by Article 28(3). If the curtailment of the right to administer a minority institution on receiving aid or being wholly maintained out of State funds as provided by Article 28 is valid, there is no reason why Article 29(2) should not be held to be applicable. There is nothing in the language of Article 28(1) and (3), Article 29(2) and Article 30 to suggest that, on receiving aid, Article 28(1) and (3) will apply, but Article 29(2) will not. Therefore, the contention that the institutions covered by Article 30 are outside the injunction of Article 29(2) cannot be accepted.”

In *P.A. Inamdar vs State of Maharashtra* (2005) 6SCC 537, the Supreme court observed :

“Much of the controversy can be avoided if only the nature of the right conferred by Articles 29 and 30 is clearly understood. The nature and content of these articles stands more than clarified and reconciled inter se as also with other articles if only we understand that these two articles are intended to confer protection on minorities rather than a right as such. In *St. Stephen’s* Their Lordships clearly held (vide para 59) that Article 30(1) implied a certain “privilege”. Articles 29 and 30 can be better understood and utilized if read as a protection and/or a privilege of minority rather than an abstract right.

Educational institutions imparting higher education i.e. graduate level and above and in particular specialized education such as technical or professional, constitute a separate class. While embarking upon resolving issues of constitutional significance, where the letter of the Constitution is not clear, we have to keep in view the spirit of Constitution, as spelt out by its entire scheme. Education aimed at imparting professional or technical qualifications stands on a different footing from other educational instruction. Apart from other provisions, Article 19(6) is a clear indicator and so are clauses (h) and (j) of Article 51-A. Education up to the undergraduate level aims at imparting knowledge just to enrich the mind and shape the personality of a student. Graduate-level study is a doorway to admissions in educational institutions imparting professional or technical or other higher education and, therefore, at that level, the considerations akin to those relevant for professional or technical educational institutions step in and become relevant. This is in the national interest and strengthening the national wealth, education included. Education up to the undergraduate level on the one hand and education at the graduate and postgraduate levels and in professional and technical institutions on the other are to be treated on different levels inviting not identical considerations, is a proposition not open to any more debate after *Pai Foundation*. A number of legislations occupying the field of education whose constitutional validity has been tested and accepted suggest that while recognition or affiliation may not be a must for education up to undergraduate level or, even if required, may be granted as a matter

of routine, recognition or affiliation is a must and subject to rigorous scrutiny when it comes to educational institutions awarding degrees, graduate or postgraduate, postgraduate diplomas and degrees in technical or professional disciplines. Some such legislations are found referred in paras 81 and 82 of S.B. Sinha, J's opinion in *Islamic Academy*"

In the above background, the question to be examined is whether the minority intuitions are entitled to claim aid for the institution for the first time as such or for some of the additional teachers employed on account of increase in the student's strength in the aided intuitions, as the case may be.

In view of the aforesaid decisions of the Supreme Court there can be no longer any doubt that even though there is a fundamental right to establish a minority institution by a notified minority, such minority institution cannot claim grant-in-aid either as a fundamental right or even as a statutory right, in the absence of any specific provision to that extent. However under Article 30(2) of the Constitution, it has the protection of not being discriminated against. If there is no provision for grant-in-aid to any institution, obviously there cannot be any discrimination because the minority and the non minority institutions are treated alike. In the present case, the petitioner institution was receiving aid with respect to 8 units/teachers vide order dated 23.2.1970. According to the recent decisions of the Government of Bihar, the petitioner institution is entitled to get 12 units/teachers vide orders dated 17.12.2009 of the Ministry of HRD. That being so, the petitioner institution is entitled to 4 additional units / teachers.

It has been held by the Supreme Court in Chandigarh Administration vs. Rajni Vati AIR 2000 SC 634 that “..... imparting primary and secondary education to students is the bounden duty of the State Administration. It is constitutional mandate that the State shall ensure proper education to the students or whom the future of society depends. In line with this principle, the State has enacted statues and framed rules and regulations to control/regulate establishment and running of private schools at different levels. The State Government provides grant-in-aid to private schools with a view to ensure smooth running of the institution and to ensure that the standard of teaching does not suffer on account of paucity of funds. It needs no emphasis that appointment of qualified and efficient teachers is a sine qua non for maintaining high standards of teaching in any educational institutions”.

It was further observed by the Supreme Court : “Coming to the contention of the appellant that Chandigarh Administration will find it difficult to bear the additional financial burden if the claim of the respondents 1 to 12 is accepted, we need only say that such a contention raised in different cases of similar nature has been rejected by this Court. The State Administration cannot shirk its responsibility of ensuring proper education in schools and colleges on the plea of lack of resources. It is for the authorities running the administration to find out the ways and means of securing funds for the purpose. We do not deem it necessary to consider the question in further detail. The contention raised by the appellants in this regard is rejected. “

Thus, want of resources cannot be a ground to deny grant, where otherwise such grant is permissible. As stated earlier that as per recent decision of the Government of Bihar, the petitioner is entitled to 4 additional units/ teachers. It is a matter of great concern today that educational rights of the minorities have come under increasing

strain, contrary to the spirit enshrined in the Constitution. Needless to add here that the quality of a nation depends upon the quality of its citizens. The quality of its citizens depends not exclusively, but in the critical measure upon the quality of their education, the quality of their education depends mainly upon the quality of their teacher.

For the foregoing reasons we find and hold that the petitioner is entitled to select and appoint two teachers against the sanctioned posts, which have fallen vacant on account of superannuation of Mr. Naseem Ansari and Mr. Nayeemuddin. No prior approval of the competent authority of the State Government is required to fill up the said posts. But the selection process of these teachers must be fair, transparent and non exploitative. After selection of these teachers the requisite documents shall be submitted to the competent authority of the State Government with a view to ensure that the teachers selected fulfill the minimum qualifications of eligibility prescribed by the State Government. We also recommend to the State Government to grant four additional units/teachers to the petitioner in accordance with the orders dated 17.12.2009 of the HRD Ministry, Government of Bihar.

### **Case No. 622 of 2011**

**Petition to seek direction to the State Government for grant of permission for establishment of a junior college of Arts and Science.**

**Petition:** Shri Aslam Fasih, President, The Konkan Muslim Education Society of Thane District, H.No. 158, Rais High School Campus, Thane Road, Bhiwandi – 121 302, Dist. Thane, Maharashtra

**Respondent:** 1. The Principal Secretary, School Education Department, Government of Maharashtra, 4<sup>th</sup> Floor, Mantralaya, Annexe Building, Mumbai-400 020.

2. The Director of Secondary & Higher Secondary Education, Government of Maharashtra, Central Building, Pune – 411 001.



3. Deputy Director of Education, Bal Bhavan Netaji Shubhash Road, Charni Road (West), Mumbai, Maharashtra .
4. The Education Officer (High Secondary), Zila Parishad, Thane, Maharashtra.

By this petition, the petitioner seeks a direction to the respondent for grant of permission for establishment of a junior college of Arts and Science in Padgha Village, Tal. Bhiwandi, Dist. Thane, Maharashtra. The petitioner society is a registered public trust constituted by Muslims of Bhiwandi in the year 1927. By the Memo No. Ass/2009/559/P.K 39/2009/ka.1. dated 13.2.2009, the State Government had conferred minority status on this trust. The petitioner trust has established various educational institutions with the approval of the State Government. On 5.3.2010, the petitioner applied to the Respondent No. 4 for grant of permission for establishment of a new junior college at Padgha Village, Tal. Bhiwandi, Thane, Maharashtra. Despite repeated reminders by the petitioner, it did not evoke any response from the respondent No. 4. It is alleged that the petitioner society has all the infrastructural and instructional facilities for starting the proposed junior college and the impugned action of the respondent No. 4 in not forwarding the aforesaid application to the competent authority of the State Government is violative of the educational rights of the minorities enshrined in Article 30(1) of Constitution.

Respondent No. 4 has resisted the petition on the ground that the petitioner's application for starting the proposed junior college could not be considered for want of notification issued by the State Government inviting applications for starting new junior colleges.

In view of the rival contentions of the parties, the point which arises for consideration is as to whether the impugned action of the respondent No. 4 in not recommending

the petitioner's application to the competent authority of the State Government is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

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

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

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

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

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

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

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

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

- (i) To enable such minority to conserve its religion and language, and
- ii) to give a thorough, good general education to the children

belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the above said two objectives, the institution would remain a minority institution.”

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

As stated earlier, the respondent has resisted the petition on the ground that the petitioner is not entitled to submit application for starting the proposed junior college for want of notification to be issued by the State Government inviting applications for starting new junior colleges. It needs to be highlighted that Article 13 of the Constitution declares that any law or executive direction which infringes the substance of a right guaranteed under Part III of the Constitution is void to the extent of infringement. The fundamental right guaranteed under Article 30 of the Constitution is intended to be effective and should not be whittled down by any administrative exigency. No inconvenience or difficulty, administrative and financial, can justify infringement of fundamental rights. Thus, the decision taken by the State Government not to entertain any fresh proposal for establishment of junior colleges is violative of the fundamental right of minorities guaranteed under Article 30(1) of the Constitution.

That being so, the impugned action of the respondent No. 4 in not forwarding the petitioner's application to the competent authority of the State Government for grant of permission for establishment of the proposed junior college is violative of the educational rights of minorities enshrined in Article 30(1) of the Constitution.

For the foregoing reasons, we recommend to the respondent No. 4 to forward the petitioner's proposal for establishment of the proposed junior college at Padgha Village, Tal. Bhiwandi, District Thane, Maharashtra to the competent authority for due consideration in accordance with relevant Rules.

### **Case No.461 of 2010**

#### **Petition to seek direction to university to grant permanent affiliation**

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

**Respondent:** 1. The Principal Secretary, Human Resource Development Department, Government of Bihar, Secretariat Bihar, Patna, Bihar.  
2. The Director, Higher Education, Human Resource Development Department, Government of Bihar, Patna.  
3. The Vice Chancellor, Jai Prakash University, Chapra, Bihar.  
4. The Registrar, Jai Prakash University, Chapra, Bihar .

By the order dated 27.7.2010 passed in this case, the Commission had directed the respondent university to grant permanent affiliation to the petitioner college for post graduate courses in Urdu, Hindi and Psychology. The petitioner has filed the present petition seeking amendment of the aforesaid order directing the respondent university to grant permanent affiliation to the petitioner college for post graduate courses in History, Political Science, Zoology and Physics for which it has already got provisional affiliation from the respondent university. It is alleged that the respondent university had granted provisional affiliation to the petitioner college for starting post graduate

courses in History, Political Science, Zoology and Physics. Now the petitioner college seeks a direction to the respondent university to grant permanent affiliation for starting the aforesaid post graduate courses.

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

It is alleged that the petitioner institution has all the infrastructural and instructional facilities for the aforesaid courses. Pursuant to the direction of the respondent university the petitioner institution had deposited the requisite amount for the purpose of inspection to be conducted for grant of permanent affiliation. It is also alleged that on 25.2.2009, the inspection team constituted by the respondent university inspected the petitioner college and recommended to the respondent university for grant of permanent affiliation for starting post graduate courses in 7 subjects namely, History, Political Science, Zoology, Physics, Urdu, Hindi and Psychology. The petitioner's grievance is that despite recommendations of the inspection team the respondent university had not granted permanent affiliation for the courses in question.

The petitioner institution is a minority educational institution within the meaning of Section 2(g) of the NCMEI Act. The respondent university ought to have granted permanent affiliation to the petitioner college for starting the aforesaid courses in accordance with the recommendations of the inspection committee constituted by it. The respondent university has failed to apprise the Commission about the reasons for non-grant of the affiliation of the said courses. In this view of the matter, it may be safely inferred that the respondent university has no plausible reasons to offer for non-grant of the affiliation of the courses as sought by the petitioner. Section 12(1) of the

NCMEI Act declares that 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. Thus the impugned action of the respondent university in not granting permanent affiliation as sought by the petitioner is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

For the foregoing reasons, the Commission in exercise of the power conferred under Section 12 (1) of the National Commission for Minority Educational Institutions Act 2004 directs the respondent university to grant permanent affiliation for starting post graduate courses in History, Political Science, Zoology, Physics, Urdu, Hindi and Psychology.

### **Case No.133 of 2012**

#### **Petition to seek direction to the State to approve the appointment and to release salary.**

- Petitioner:** 1. Sr. Josna Mary, Secretary, Jeevoday Education Society, Residency Road, Sadar, Nagpur Through its Secretary Sr. Josna Mary.
2. Jeevoday Special School's Prathiksha, Rehabilitation Centre Through its Principal, Sr. Josna Mary

- Respondent:** 1. The Secretary, Social Justice and Special Assistance, Department, Maharashtra State, Mantralaya, Mumbai.
2. The Commissioner Handicapped Welfare, Maharashtra State, Pune.
3. The Divisional Social Welfare Officer, Grade A, Zila Parishad, Nagpur

The petitioner No. 2 is an aided minority educational institution. Petitioner school was established for the purpose of imparting education to the male and female

deaf and mutes. On 22.10.2008, vacancy for the Vocational Instructor occurred in the petitioner No. 2 school on which post, qualified incumbent Sr. Anshumala was selected and appointed. The papers relating to selection and appointment of Sr. Anshumala were submitted to the respondent No. 2 Commissioner Handicapped Welfare, Maharashtra State, Pune. The proposal was also recommended by the Social Welfare Officer, Grade A Zilla Parishad, Nagpur and Collector, Nagpur but the respondent No. 2 did not take any action till 8.6.2011. By the letter dated 8.6.2011, the Commissioner Handicapped Welfare, Maharashtra State, Pune addressed a letter to the respondent No. 1, seeking advice on the question of granting exemption to minority educational institution from the policy of reservation in employment. It is alleged that the petitioner's proposal seeking approval of the selection and appointment of Sr. Anshumala has not yet been decided by the respondents. Hence this petition.

Despite service of notice non entered appearance on behalf of the respondents.

The point which arises for consideration is whether the policy of reservation in employment can be extended to a minority educational institution covered under Article 30(1) of the Constitution?

It needs to be highlighted that the Bombay High Court has held in Bombay Institution for Deaf and Mutes and Anr. Vs. Department of Social Welfare, Pune and Ors. {2002(1) Mh.L.J.} that a direction to the minority educational institution to have reservation in appointment of staff teachers is definitely a serious encroachment on the rights of minorities guaranteed in Article 30(1) of the Constitution and as such a



direction can not be upheld. The Bombay High Court had also directed the competent authority not to apply the Government's Resolutions dated 27.3.1991 and 23.3.1994 to minority educational institutions to the extent they provide for reservation in the appointment of staff and teachers to such educational institution. Surprisingly, the respondent No. 1 and 2 in total disregard to the authoritative pronouncement of the Bombay High Court in Bombay Institution for Deaf and Mutes case (supra) , have not approved the appointment of Sr. Anshumala for the post of Vocational Instructor. It is well settled that a minority educational institution has freedom to select and appoint its teaching and non-teaching staff in accordance with the qualifications for eligibility prescribed therefor by the statutory authorities. The grant –in-aid does not impair or even dilute the very character of the minority educational institution. In Sindhi Education Society & Anr. vs. Chief Secretary, Govt. of NCT of Delhi , & Ors. 2010 AIR SCW 5393, the Supreme Court has held that the policy of reservation in employment cannot be extended to a minority educational institution.

Bearing in mind the aforecited authorities we have no hesitation in coming to the conclusion that the impugned action of the respondent No. 2, the Commissioner handicapped Welfare, Maharashtra State, Pune in not granting approval for appointment of Sr. Anshumala as Vocational Instructor is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

We, therefore, recommend to the respondent No. 2, the Commissioner Handicapped Welfare, Maharashtra State, Pune to approve the appointment of Sr. Anshumala for the post of Vocational Instructor of the petitioner No. 2 school from 22.10.2008. We also recommend to the Respondent No. 2 to release her salary alongwith arrears to pay from 22.10.2008.

**Case No. 136 of 2012**

**Petition to seek approval for appointment and entitlement to get salary.**

**Petitioner:** Corporate Manager, Corporate Management of Schools, Archdiocese of Changanacherry, Changanacherry P.O., Kottayam District, Kerala.

**Respondent:** The Secretary, General Education Department, Government of Kerala, Secretariat, Thiruvananthapuram, Kerala-695001.

The petitioner school is a minority educational institution covered under Article 30(1) of the Constitution. The Corporate Manager, Archdiocese of Changanacherry promoted and appointed Smt. Jessy Joseph H.S.A. as Head Mistress in St. Antony's Girls GHS, Alappuzha, w.e.f. 1.4.2010 on superannuation of Smt. Lissamma Kurian Head Mistress. The said proposal was sent to the District Education Officer, Alappuzha for approval. Appointment of Smt. Jessy Joseph was disapproved by the District Education Officer on the ground of non-production of minority status certificate by the management of the said school. The petitioner unsuccessfully challenged the said order in appeal before the Dy. Director of Education, Alapuzha. Feeling aggrieved by the order of the appellate authority the petitioner preferred a revision petition before the Additional Director of Public Instructions, which was also dismissed vide order No. K.Dis. EC(1)/74562/10/DPI dated 18.5.2011. It is alleged that the impugned order of the competent authorities passed in respect of appointment of Smt. Jessy Joseph is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

The point which arises for consideration is whether the impugned order dated 8.6.2010 of the District Education Officer, Alapuzha is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution?

It needs to be highlighted that by the impugned order of the District Education Officer, Alapuzha disapproved the appointment of Smt. Jessy Joseph as Head Mistress on the sole ground of non-production of minority status certificate of the petitioner institution. The impugned order was also upheld by the Deputy Director of Education, Alapuzha and the Additional Director of Public Instructions (General), Government of Kerala. It is relevant to mention that by the judgment dated 18.7.1967 rendered by the High Court of Kerala in OP No. 540/1966, the High Court had declared that all the educational institutions established by the Corporate Management of Archdiocese of Changanacherry are minority schools within the meaning of Section 2(5) of the Kerala Education Act. On the basis of the said judgment, the petitioner school has been declared as minority educational institution within the meaning of Section 2(g) of the National Commission for Minority Educational Institutions Act vide orders dated 13.4.2011 passed in Case No. 1705/2010.

In N. Ammad vs. Emjay High School (1998) 6 SCC 674, their Lordships of the Supreme Court have held that “A minority educational institution continues to be so whether the Government declares it as such or not. When the Government declares an educational institution as a minority institution, it merely recognizes a factual position that the institution was established and is being administered by a minority community. The declaration is merely an open acceptance of the legal character of the institution which must necessarily have existed antecedent to such declaration. “

In the instant case the High court of Kerala had already declared that the institutions established by the petitioner corporate educational agency are minority educational institutions.

Thus, the management of the petitioner school which is an educational institution covered under Article 30(1) of the Constitution has a right to select and appoint Smt. Jessy Joseph as Head Mistress and her order of appointment is valid and effective from 1.4.2010. We, therefore, find and hold that Smt. Jessy Joseph is entitled to get her pay from 1.4.2010 as she was validly appointed by the petitioner.

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

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

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

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

### **Case No.1208 of 2010**

**Petition to seek direction to the State Government for grant of permission for establishment of Urdu Medium High School.**

**Petitioner:** Janta Gramin Vikas Pratisthan, Palasi, Tq. Darwha, Distt. Yavatmal, Maharashtra.

**Respondent:** 1. The Secretary, School Education Department, Government of Maharashtra, Mantralaya, Mumbai.

2. The Director of Education, Secondary & Higher Secondary School Education Department, Government of Maharashtra, Pune.

3. Deputy Director of Education, Latur Division, Latur, Maharashtra.

4. District Education Committee (Middle), Zilla Parishad, Nanded through Education Officer (Middle), Zilla Parishad, Nanded, Tq & Distt. Nanded, Maharashtra.
5. Education Officer (Middle), Zila Parishad, Nanded, Distt. & Tq Nanded, Maharashtra.

By this petition, the petitioner society seeks a direction to the State Government for grant of permission for establishment of Urdu medium High school at Hadgaon, District Nanded, Maharashtra. It is alleged that Janta Gramin Vikas Pratisthan, Palasi, Tq. Darwaha Distt. Yavatmal Maharashtra is a registered society constituted by members of the Muslim community to establish Urdu medium schools for downtrodden Muslim minority students. Hadgaon Taluka in Nanded District has a population of more than 35,000 out of which 30% is Muslim population. There is only one Urdu medium upper primary school from standard 1<sup>st</sup> to 7<sup>th</sup> being run by Zila Parishad, Nanded in addition to another school run by a private society Ikra from standard 1<sup>st</sup> to 5<sup>th</sup>. There is no Urdu medium high school from 8<sup>th</sup> to 10 standard at Hadgaon. It is alleged that Urdu medium high schools are located only at a distance of 15 kms. from Hadgaon. The petitioner submitted a proposal to the competent authority of the State Government for grant of permission to establish Urdu medium high school from 8<sup>th</sup> to 10<sup>th</sup> standard at Hadgaon for the benefit of the Muslim community. On evaluation of the proposal by the competent authority it was rejected on the sole ground of inadequate bank balance. It is further alleged that the audit reports of the society were sent to the competent authority which showed that the society has adequate bank balance. According to the petitioner the impugned action of the State Government in rejecting the petitioner's proposal for establishment of Urdu medium high school at Hadgaon is violative of the educational rights guaranteed under Article 30(1) of the Constitution.

The petition has been resisted by the Education Officer (Secondary), Zila Parishad, Nanded on the ground that as per the Census of 2001, the total population of Hadgaon is 23,339 and at present it would be about 27,880. According to the Census of 2001, Muslim population of Hadgaon was 3886 only. There is a high school run by the Zila Parishad, Nanded having 5<sup>th</sup> to 10<sup>th</sup> standard which has a section of Urdu medium. There is one primary school and there is no secondary school at Hadgaon. The petitioner's proposal was not recommended as the bank balance of the petitioner was less than others, whose proposals for establishment of Urdu High Schools were under consideration. Accordingly, the State Government did not approve the proposal submitted by the petitioner.

The point for consideration is : whether the impugned action of the respondent in rejecting the petitioner's proposal for establishment of Urdu medium high school at Hadgaon is violative of the educational rights of the minorities guaranteed under Article 30(1) of the Constitution.

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

abridging or limiting any of these provisions under Chapter III of the Constitution and threatens to veto any law, rule or regulation found inconsistent with.

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

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

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

In St. Stephens College Vs. University of Delhi (1992) 1 SCC 558, the Supreme Court has observed that “the words ‘of their’ ‘choice’ in Article 30(1) leave vast options to the minorities in selecting the type of educational institutions which they wish to



establish. They can establish institutions to conserve their distinct language, script or culture or for imparting general secular education or for both the purposes.”

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

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

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

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

It is an admitted position that there is no Urdu medium high school at Hadgaon. It has a sizable population of Muslim community. There is only one high school from 8<sup>th</sup> to 10<sup>th</sup> standard which is being run by Zila Parishad, Nanded and it has a section of Urdu medium. Having regard to the population of the Muslim community at Hadgaon the high school with an Urdu section run by Zila Parishad appears to be insufficient to cater to the needs of the Muslim community. It is also undisputed that the nearest Urdu medium high school is more than 15 kms. away from Hadgaon. Thus, there appears to be a genuine need for an Urdu medium high school to cater to the needs of the Muslim community of Hadgaon. The petitioner's proposal for establishment of the proposed Urdu medium high school was rejected on the sole ground of non-availability of sufficient funds. Mr. Aminullah Khan Habib Khan, President of the petitioner society has filed his affidavit stating that the proposed school has a deposit of Rs. 1,53,000. It is also stated in the affidavit that the petitioner institution has all the infrastructural and instructional facilities for establishment of the proposed school. He has also attached a certificate from the Pusad Urban Co-op Bank Ltd. Darwha Branch certifying that the petitioner society has a bank balance of Rs. 1,53,000 on 20.11.2010.

Relying upon the unrebutted affidavit of Mr. Aminullah Khan Habib Khan we are of the opinion that the petitioner society has all the infrastructural and instructional facilities for establishment of the proposed Urdu medium school at Hadgaon and that there is also genuine need for establishment of the proposed school to cater to the needs of the Muslim community of Hadgaon. We also find and hold that the impugned action of the State Government in rejecting the proposal for establishment of the proposed Urdu high school at Hadgaon is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

We, therefore, recommend to the State Government to reconsider the petitioner's proposal and grant permission for establishment of the proposed Urdu high school at Hadgaon on permanent no grant basis.

### **Case No.331 of 2012**

#### **Petition to seek direction to the State to grant approval of the selection and appointment of the teaching staff.**

- Petitioner:**
1. Mr. P.A. Inamdar, R/A, 963, Nana Peth, Ma-Parvez Road, Pune-411 002 (Maharashtra).
  2. The Maharashtra Cosmopolitan Education Society, Pune, Maharashtra.
  3. A.K.K. New Law Academy, Azam Campus, Camp, Pune Maharashtra Through its Principal.
  4. Dr. Rasheed Shaikh, (Dean, Faculty of Law, University of Pune), Having its office at 2390-B.K.B. Hidayatullah Road, Azam campus, Camp, Pune – 411 001 (Maharashtra).

- Respondent:**
1. The Secretary, University Grants Commission, Bahadur Shah Zafar Marg, New Delhi – 110 002.
  2. The Principal Secretary, Department of Higher & Technical Education, Government of Maharashtra, Mantralaya, Mumbai-32.
  3. The Registrar, University of Pune, Ganeshkhind, Pune.

These are 4 petitions filed by various colleges managed and administered by The Maharashtra Cosmopolitan Education Society, Maharashtra challenging applicability of certain provisions of the UGC (Minimum Qualification for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for Maintenance of Standard of Higher Education) Regulations 2010 (for

short the Regulations) to a minority educational institution. There was also a prayer for quashing Clauses 5.1.4 and 5.1.5 of the Regulations as being illegal and un-consequential and void and also for quashing the order of the respondent university dated 18.7.2011 with the direction to the respondent university to approve appointment of teaching staff of the petitioner institution. During the hearing, the petitioner abandoned relief for quashing the UGC regulations and prayed for a declaration that impugned clauses of the Regulations do not apply to a minority educational institution. As all these petitions raised a common question as to the applicability of the impugned regulations of the UGC, it would be sufficient if the facts of the petitions No. 331/2012 are set out. All these petitions are being disposed of by this common order.

It is alleged that the petitioner institutions as minority educational institutions are covered under Article 30(1) of the Constitution. The petitioner No. 3 invited applications by publishing an advertisement in the daily Newspapers Indian Express & Loksatta dated 6.6.2011 for the following posts:

- (a) Aided Section: LL.B Course – One Full time Lecturer (All are Open Category);
- (b) Unaided Section: B.S.L., LL.B course – One Full Time Lecturers in Law and Political Science;
- (c) Unaided Section : LL.M Course – Full time Lecturers.

Pursuant to the said advertisement application from 12 candidates were received. On 9.7.2011, meeting of the selection committee constituted by the petitioner No. 2 and 3 was held. Following members were the members of the Selection Committee:

Sr. No.	Name of the Member of the Selection Committee	Designation
---------	---	-------------

1.	Mrs. Abeda Inamdar Vice President, MCE Society	Nominee of the President Governing Body/Management
2.	Prof. Muzaffar Shaikh Member of the Governing Body	Chairman, Local Management Committee, AKK, New Law Academy, Pune
3.	Adv. Dr. Sureshchandra R. Bhosale, Chairman, Board of Studies, University of Pune and former Dean, University of Pune	Management Nominee (Subject Expert)
4.	Mrs. Dr. Durgambini Patel, Reader, Dept. of Law, University of Pune	Subject Expert
5.	Prof. M.H. Hirani, Former Professor and Head., Dept of Law, University of Pune	Subject Expert
6.	Dr. Rasheed Shaikh, Principal, A.K.K. New Law Academy, Pune and Dean, Faculty of Law, University of Pune	Principal of the Institute

The Selection Committee selected and appointed following candidates for the posts of Asstt. Professor in Law for the academic year 2011-12.

Sr. No.	Name of the Selected and Recommended Candidates	Qualifications
1.	Ms. Jacinta S. Bastian	LL.B, LL.M, NET
2.	Ms. Deepali Tukaram Patil	LL.B, LL.M, SET
3.	Ms. Swati B. Singate	LL.B, LL.M, SET
4.	Mrs. Shaikh Nuzhat Afroz	LL.B, LL.M, NET
5.	Mrs. Manisha R. Mittal	LL.B, LL.M, SET

Thereafter, appointment orders of the aforesaid candidates alongwith the report of the Selection Committee were submitted to the respondent university for grant of approval. The respondent university refused to approve appointments of the aforesaid candidates on the ground that the Selection Committee constituted by petitioner Nos. 2 and 3 was not in consonance with the UGC Regulations. It is alleged that the impugned clauses of the Regulations and the impugned action of the respondent university in declining to approve the appointment of the teaching staff selected by the petitioner institution is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

The UGC has resisted the petition on the ground that the Commission has no jurisdiction to adjudicate upon the constitutional validity of the Regulations framed under Section 26 of the UGC Act, 1956. It is alleged that the Regulations are applicable to every university established or incorporated by or under a Central Act, Provincial Act or a State Act, every institution including a constituent or an affiliated college recognized by the UGC. It is also alleged that the impugned clauses of the Regulations of the UGC are in the interest of academic excellence and as such they do not suffer from any legal infirmity. It is further alleged that the impugned clauses 5.1.4 and 5.1.5 of the Regulations relating to composition of Selection Committee for Assistant Professor as well as Principal of the college do not infringe Article 30(1) of the Constitution.

The respondent university has not filed reply. It has simply adopted counter filed on behalf of the respondent UGC.

Learned counsel for the respondent UGC has raised preliminary objection that this Commission has no jurisdiction to entertain the present petition for quashing the Regulations. It is relevant to mention that this Commission does not have jurisdiction to quash any statutory provision made in the Act/rules/regulations. It needs to be highlighted that during the hearing of the case, the petitioners had abandoned their prayer for quashment of the Regulations and it was submitted that a declaration to be made to the effect that the impugned Clauses 5.1.4 and 5.1.5 of the Regulation are inapplicable to a minority educational institution covered under Article 30(1) of the Constitution. The relevant provision of regulation 5.1.4 is as under:-

#### **5.1.4. Assistant Professor in Colleges including Private Colleges**

(a) The Selection Committee for the post of Assistant Professor in Colleges in Colleges including Private Colleges shall have the following composition:

1. Chairperson of the Governing Body of the college or his/ her nominee from among the members of the Governing body to be the Chairperson of the Selection Committee.
2. The Principal of the College
3. Head of the Department of the concerned subject in the College.
4. Two nominees of the Vice Chancellor of the affiliating university of whom one should be a subject expert. In case of colleges notified/ declared as minority educational institutions, two nominees of the Chairperson of the college from out of a panel of five names, preferably from minority communities, recommended by the Vice Chancellor of the affiliating university from the list of experts suggested by the relevant statutory body of the college, of whom one should be a subject expert.

5. Two subject-experts not connected with the college to be nominated by the Chairperson of the governing body of the college out of a panel of five names recommended by the Vice Chancellor from the list of subject experts approved by the relevant statutory body of the university concerned. In case of colleges notified/ declared as minority educational Institutions, two subject experts not connected with the University to be nominated by the Chairperson of the Governing Body of the College out of the panel of five names, preferably from minority communities, recommended by the Vice Chancellor from the list of subject experts approved by the relevant statutory body of the College.

6. An academician representing SC/ST/OBC/Minority/ Women/ Differently-abled categories, if any of candidates representing these categories, if any of candidates representing these categories is the applicant, to be nominated by the Vice Chancellor, if any of the above members of the selection committee do not belong to that category.

(b) To constitute the quorum for the meeting, five of which at least two must be from out of the three subject-experts shall be present.

(c) For all levels of teaching positions in Government colleges, the State Public Services Commissions/ Teacher Recruitment Boards must invite three subject experts for which the concerned University, be involved in the selection process by the State PSC.

(d) For all levels of teaching positions in Constituent college (s) of a university, the selection committee norms shall be similar to that of the posts of departments of the university.

(Emphasis supplied)

#### **5.1.5. Associate Professor in Colleges including Private Colleges**

(a) The Selection Committee for the post of Assistant Professor in Colleges including Private Colleges shall have the following composition:



1. The Chairperson of the Governing Body or his or her nominee, from among the members of the Governing body to be the Chairperson of the Selection Committee.
  2. The Principal of the College.
  3. The head of the Department of the concerned subject from the college.
  4. Two University representatives nominated by the Vice Chancellor, one of whom will be the Dean of College Development Council or equivalent position in the University, and the other must be expert in the concerned subject. In case of Colleges notified/ declared as minority educational institutions, two nominees of the Chairperson of the College from out of a panel of five names, preferably from minority communities, recommended by the Vice-Chancellor of the affiliating university from the list of experts suggested by the relevant statutory body of the college of whom one should be a subject expert.
  5. Two subject-experts not connected with the college to be nominated by the Chairperson of the governing body of the college out of a panel of five names recommended by the Vice Chancellor from the list of subject experts approved by the relevant statutory body of the university concerned. In case of colleges notified/ declared as minority educational Institutions, two subject experts not connected with the University to be nominated by the Chairperson of the Governing Body of the College out of the panel of five names, preferably from minority communities, recommended by the Vice Chancellor from the list of subject experts approved by the relevant statutory body of the Colleges.
  7. An academician representing SC/ ST/ OBC/ Minority/ Women/ Differently-abled categories, if any of candidates representing these categories is the applicant, to be nominated by the Vice Chancellor, if any of the above members of the selection committee do not belong to that category.
- (b) The quorum for the meeting should be five of which at least two must be from out of the three subject-experts.

(Emphasis supplied)

It is mentioned in the aforesaid regulations that in case of colleges declared as minority educational institutions, two nominees of the Chairperson of the college from out of a panel of five names preferably from minority communities, recommended by the Vice Chancellor of the affiliating university from the list of experts suggested by the relevant statutory body of the college, of whom one should be a subject expert are to be included in the Selection Committee. It is contended on behalf of the petitioner that the aforesaid condition incorporated in the impugned regulations which enter alia interfere with the management of the minority educational institution is violative of the rights guaranteed under Article 30(1) of the Constitution. It is also contended that a minority educational institution has freedom to select and appoint its teaching and non-teaching staff in accordance with the qualifications prescribed therefor by the statutory authorities and the legislature cannot interfere in the composition of the selection committee.

It has been held by their Lordships of the Supreme Court in St. Xavier's College, Ahmedabad vs. State of Gujarat 1974 (1) SCC 717 that "Autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institutions. The distinction is between a restriction on the right of administration and a regulation prescribing the manner of administration. The right of administration is day to day administration. The choice in the personnel of management is a part of the administration. "

It is relevant to mention that the Supreme Court has consistently upheld the rights of minorities embodied in Article 30(1) and has ensured that the ambit and scope of the

rights of the minorities is not narrowed down. The broad approach has been to see that nothing is done to impair the rights of the minorities in the matter of their educational institutions and that the width and scope of the provisions of the constitution dealing with those rights are not circumscribed. The right of religious or linguistic minority to administer educational institution of their choice, though couched in absolute terms has been held by the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 to be subject to regulatory measures which the State might impose for furthering the excellence of standard of education but the right guaranteed under Article 30(1) of the Constitution cannot be allowed to be whittled down by any measure masquerading as a regulation. According to Article 13 of the Constitution a law would be void even if it merely abridges fundamental right guaranteed by Part III and does not wholly take away the right. The regulatory measures for ensuring educational standard and maintaining excellence thereof are no anathema to the protection conferred by Article 30(1) of the Constitution. Reference may in this connection be made to the following observations of their Lordships of the Supreme Court in T.M.A. Pai Foundation case (supra):

“Apart from the generalised position of law that the right to administer does not include the right to maladminister, an additional source of power to regulate by enacting conditions accompanying affiliation or recognition exists. A balance has to be struck between the two objectives: (i) that of ensuring the standard of excellence of the institution, and (ii) that of preserving the right of the minority to establish and administer its educational institution. **Subject to a reconciliation of the two objectives, any regulation accompanying affiliation or recognition must satisfy the triple tests: (i) the test of reasonableness and rationality, (ii) the test that the regulation would be conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it, and (iii) that there is no inroad into the protection conferred by Article 30(1) of the Constitution, that is by framing the regulation the essential character of the institution being a minority educational institution, is not taken away.**”

(emphasis supplied)

The State or any statutory authority, can not under the cover or garb of adopting regulatory measures, destroy the administrative autonomy of a minority educational institution or start interfering with the administration of the management of the institution so as to render the right of the administration of the institution concerned nugatory or illusory. In other words, the regulation should not in any way take away the freedom of management of administration of the institution so as to reduce it to a satellite of a university or the State. The right to select its teaching or non-teaching staff of a minority educational institution is perhaps the most important facet of the right to administer an educational institution and that imposition of any trammel thereon except to the extent of prescribing the requisite qualifications and experience, would be treated as invalid and would constitute as an interference with the right of administration of the minority educational institution. At this juncture, the reference to question No. 5( c ) formulated by the Supreme Court in T.M.A. Pai Foundation case (supra) has become inevitable. The said question and the answer is as under :-

“Q 5 ( c ) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facts of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control

should be minimal and the conditions of recognition as well as conditions of affiliation to a university or board have to be complied with, but in the matter of day to day management, like appointment of staff, teaching and non-teaching and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, rational procedure for selection of teaching staff and for taking disciplinary action has to be evolved by the management itself. For redressing the grievances of such employees who are subjected to punishment or termination from service, a mechanism will have to be evolved and in our opinion, appropriate tribunals could be constituted, till then, such tribunal could be presided over by a judicial officer of the rank of district Judge. The state or other controlling authorities, however, can always prescribe the minimum qualifications, salaries, experience and other conditions bearing on the merit of an individual for being appointed as teacher of an educational institutions.

Regulations can be framed governing service condition for teaching and other staff for whom aid is provided by the State without interfering with overall administrative control of management over the staff, government /university representative can be associated with the selection committee and guidelines for selection can be laid down. In regard to unaided minority educational institutions such regulations, which will ensure a check over unfair practices and general welfare of teachers could be framed. “

In the instant case, requirement of clauses 5.1.4 and 5.1.5 of the regulations to seek prior approval of the Vice Chancellor for selection of two experts out of the panel of 5 experts for their nomination in the selection committee to be constituted by management of a minority educational institution clearly offends Article 30(1) of the Constitution. These provisions of the Regulations cannot be said to be a permissive regulatory measure as they affect the right of administration of a minority educational institution relating to composition of the selection committee for appointment of its teaching staff. This requirement directly stares into the face of law declared by the Supreme Court in T.M. Pai Foundation case (supra). Consequently, the impugned conditions incorporated in clause 5.1.4 and 5.1.5 of the Regulations cannot be made applicable to a minority educational institution. It is well settled that once a teacher possessing the requisite qualification prescribed therefor was selected by the management of a minority educational institution, the State or the Statutory body have no right to veto the selection of such a teacher. As stated earlier the selection and appointment of teachers for a minority educational institution has been regarded as one of the essential ingredient under Article 30(1) of the Constitution. Reference may in this connection be made to the following observations of the Supreme Court in T.M.A. Pai Foundation (supra):

“.....While it was permissible for the State and its educational authorities to prescribe the qualifications of teachers it was held that once the teachers possessing the requisite qualifications were selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution was regarded as

one of the essential ingredients under article 30(1). The Court's attention was drawn to the fact that in Kerala Education Bill, 1957 AIR 1958 SC 956: 1959 SCR 995, this Court had opined that clauses 11 and 12 made it obligatory for all aided schools to select teachers from a panel selected from each district by the Public Service Commission and that no teacher of an aided school could be dismissed, removed or reduced in rank without the previous sanction of the authorized officers. At SCR p 245, Khanna , J., observed that in cases subsequent to the opinion in Kerala Education Bill 1957 AIR 1958 SC 956: 1959 SCR 995 this Court had held similar provisions as clause 11 and clause 12 to be violative of Article 30(1) of the minority institution. “

(Emphasis supplied)

In the instant case, Ms. Jacinta S. Bastian, Ms. Deepali Tukaram Patil, Ms. Swati B. Shingate, Mrs. Shaikh Nuzhat Afroz and Mrs. Manisha R. Mittal have been selected by the Selection Committee constituted by the management of the petitioner institution. The Selection Committee consisting of the following members :-

Sr. No.	Name of the Member of the Selection Committee	Designation
1.	Mrs. Abeda Inamdar Vice President, MCE Society	Nominee of the President Governing Body/Management
2.	Prof. Muzaffar Shaikh Member of the Governing Body	Chairman, Local Management Committee, AKK, New Law Academy, Pune
3.	Adv. Dr. Sureshchandra R. Bhosale, Chairman, Board of Studies, University of Pune and former Dean, University of Pune	Management Nominee (Subject Expert)
4.	Mrs. Dr. Durgambini Patel, Reader, Dept. of	Subject Expert

	Law, University of Pune	
5.	Prof. M.H. Hirani, Former Professor and Head., Dept of Law, University of Pune	Subject Expert
6.	Dr. Rasheed Shaikh, Principal, A.K.K. New Law Academy, Pune and Dean, Faculty of Law, University of Pune	Principal of the Institute

**Case No. 332/2012**

In this case Mrs.Tabassum I. Hangad, Mr. Shakeel A. Razzaque Memon and Ms. Amruta V. Yadav have been selected as Professors by the Selection committee constituted by following members :-

Sr. No.	Name of the Member of the Selection Committee	Designation
1.	Mr. P. A. Inamdar	President, M.C.E. Society
2.	Prof. Shaikh Irfan	Chairman, Local Management Committee
3.	Shri Latif Maqdam	Member, LMC
4.	Prof. Muzaffar Sshaikh	Member, LMC
5.	Dr. Mrs. A.R. Madgulkar	Subject Expert
6.	Dr. Neeraj Vyavhare	Subject Expert
7.	Mr. Ajay Namdeo	Subject Expert
8.	Prof. Mrs. Mrunalini Damle	Subject Expert
9.	Mrs. Rukhsana A. Rub	HOD Pharmacognosy
10.	Mrs. Nazama Inamdar	HOD Pharmaceutical Chemistry



11.	Mr. Ziyaurahman A.R.	HOD Pharmacology
12.	Dr. Mrs. Kiran S. Bhise	Principal of the Institute

**Case No. 333/2012**

In this case, Dr. Atik Shaikh, Dr. Abhijeet Kaiwade, Mr. Mir Ali Jafri, Mr. Hanif Kha Pathan, Mr. Pratul R. Kesarwani, Mr. Yogesh Ghorpade, Ms. Snehal Anand, Ms. Rupali Jadhav and Mr. Shaikh Md. Zuber Abdul Majeed have been selected as professors / lecturers by the Selection committee constituted by the following members for MCA:-

Sr. No.	Name of the Member of the Selection Committee	Designation
1.	Mrs. Abeda Inamdar	Nominee of the President of Governing Body/Management
2.	Mr. Latif Magdum	Member, Local Management Committee
3.	Prof. Muzaffar Shaikh	Member, LMC, A.K.K. New Law Academy, Pune
4.	Prof. R. Ganeshan	Director of the Institute
5.	Dr. Manik Kadam Professor JSPM, Wagholi	Subject Expert
6.	Dr. M.D. Lowerence, Principal, M.M.C.C. Pune	Subject Expert

For MCM:

Sr. No.	Name of the Member of the Selection Committee	Designation
1.	Mrs. Abeda Inamdar, Vice President, MCE Society	Nominee of the President of Governing Body/Management
2.	Mr. Latif Magdum	Member, Local Management Committee
3.	Prof. Muzaffar Shaikh	Member, LMC, A.K.K. New Law Academy, Pune
4.	Prof. R. Ganeshan	Director of the Institute
5.	Dr. Manik Kadam, Professor JSPM, Wagholi	Subject Expert
6.	Dr. M.D. Lowerence, Principal, M.M.C.C. Pune	Subject Expert

For MBA :

Sr. No.	Name of the Member of the Selection Committee	Designation
1.	Mrs. Abeda Inamdar  Vice President, MCE Society	Nominee of the President of Governing Body/Management
2.	Mr. Latif Magdum	Member, Local Management Committee
3.	Prof. Muzaffar Shaikh	Member, LMC, A.K.K. New Law Academy, Pune
4.	Prof. R. Ganeshan	Director of the Institute
5.	Dr. A. B. Rao, Professor Emeritus, head Research, Symbiosis University	Subject Expert

6.	Dr. M.D. Lowerence, Principal, M.M.C.C. Pune	Subject Expert
----	---	----------------

For Librarian :

Sr. No.	Name of the Member of the Selection Committee	Designation
1.	Mrs. Abeda Inamdar, Vice President, MCE Society	Nominee of the President of Governing Body/Management
2.	Mr. Latif Magdum	Member, Local Management Committee
3.	Prof. Muzaffar Shaikh	Member, LMC, A.K.K. New Law Academy, Pune
4.	Prof. R. Ganeshan	Director of the Institute
5.	Dr. A. B. Rao, Professor Emeritus, head Research, Symbiosis University	Subject Expert
6.	Dr. M.D. Lowerence, Principal, M.M.C.C. Pune	Subject Expert

### **Case No. 516/2012**

The Managing Committee of Abeda Inamdar Senior College of Arts, Science & Commerce had constituted Selection Committee for appointment of its teaching staff for various subjects in Arts, Science, Commerce and Computer Science faculties for the academic year 2011-12. By the memo No. AISC/721/SCM/2011 dated 14.6.2011 report of the meeting of the Selection Committee held on 11.6.2011 was forwarded to the Registrar of the respondent university for approval of the candidates selected by the Selection Committee constituted by the management of the petitioner college.

It needs to be highlighted that the respondent university has not filed its counter to controvert the factual matrix of the case. There is nothing on record to show or suggest that the selection process of the teaching staff of the petitioner institution by the management of the petitioner institution was not fair, transparent or non-exploitative or that the teachers selected by the management do not fulfill the minimum qualification of eligibility prescribed therefor by the respondent university. That being so, the role of the respondent university is limited to the extent of ensuring that the persons so selected fulfill the minimum qualifications of eligibility laid down by the university. Consequently, the action of the respondent university in declining to grant approval of the selection and appointment of the aforesaid teaching staff of the petitioner institutions is violative of the educational rights of the minorities enshrined under Article 30(1) of the Constitution.

For the foregoing reasons, we direct the respondent university to implement the findings of the Commission by granting approval to the appointment of teachers selected and appointed by the Selection Committee constituted by the management of the petitioner institutions.

**Case No. 1903 of 2011**

**Petition for direction to the State Government to issue NOC for grant of affiliation by the CBSE**

**Petitioner:** Islamic Educational Development Organization, Sangaiyumpham, P.O. Wangjing, Manipur, Through its Secretary Md. Siraj Ahamed.

**Respondent:** The Principal Secretary, Education (S) Department, Government of Manipur, Room No. 200, Manipur Secretariat (South Block), Imphal, Manipur 795 001

The petitioner society has filed the petition on behalf of the Taj Standard School, Sangaiyumpham, P.O. Wangjing, Manipur, a minority educational institution covered under Article 30(1) of the Constitution for a direction to the State Government to issue NOC for grant of affiliation by the CBSE. It is alleged that in 2009, the said school had applied to the State Government for grant of NOC for its affiliation by the CBSE. The State Government has not issued NOC as sought by the petitioner. Hence this petition.

Despite service of notice, none entered appearance on behalf of the State Government.

The question which arises for consideration is whether the impugned action of the State Government in not granting NOC to the said school for its affiliation by the CBSE is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution?

By the order dated 12.10.2006, passed in Case No. 1047/2006, the Taj Standard School was declared by this Commission as minority educational institution covered under Article 30(1) of the Constitution. It appears from the record that the said school had applied to the State Government for grant of NOC for its affiliation by the CBSE. The school was inspected by the Dy. Inspector of School, Zone III, Thoubal, Government of Manipur. The Inspection Report was counter signed by the Zonal Education Officer, Zone III, Thoubal, Government of Manipur. By the letter dated 12.5.2009, the Zonal Education Officer, Zone III (TH), Government of Manipur had forwarded the Inspection Report to the Director of Education (S), Government of Manipur with a request to grant No Objection Certificate for affiliation to the said

school by the CBSE. By the letter dated 27.11.2010, the Additional Director of Education (S/A), Government of Manipur forwarded the aforementioned letter of the Zonal Education Officer, Zone III (TH) to the Commissioner (Education/S), Government of Manipur for appropriate action at an early date. It appears that the said letter did not evoke any response from the Commissioner (E/S). The Inspection Report submitted to the competent authority of the State Government clearly reflects that the said school has all the infrastructural and instructional facilities for grant of affiliation by the CBSE. The State Government has not controverted the factual matrix of the case. Since the said school has all the infrastructural and instructional facilities for grant of affiliation by the CBSE, the impugned action of the State Government in not granting NOC as sought by the petitioner is violative of the educational rights of the enshrined in Article 30(1) of the Constitution.

For the foregoing reasons we recommend to the State Government to issue NOC to the Taj Standard School, Sangaiyumpham, P.O. Wangjing, Manipur for grant of affiliation by the CBSE.

### **Case No. 1322 of 2009**

#### **Petition to seek recommendation to the DGET, Government of India, Ministry of Labour and Employment to accord sanction**

**Petitioner:** Sir Syed Technical Training Centre, At Akbarpur, PO and PS Barh, Patna, Bihar

**Respondent:** 1. Director, Employment and Training, Government of Bihar, New Secretariat, Vikas Bhawan, Patna, Bihar.

2. Sh. Sanjay Kumar, Dy Director, Training (RDAT) Office, CGO Office Complex DF Block, E Wing, 1st Floor, Salt Lake City, Kolkata-64.

3. Shri Vivek Kumar, Dy. Director, Employment and Training (Muzaffarpur), c/o Director, Employment and Training, Government of Bihar, New Secretariat, Vikas Bhawan, Patna, Bihar

4. Shri A. Nandi, Deputy Director, CSTARI & Member NCVT, Central Staff Training & Research Institute, Salt Lake City, Kolkata-91.

The petitioner Sir Syed Technical Training Centre (for short the Centre) is a minority educational institution covered under Article 30(1) of the Constitution. On 25.4.2008, the petitioner institution submitted an application for extension of 2+2 units of Electrician, 2+2 in Fitter trade and the affiliation for 1+1 in Mechanic Diesel Trade. Thereupon, the Director of Employment and Training, Government of Bihar constituted a Technical Committee for inspecting the Centre. On 17.2.2008, the Technical Committee inspected the centre and submitted its report for inspection by the Standing Committee under the DGE & T, Government of India, New Delhi for approval under the NCVT scheme.

On 21.7.2009, the Standing Committee inspected the centre and submitted a negative report. It is alleged that the centre had all the infrastructural and instructional facilities in accordance with the norms prescribed by the NCVT but the Standing Committee submitted a negative report on account of non-payment of bribe demanded by members of the Committee, namely Shri Vivek Kumar, Dy. Director, Muzaffarpur and Shri Sanjay Kumar, Dy. Director, RDAT, Kolkata. It is alleged that as per norms, the respondents did not supply the copy of the Annexure III alongwith the copy of the inspection report to the petitioner immediately after the inspection i.e. 21.7.2009 and this was contrary to the norms and guidelines prescribed by the DGET, Government of India vide memo dated 5.5.2009 (for short the guidelines). According to the petitioner, the respondents kept the petitioner in dark about the report Annexure III with the sole object of extracting illegal gratification from the centre. The respondent Nos. 2 & 3 indulged in manipulation/cuttings of the figures in Annexure III after 21.7.2009, on

petitioner's refusal to pay the bribe demanded by them. For this reason, they did not hand over the copy of the Annexure III to the petitioner on 21.7.2009.

According to the petitioner, earlier the centre had applied for extension of 8 units in Electrical and Fitter trades and affiliation of two units in Diesel Mechanic trade. On 17.12.2008, the Inspection Committee inspected the centre and recommended for extension of all the ten units. However, actuated by dishonest intention, the respondent No. 2 and 3 did not recommend the said extension as sought by the centre. It is alleged that shortage of machines, equipment etc and other deficiencies were not pointed out on 21.7.2009. Even signatures of the 3<sup>rd</sup> Member of the Standing Committee were taken by the respondent No. 2 and 3 on the blank form, which robs efficacy of the report of the Standing Committee.

It is also alleged that pursuant to the orders dated 17.11.2009 passed by this Commission, the Directorate of Employment and Training, Government of Bihar constituted another Standing Committee on 24.11.2009, which inspected the centre and found the following deficiencies:-

<b>Trade</b>	<b>Sought by the Institute</b>	<b>Recommendation by the Standing Committee</b>	<b>Observation</b>
Electrician	04(2+2)	02(1+1)	Minor shortage in shop tools and shop outfit
Fitter	04(2+2)	02(1+1)	Minor shortage in shop tools & shop outfit
Mech. Diesel	02(1+1)	Nil	Major deficiencies in machineries



According to the averments made in the supplementary petition filed by the petitioner, the Director, Employment and Training, Government of Bihar constituted another Standing Committee for considering extension/affiliation of 2 (1+1) units in Electrical and 2 (1+1) unit in Fitter Trade. On 22.6.2010, the said Standing Committee consisting of Shri A. Nandi, Dy. Director CSTARI, Dr. Rabindra Prasad, Principal ITI Hathwa and Shri Munnilal Prasad AE (Electrical), B.S.E. Board, Barh, Patna inspected the centre. It is alleged that on that day Shri Vivek Kumar, Dy. Director had a meeting with Shri A. Nandi and on his advice, Shri A. Nandi did not complete the report on 22.6.2010. It is also alleged that Shri A. Nandi had threatened Shri Jamaluddin, Secretary of the Centre to withdraw the case from the Commission, failing which he would give a negative report. Since the centre did not oblige Shri A. Nandi by withdrawing the present case, he signed the negative report including the Annexure III on 29.6.2010. It is further alleged that Shri A. Nandi had violated the guidelines by not signing the inspection report on 22.6.2010 and also for not supplying a copy thereof to the centre immediately after inspection. It is alleged that under the influence of Sarva Shri Sanjay Kumar and Vivek Kumar, Shri A. Nandi had given negative recommendations. It is further alleged that Annexure III of the report was scrutinized and signed by the Standing Committee on 22.6.2010 wherein no deficiency was pointed out. Subsequently, Shri A. Nandi tampered with the said report, which cannot be acted upon. It is further alleged that the respondent No. 4 had violated the norms and guidelines framed by the NCVT/DGE &T. On these premise, the petitioner prayed for a direction to the competent authorities to sanction the additional 2+2 units of Electricians and 2+2 in Fitter Trade.

Respondents Shri Vivek Kumar and Shri Sanjay Kumar refused the allegations made against them. They have specifically denied the averments relating to the demand of

bribe from the petitioner. According to them, on 21.7.2009, the three member committee inspected the centre and prepared the report on that day itself and forwarded the same to the Director. Thereafter, on 29.7.2009, the petitioner addressed a letter of compliance to them expressing gratitude for the advice given by the said committee. It is also alleged that the centre had admitted students without sanction of the competent authority. According to the respondents, Shri Sanjay Kumar and Shri Vivek Kumar, the centre was again inspected on 27.11.2009 and the inspection reports clearly mention about the deficiencies/shortage noticed during the inspection.

Shri Munilal Prasad, third member of the standing committee has supported the petitioner's case by contending that his signatures were obtained by the respondents, Shri Vivek Kumar and Shri Sanjay Kumar on a blank form vide letter dated 25.7.2009.

Shri A. Nandi has also denied the allegations made against him including the alleged demand of bribe from the centre. According to him, on 22.6.2010, inspection of the centre was carried on in accordance with the norms prescribed therefor. At the time of inspection, acute shortage was found in trainers' tool kits for both Electrical and Fitter Trade units, which were counted and listed out by the instructor and Group Instructors and duly certified by Group Instructors and Principal of the Centre in the presence of members of the Standing Committee. He was informed that the shortage items were with the trainees, but all the trainees were found absent on the day of inspection, which is contrary to the norms prescribed by the DGE &T for inspection. The centre had also failed to produce Goods Inward Register, Dead Stock Register and Purchase Vouchers about purchase of the Tools, Equipments, Machines and the respective issue registers as per Annexure III. He has further elaborated on the deficiencies in respect of each and every item pointed out in the Annexure III and has stated that

since the items were not produced for physical verification, they could not be certified. He has further stated that in the recommendation sheet which was submitted alongwith the Annexure III, the deficiencies have been shown, which was signed by the Principal and the Group Instructors of the Centre. He has specifically denied the allegations that actuated by malice he had made the negative report.

An objection has also been taken by the respondents Dy. Director General (Training) that on the date of inspection, i.e. on 22.6.2010, the Centre was not declared as a minority educational institution and as such the centre is not entitled to invoke the provisions of the Act and the petition is liable to be dismissed on this count alone. It is further alleged that the Director, Employment and Training may again be directed to constitute another standing committee for re-inspection of the centre. During the pendency of the case, the petitioner centre had filed a separate petition for obtaining minority status certificate which was granted by this Commission vide orders dated 21.8.2011 passed in Case No. 640 of 2011. It has been held by the Supreme Court in N. Ammad vs. Emjay High School (1998) 6 SCC 674) that a minority educational institution continues to be so whether the Government declares it as such or not. When the Government declares an educational institution as a minority institution, it merely recognizes a factual position that the institution was established and is being administered by a minority community. The declaration is merely an open acceptance of the legal character of the institution which must necessarily have existed antecedent to such declaration. In view of the said decision of the Supreme Court, the petitioner's case cannot be thrown out on the sole ground that on the date of inspection i.e. 22.6.2010, the petitioner centre was not declared as minority educational institution.

It is an admitted position that the Centre was inspected thrice by the Standing Committee i.e. on 21.7.2009, 27.11.2009 and on 22.6.2010. As regards the inspection carried on 21.7.2009, it is contended on behalf of the petitioner that two members of the Standing committee, namely Sarva Shri Sanjay Kumar and Vivek Kumar had given negative recommendations for non-payment of the bribe demanded by them from the petitioner. But the said contention stands belied by the petitioner's letter dated 29.7.2009 expressing satisfaction about the inspection held on 21.7.2009. Had it been a fact that Sarva Shri Sanjay Kumar and Vivek Kumar had demanded bribe from the petitioner for a favourable recommendation, the petitioner would not have written the said letter dated 29.7.2009. However, the said inspection was superseded by another inspection carried on 27.11.2009.

It is undisputed that on 27.11.2009, the Centre was inspected by the Standing Committee which had found the following deficiencies:-

<b>Trade</b>	<b>Sought by the Institute</b>	<b>Recommendation by the Standing Committee</b>	<b>Observation</b>
Electrician	04(2+2)	02(1+1)	Minor shortage in shop tools and shop outfit
Fitter	04(2+2)	02(1+1)	Minor shortage in shop tools & shop outfit
Mech. Diesel	02(1+1)	Nil	Major deficiencies in machineries

It is beyond the pale of controversy that the Director, Employment and Training, Government of Bihar had constituted another Standing Committee for considering the centre's prayer for extension/affiliation of 2(1+1) units in Electricals and 2(1+1) units in fitter Trade vide memo No. 2574 dated 15.6.2010. The said Standing Committee

consisting of Shri A. Nandi, Dy. Director, CSTARI, Dr. Rabindar Prasad, Principal ITI, Hathwa and Shri Munnilal Prasad A.E. (Electricals), BSE Board, Barh, Patna inspected the Centre on 22.6.2010.

It is significant to mention here that the inspection dated 22.6.2010 assumes importance in this case. By the letter dated 29.6.2010, Shri A. Nandi had informed the Regional Director, Regional Directorate of Apprenticeship Training (ER), Kolkata that he had inspected the Centre on 22.6.2010. It is undisputed that Annexure III report was signed by the Members of the Standing Committee (except Mr. A. Nandi) on 22.6.2010. There is another Annexure-III report on record which was signed by Mr. A. Nandi bearing the date of 22.6.2010.

It is relevant to mention that pursuant to an application filed by Mr. Jamaluddin , Secretary of the Centre, following information was supplied by the DGE T, Government of India under the RTI Act.

RTI MATTER

URGNT/SPEED POST

DGET – 37(8)/RTI/2011-TC (DESK)  
Government of India  
Ministry of Labour and Employment  
Directorate General of Employment and Training

Shram Shakti Bhavan, Rafi Marg  
New Delhi, dated 8<sup>th</sup> Nov. 2011

To  
Shri Md. Jamaluddin  
Secretary, Sir Syed Technical Training Centre  
Akbarpur, P.O. Barh-803213  
Patna (Bihar)

Subject : Information sought under RTI Act, 2005 – regarding

Sir,

I am directed to refer to your application requesting to furnish copies of certain documents under the Right to Information Act, 2005. The information/documents sought by you in your original application dated 27<sup>th</sup> September 2011 is as under:-

- (i) Photocopy of Annexure –III in respect of the inspection conducted on 22.6.2010 by the Standing Committee at Sir Syed Tech. Training Centre, Akbarpur, Barh closed.
- (ii) Standing Committee Inspection Report (SCIR) dated 22.6.2010 is not signed by all the members.

2. However, you can make an appeal to the Appellate Authority Shri R.L. Singh, DDG(Training) DGET Hqrs, Ministry of Labour & Employment, Shram Shakti Bhawan, Rafi Marg, New Delhi – 110 001 if you are not convinced with the reply.

Yours faithfully,

(S.N.S. Rahi)

Deputy Director (Training) CPIO

Encl: As above

Thus, there are two inspection reports on record. One report is signed by only two members, namely, Dr. Rabindra Prasad , Principal ITI, Hathwa and Shri Munnilal Prasad AE (Electricals), B.S.E. Board and the other report is signed by all the members including Mr. A.N. Nandi. Both the reports bear the date of 22.6.2010. The report signed by the two Members of the Standing Committee clearly mentions that at the time of inspection, no shortage of Electrical Equipments or Machinery etc. was found, whereas the report containing signatures of Mr. A. Nandi mentions about the alleged shortage/deficiencies found at the time of inspection. Learned counsel for the petitioner has strenuously urged that the report containing signatures of Shri A. Nandi is tampered with and the report signed by the two members is a genuine report, which

merits acceptance. He has invited our attention to the rejoinder affidavit dated 26.11.2011 of Shri Jamaluddin in support of the said contention. He has also invited out attention to the complaint dated 2.7.2010 of Shri Jamaluddin addressed to Shri Sharda Prasad , IAS, Director General of Employment and Training, Ministry of Labour and Employment, Government of India about the alleged atrocious conduct of Mr. A. Nandi. Mr. Md. Jamaluddin has stated in his rejoinder affidavit that after inspection of the Centre, Mr. A. Nandi had assured him for favourable recommendation for extension of the trades in question on withdrawl of the present case filed before the Commission. He has further stated that on his refusal to do so, Shri A. Nandi had forged and fabricated the report Annexure III for his negative recommendation.

It transpires from the record that after inspection of the Centre, two Members of the Standing Committee namely, Dr. Rabindra Prasad and Shri Munnilal Prasad signed the Annexure-III report and submitted it to the Director, Employment and Training, government of Bihar, which was forwarded to the DGE &T, Government of India. Copy of this report was supplied to the petitioner under the RTI Act by the DGE&T, Government of India. This report is also conspicuous by the absence of any shortage of equipment/machinery or any other deficiency alleged to have been found at the time of inspection.

It needs to be highlighted that the DGE&T, Ministry of Labour and Employment, Government of India had formulated certain guidelines for carrying out inspection for affiliation etc. vide memo dated 5.5.2009. Clause 2 of the said guidelines which is relevant for our purpose is as under :-

DGET-12/2009-TC  
Government of India  
Ministry of Labour and Employment  
Director General of Employment & Training

Shram Shakti Bhawan, Rafi Marg

New Delhi Dated 5<sup>th</sup> May 2009

To,

1. The Secretaries /Principal Secretaries of all State Govts/UT Administrations dealing with vocational training.

Subject : Inspection Report for affiliation

xxxxxxxxxx

2(I) It was also decided that the inspection of not more than two ITIs/ITCs should be carried out in a day. Inspection must be carried out in working hours only.

(ii) The report (SCIR/DIR/SIR) must be properly signed with date, name designation and stamp of the Inspecting officers at the time of inspection itself and one copy of the report should be handed over to the head of the institute on the same day.

(iii) The report must be submitted to State Directorate immediately, which subsequently should be forwarded to DGET (HQ) (duly signed by Director/Joint Director), within a week. The State Directors must ensure that the files must reach DGET (HQ) on or before 31<sup>st</sup> My and 30<sup>th</sup> November for the respective sessions in august and February, so that these files are processed on time."

Yours faithfully

(R.L. Singh)  
Director of Training  
Member Secretary, NCVT

Copy to 1.The Directors/Commissioners dealing with Vocational Training of States/UT Administration.

2.The Director, ATI Chennai, Hyderabad, Bombay, Kolkata, Kanpur, Ludhiana, CSTARI Kolkata, ATI (EPI) Hyderabad & Dehradun, FTI Bangalore, Jamshedpur & NIMI Chennai

3.The Regional Director, RDAT, Kanpur, Mumbai, Kolkata, Chennai, Faridabad & Hyderabad



4.The Principal, CTI Chennai, MITI Haldwani, Calicut, Jodhpur, Choudwar

5. The Principal, NVTI Noida, All RVTIs

6. All the officers/sections of Training Directorate of DGET

(M.M. Gera)  
Joint Director of Training

(Emphasis supplied)

Rejoinder affidavit of Mr. Jamaluddin clearly shows that Mr. A.Nandi had not inspected the centre in working hours. It needs to be highlighted that circumstantial evidence clearly shows that the inspection report was not signed by Mr. A. Nandi on the day of inspection but it was ante dated. This circumstance, to a great extent probabilities case of the petitioner that Mr. A. Nandi had not carried out the inspection in working hours. This is a clear violation of the guidelines.

According to Clause 2(ii), the report must be signed with date etc. at the time of inspection itself and one copy of the report should be handed over to the head of the institute on the same day. Clause 2(iii) obligate the inspection committee to submit report to the State Directorate immediately for its onward transmission to the DGET within a week. It is undisputed that on 22.6.2010, two Members of the Committee namely Dr. Rabindra Prasad and Shri Munnilal Prasad had signed the Annexure III report after inspection and they also submitted it to the State directorate for its onward transmission to the DGET, Government of India. It is also undisputed that a copy of the report dated 22.6.2010 was not supplied to the Head of the Institute in terms of Rule 2(ii) ibid. Shri A. Nandi has not offered any explanation whatsoever about non-compliance of the said mandatory provisions of the clause 2(ii). The affidavit dated 27.12.2010 filed by Shri A. Nandi also indicates that the report Annexure III was not

signed by him on the day of inspection i.e. 22.6.2010. Reference may, in this connection be made to the following paragraphs of his affidavit:-

“3(iii) Every third instructor for Engineering Drawing and Workshop Calculation Science were not engaged/present on the day of inspection, which is also against the standing affiliation norms as the total strength of trainees was going to be increasing more than 288.

(iv) The Annexure –III was not produced during the inspection time as it was not prepared, though it is the duty and responsibility of the SCVT member to assist the ITI/ITC to prepare the report as per DGET norms before inspection. However, as a gentleman I have requested both the standing committee members to prepare the Annexure –III as per DGET norms and sign after thoroughly verifying all the purchase documents, GIR, DSR , Purchase Voucher/Memo and Issue Register for Tools, Equipments & Machineries, if they have satisfied. Both the members of standing committee agreed on that principle.

(v) I have never informed the ITC about my whereabouts at Patna. As per the DGET norms State Directorate is responsible to communicate and coordinate all the ITCs about the Inspection Schedule for affiliation. On 23.6.2010, I was badly engaged with the affiliation work for two separate institutes at different places and as such reached hotels at about 11 p.m. , when there were none

waiting for me. So, the allegation framed by the ITC is baseless and vindictive.

(vi) on 24.6.2010, I was engaged to inspect Brichh Vatika ITC, Rajeev Nagar, Patna and on returning to hotel I was busy for packing my luggage at about 5.30 p.m. as my duty at Patna was over. Suddenly hotel reception ringed me and informed that two gentlemen are waiting in reception and wish to meet me. As courtesy I came down to hotel reception, where two gentlemen from S.S.T.T.C. were waiting with their Annexure III report. They requested to sign the same as it was prepared by the assistance of SCVT members. The same was checked by me and also suggested some correction as it was not prepared as per DGE&T norms. So, it is very much clear that the ITC members have contacted me by their own. Other allegation framed by the ITC is baseless and vindictive.

(vii) On 29.06.2010, three persons from S.S.T.T.C. came CSTARI, Kolkata for their own interest as they could not prepare and submit the Annexure – III during my stay at Patna.

In the final Annexure-III report, which they brought for signature, was not attached almost 80 to 90% purchase documents for both the trades regarding Tools, Equipments and machineries, what the SCVT members have ignored and also not brought store records GIR, DSR, Issue Register, which I have instructed at their ITC.

Instead of crossing and cutting every item in five copies of Annexure-III I have signed the Annexure –III by mentioning the shortage observed (certified by Group Instructors and Principals of S.S.T.T.C.(ITC) and also put not recommended remark in the final recommendation sheet.

After this they refused to accept the report and started behaving very indecently and threatened with dire consequences and also shouted to see me at court. In this situation I just stood in front of them with folded hands without uttering a single word, which was witnessed by our office staffs/officers.

(viii) The copy of Recommendation Sheet along with Annexure –III showing deficiencies signed by Principal and Group Instructors of the said ITC along with my report was submitted to the Regional Director, RDAT, Kolkata on the same day.

6. The reason for cutting the pre-typed report is already mentioned in detail in Sl.No. 3(vii). However, by seeing the enclosures to the complaint made by ITC, it is surprising that a different recommendation sheet is attached with changed contents and signed by two members only. It clearly indicates the behavior of the other two members how they were connived with the ITC and are frequently changing the reports and its contents. The manipulation/changed of Standing Committee report is only by the two other members and not by the undersigned.

7. That during the whole process of inspection of afterwards the undersigned never talked or discussed about any other court case, which is also irrelevant. In fact I was even not fully aware of the case and its facts what they have mentioned. This is all fabrication to litigate the matter and take undue advantage out of the situation. I was concerned only about the inspection carried out by the Standing Committee, no other comments were passed. Petitioner, right from the day of inspection was threatening me to drag in the court if not recommended. My report which was submitted to RDAT on 29.6.2010 itself indicates the fact as stated by me at Annexure – II.

9. After completion of the work of inspection report was submitted to the Regional Director, RDAT, Kolkata on 29.6.2010 itself, which has been forwarded to DGE&T, New Delhi for further necessary action. No other comments to offer.”

The aforesaid statement of Shri A. Nandi clearly shows that the report Annexure III was not signed by him on 22.6.2010. Surprisingly, Xerox copy of the said report signed by him bears the date of 22.6.2010. This circumstance to a great extent probablises the petitioner’s contention that the said report is ante dated. Shri A. Nandi has not offered any explanation whatsoever about ante dating of the said report. Thus, Shri A. Nandi had deliberately violated Clause 2(ii) of guidelines. His affidavit also shows that the report Annexure III was not submitted to the State Directorate immediately but the same was submitted on 29.6.2010. Shri A. Nandi has not offered

any plausible explanation for the said violation of Clause 2(iii) of the guidelines. Thus, violation of the said guidelines by Shri A. Nandi robs efficacy of the Annexure III report submitted by him. It transpires from the record that on 22.6.2010, the inspection report was signed by two Members only, namely, Dr. Rabindra Prasad and Shri Munnilal Prasad and they had submitted the report to the State Directorate immediately. Copy of the said report was supplied to the centre under the RTI Act vide memo dated 8.11.2011. Why Mr. A. Nandi had not signed the said report on the same day alongwith other members is shrouded in mystery. The circumstances leading to the said violation of the guidelines have lent material corroboration to the statement of Mr. Md. Jamaluddin that Shri A. Nandi had forged and fabricated the inspection report for some extraneous consideration. Consequently, no reliance can be placed on such a report. Eliminating the said report of Mr. A.N. Nandi, there remains the inspection report submitted by remaining two members of the committee, which does not record any shortage or deficiency. In our considered opinion, report of the said Members merits acceptance.

For the foregoing reasons, we recommend to the DGET, Government of India, Ministry of Labour and Employment to reject the negative report of Shri A. Nandi and to act upon the report of the remaining Members of the Committee for according sanction of extension of 2+2 units of Electricians and 2+2 in Fitter Trades as sought by the centre.

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

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

On 7.3.2013, Hon'ble Chairman met Shri Ajay Vishnoi, Hon'ble Minister for Minority Welfare, Government of Madhya Pradesh and Shri Raghuvveer Shrivastav, Commissioner, Backward Classes and Minority Welfare, Madhya Pradesh. During the discussion the issue of temporary minority status certificate to minority educational institution was discussed. Hon'ble Minister was apprised of the various judicial pronouncements by the apex Courts. The Hon'ble Minister for Minority Welfare assured that the practice of issuing temporary minority status certificates will be discontinued and such of the minority educational institutions declared as minority educational institutions by the Commission shall be treated as minority educational institutions by the Government of Madhya Pradesh.

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

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

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

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

### **Case No.1225 of 2011**

#### **Petition to seek direction to the State to allow to fill up the sanctioned posts lying vacant by superannuation of the teaching staff.**

**Petitioner:** M. M. Memorial Urdu High School, Gopalganj, Bihar.

**Respondent:** The Secretary, Human Resource Development Department, Government of Bihar, Secretariat, Patna, Bihar

Challenge in this petition is to the order No. 10/SI-41/0986 dated 3.2.2010 issued by the Human Resource Development Department, Government of Bihar banning recruitment of teachers in secondary and higher secondary schools including the educational institutions covered under Article 30(1) of the Constitution. According to the petitioner, the sanctioned strength of the teachers in the school is 14. 3 teachers of the sanctioned strength had superannuated and 2 more teachers are likely to retire by July 2011. The student strength of the school is 1200. The petitioner seeks a



direction to the respondent exempting the educational institution covered under Article 30(1) of the Constitution from the rigour of the impugned order No. 10/SI-41/0986 dated 3.2.2010.

Despite service of notice none entered appearance on behalf of the respondent.

It is alleged that the student strength of the petitioner school is 1200 and 14 posts of the teachers were sanctioned for the said school. It appears that out of sanctioned strength 5 teachers have now superannuated. Having regard to the student population of the petitioner school, the present strength of the sanctioned teachers is inadequate for imparting education to the students. The impugned order dated 3.2.2010 banning recruitment of teaches in the educational institutions including the educational institutions covered under Article 30(1) of the Constitution is been creating hardships to the students belonging to the minority community.

By the impugned order dated 3.2.2010, students belonging to the minority communities are being deprived of their right to education within the meaning of Article 21 of the Constitution. The Supreme Court has implied the 'Right to Education' as a fundamental right from Article 21 of the Constitution. The word 'life' has been held to include 'education' because education promotes good and dignified life. (Unnikrishnan vs. State of A.P. AIR 1973 SC 2178).

We, therefore, recommend to the State Government to exempt the educational institutions covered under Article 30(1) of the Constitution from the rigour of the order dated 3.2.2010 and to allow the petitioner to fill up the sanctioned posts vacant by superannuation of the teaching staff.

**Case No. 2694 of 2010**

**Petition to seek direction to the State Government to grant permission for establishment of Urdu Primary School**

**Subject:** Hindustan Minority Education and Social, Welfare Society, Tq. & District Akola, Maharashtra Through its President Mohd. Salar Khan Mohd.

**Respondent:** 1. The Secretary, School Education Department, Government of Maharashtra, Mantralaya, Mumbai.

2. The Director of Education, Primary Education Department, Government of Maharashtra, Central Building, Pune.

By this petition, the President of Hindustan Minority Education and Social Welfare Society Tq. & District Akola, Maharashtra seeks a direction to the State Government to grant permission for establishment of Urdu Primary School at Bhagarwadi, Khair Mohammad Plot, Akola (MS). It is alleged that on 9.5.2008, the petitioner society had submitted a proposal to the competent authority of the State Government for grant of permission to establish Urdu Primary School on permanent non-grant basis. The District Level Committee has recommended the proposal but the State Level Committee declined to grant requisite permission on the sole ground of availability of 2 municipal Urdu schools within 2 kms area of the proposed school. It is alleged that the impugned action of the State Government is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

The petition has been resisted by the Director, Primary Education, Government of Maharashtra on the ground that there are already 2 municipal Urdu primary schools within the radius of 2 kms. and as such the State Level Committee decided not to recommend the petitioner's proposal.

The point for determination is as to whether the impugned action of the State Government in rejecting the petitioner's proposal for establishment of Urdu Primary School at Bhagarwadi, Khair Mohammad Plot, Akola (Maharashtra) is violative of the educational rights of the minorities enshrined in 30(1) of the Constitution?

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

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

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

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

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

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

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

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

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

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

It needs to be highlighted that the District Level Committee had recommended the petitioner’s proposal for establishment of Urdu primary school at Bhagarwadi, Khair Mohammad Plot, Akola, (MS). It is also undisputed that the petitioner’s proposal was rejected on the sole ground that there are 2 municipal schools already existing within the radius of 2 kms area.

It is significant to mention that the petitioner’s proposal was not rejected on the ground of lack of infrastructural and instructional facilities. There is nothing on record to show or suggest that the establishment of the proposed Urdu Primary School at

Bhagarwadi, Khair Mohammad Plot, Akola, Maharashtra would create unhealthy competition between similarly situated educational institutions. In this view of the matter, impugned action of the Director of Primary Education rejecting the petitioner's aforesaid proposal is violative of the educational rights of the minorities guaranteed under Article 30(1) of the Constitution.

For the foregoing reasons we recommend to the respondent to reconsider the petitioner's proposal for establishment of the proposed Urdu Primary School at Bhagarwadi, Khair Mohammad Plot, Akola Maharashtra.

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

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

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

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

The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational

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.”

A meaningful exercise of the rights guaranteed under Article 30(1) of the Constitution must, therefore, mean the right to establish effective educational institutions which may subserve the real needs of the minorities and the scholars who resort to them. It is permissible for the State or the regulatory authority to prescribe regulations, which must be complied with, before any minority institution could seek or retain affiliation and recognition but such regulations should not impinge upon the minority character of the institution. Therefore, a balance has to be kept between the two objectives – that of ensuring the standard of excellence of the institution, and that of preserving the right of the minorities to establish and administer their educational institutions. Regulations that embraced and reconciled the two objectives could be considered to be reasonable. (See T.M.A. Pai Foundation Vs. State of Karnataka) 2002 (8) SCC 481). In T.M.A. Pai Foundation’s case, it has been held by the Supreme Court that affiliation and recognition has to be available to every institution that fulfills the conditions for grant of such affiliation and recognition. Moreover, the right conferred by Art. 30 on minorities imposes a duty on the legislature and the executive to abstain from making any law or taking any executive action which would take away or abridge that right.

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

**Case No. 2334 of 2012**

**Petition to seek direction to State Government to approve the admissions admitted through CET**

**Petitioner:** The Association of Minority Pharmacy Colleges, Molgi Road, Akkalkuwa Dist. Nandurbar, Maharashtra, Through its President Maulana Gulam Mohd. Vastanvi

**Respondent:** Pravesh Niyantaran Samiti, Govt., of Maharashtra, 305, 3<sup>rd</sup> Floor, Govt. Polytechnic Building, 49, Kherwadi, Ali Yawar Jung Marg, Bandra (E), Mumbai.



By this petition, the petitioner seeks a direction to the respondent to approve the admission of the students admitted through its CET held on 29.8.2012 and also to allow the petitioner to hold CET for the academic year 2013-2014. The petitioner is an association of minority educational institutions established by members of the Muslim Community. The respondent had allowed the petitioner to hold its own CET for the academic year 2011-12 vide memo dated 7.9.2011 (Annexure P-1). Admission of students selected through the CET conducted by the petitioner was also approved by the respondent vide memos dated 11.4.2012, 17.4.2012 and 21.5.2012 (Annexure P-2). The petitioner applied to the respondent for conducting its own CET for the academic year 2012-13. After repeated reminders, the petitioner was informed about rejection of its application for holding its own CET vide memo dated 7.8.2012 (Annexure P-5). By the letter dated 3.10.2012, extract of the minutes of the meeting and the decision taken by the respondent were also communicated to the petitioner (vide Annexure P-12). The English translation of the decision taken by the respondent on 16.7.2012 on the petitioner's application is as under :

“Two CETs for admission procedures are available (MAH-MPH-CET2012 & M. Pharm Asso-CET-2012), the third CET for admission procedure from Association of Minority Pharmacy Colleges, Akkalkuwa (AMPCA-CET-2012) is not feasible for admission of students. They should either participate in the admission process of Government or the admission process of association of Private Un-aided Pharmacy Colleges.”

It is alleged that impugned decision of the respondent is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. Hence this petition.

The respondent resisted the petition on the ground that it is not maintainable as the Commission has no jurisdiction to issue any direction to the State Government or to the Committee constituted by the State Government. It is alleged that the Commission cannot entertain the present petition as the petitioner institution is not a minority educational institution. It is also alleged that the petitioner has no locus standi to file the present petition on behalf of the Y.B, Chavan College of Pharmacy, Ali-Allana college of Pharmacy and Allana College of Pharmacy. It is further alleged that there are about 17 minority unaided pharmacy colleges including the petitioner in the State of Maharashtra, who had participated in the CET conducted by the State of Maharashtra and the Association of Private Pharmacy Colleges and the eligible candidates have been allotted for their admission in the colleges of Pharmacy. It is further alleged that cut off date for approval of students selected through CET conducted under the supervision and control of the Director of Technical Education, State of Maharashtra expired on 31.8.2012 and as such the present petition which was filed on 15.7.2012, has become infructuous. It is further alleged that according to the decisions rendered by the Supreme Court all professional colleges can admit students only from sources mentioned above and the petitioner cannot be permitted to hold its own CET for admission of students. It is also alleged that the Director of Technical Education, State of Maharashtra is a necessary party to the present proceedings and as such the petition is bad for non joinder of the necessary party.

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

- (a) Whether the commission has jurisdiction to entertain the petition?
- (b) Whether the petition is bad for non-joinder of the necessary party?
- (c) Whether the impugned decision dated 16.7.2012 of the respondent debarring the petitioner from holding its own CET is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution?

### **Issue No. 1**

At the outset we must make it clear that this Commission has been created under an Act of Parliament to facilitate exercise of the educational rights of the minorities enshrined in Article 30 (1) of the Constitution. The statement of objects and reasons accompanying the Bill clearly spell out the object for constitution of this Commission. At this juncture, we may usefully excerpt the Statement of Objects and Reasons of the Bill, which are as under:-

“In one of the Sections of the National Common Minimum Programme, there is a provision to establish a Commission for Minority Educational Institutions (hereinafter referred to as the National Commission) that will provide direct affiliation for minority professional institutions to Central Universities. This long felt demand of the Minority communities was also underscored in a series of meetings held by the Ministry of Human Resource Development with educationists, eminent citizens and community leaders associated with Minority education. Among the various issues raised by the representatives of the Minority communities was the difficulty faced by them in establishing and running their own educational institutions, despite the Constitutional guarantees accorded to them in this regard. The major problem was the issue of securing affiliation to a university of their choice. The territorial jurisdiction of the State Universities, and the concentration of minority populations in some specific areas

invariably meant that the institutions could not avail the opportunity of affiliation with the universities of their choice.

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

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

4. The salient features of the aforesaid ordinance are as follows:-

- (i) It enables the creation of a National Commission for Minority Educational Institutions;
- (ii) It creates the right of a minority educational institution to seek recognition as an affiliated college to a Scheduled University, notwithstanding anything contained in any other law for the time being in force;

- (iii) It allows for a forum of dispute resolution in the form of a Statutory Commission, regarding matters of affiliation between a minority educational institution and a Scheduled University and its decision shall be final and binding on the parties;
- (iv) The Commission shall have the powers of a civil court while trying a suit for the purpose of discharging its functions under it, which would provide the decisions of the Commission the legal sanction necessary for such purpose; and
- (v) it empowers the Central Government to amend the Schedule to add in, or omit from any University.”

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

It needs to be highlighted that the Act provides that the Commission will be guided by the principles of natural justice and subject to the other provisions of the Act and has the power to regulate its own procedure. Sub Section (2) of Section 12 empowers the Commission to exercise the specified powers under the Code of Civil procedure like summoning of witnesses, discovery, issue of requisition of any public record, issue of commission etc. Sub Section (3) of Section 12 specifies that every proceeding before the Commission shall be deemed to be a judicial proceeding in terms of the Indian Penal Code and the Commission shall be deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure 1973 (2 of 1974). Sections 12A and 12B confer appellate powers to this Commission and they also provide that orders passed by the Commission shall be executable as a decree of a Civil Court. Sub Section (5) of Section 12 A of the Act declares that an order made by the Commission under Sub Section (4) shall be executable by the Commission as a decree of a Civil Court. Section 12F of the Act indicates that no civil court has jurisdiction in respect of any matter with the Commission and is empowered by or under the Act to determine. Thus, the Commission enjoys all trappings of a court.

There is also an ouster of jurisdiction of the civil court to entertain any suit or proceeding in respect of any matter which the Commission is empowered by or under the Act to determine. The constitution of the Act itself indicates that it is chaired by a retired Judge of the High Court. Thus the Act is a self-contained code intended to deal with all disputes arising out of recognition/affiliation of the educational institutions of the minorities covered by Article 30(1) of the Constitution. The Act also empowers the Commission to deal with the cases relating to deprivation/violation of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

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

In our considered opinion the petitioner has made out a prima facie case of violation/deprivation of the fundamental right guaranteed under Article 30(1) of the Constitution. That being so, the Commission has jurisdiction to entertain the petition.

Learned counsel for the respondent has strenuously urged that the petitioner cannot invoke jurisdiction of the Commission as it is not a minority educational institution. In our opinion the aforesaid submission of the learned counsel does not hold much water. Needless to add here that the Commission has been set up to safeguard and

protect the rights of the minorities guaranteed under Article 30(1) of the Constitution. It needs to be highlighted in its letter No. PNS (H&T) Meeting decision/2010-2011/1152 dated 7.9.2011, the respondent has unequivocally admitted that the petitioner is an Association of Minority Pharmacy College of Maharashtra. In view of the said admission, it does not lie in the mouth of the petitioner to contend that the petitioner is not a minority institution. Consequently, we find and hold that the Commission has the jurisdiction to entertain the petition.

### **Issue No. 2**

It is contended on behalf of the respondent that the Director of Technical Education, Government of Maharashtra is a necessary party to the present proceedings and since the said authority has not been impleaded, the petition is bad for non-joinder of the necessary party. Admittedly, the respondent committee has been constituted by the State Government to monitor admission process and fee fixation in accordance with the directions of the Supreme court in Islamic Academy of Education vs. State of Karnataka (2003) 6 SCC 697. That being so, the Director of Technical Education, Government of Maharashtra has no power to monitor admission process of the colleges in question. Moreover, the petitioner has not sought any relief against the said authority. Consequently, it cannot be held that the petition is bad for non-joinder of the Director of Technical Education, Government of Maharashtra.

### **Issue No. 3**

It is undisputed that the Government of Maharashtra had constituted the respondent committee in accordance with the directions of the Supreme Court in Islamic Academy of Education (supra) vide orders dated 24.9.2003 (Annexure P-1). It needs to be



highlighted that responsibilities of the respondent committee have been enumerated in clause 4(b) of the orders dated 24.9.2003 which are as under :

Admission Regulation Committee

1. The Committee will keep watch on the entrance examination conducted by the institute.
2. The Committee will ascertain that the process of entrance examination is carried out properly and with transparency and will supervise the admission process.
3. The committee will have a right to obtain the question paper/names of the persons assessing the answer books and information about the system of examination from the Institute to confirm that there is no leakage of the question paper for the entrance examination.
4. For those institutes which have their own system of admission, the committee can give approval to the institutes to give admission as per the system. Such admission process can be continued for a minimum of 25 years.
5. If the committee feels that the necessity of a minority institute is proper regarding admission, the committee can permit the institute to fill more seats than the quota sanctioned by the Government for the caste.
6. If any institute is to be exempted from the Admission Regulation Committee or if any Institute wishes to make a change in the percentage in admission, it will be necessary for the Government to put up what it has to say before the Committee.”

It has been held by the Supreme Court in Islamic Academy of Education (supra) and P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537 that the main function of Admission Regulation committee to monitor admission process to ensure fairness and transparency in admission procedure. Policing under regulatory measures is permissible but not nationalisation or total take over. The Committee can't set at naught any decision of the High Court or Supreme Court under the garb of the regulatory measures.

It is beyond the pale of any controversy that the petitioner Association is a minority institution. It is an Association of Minority Pharmacy Colleges established by members of the Muslim community. The affidavit of Mr. Sayyed Nazim Sayyed Chand clearly proves that the three colleges associated with the petitioner, namely Ali-Allana college of pharmacy, Y.B. Chavan College of Pharmacy and Allana College of Pharmacy are only one group of minority institutions of the State of Maharashtra imparting same or similar education. He has clearly stated in his affidavit that no other Muslim minority college in the State of Maharashtra conducts M. Pharma course. It has been held by the Supreme court in P.A. Inamdar case (supra) that “there is nothing wrong in an entrance held for one group of institutions situated in one state or in more than one State may join together and hold a common entrance test .....

In P.A. Inamdar (supra) one of the questions that came up of consideration was “whether private unaided professional colleges are entitled to admit students by evolving their own method of admission” and the question was answered by the Supreme court as under:-

“Pai Foundation has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admission and the procedure therefor subject to its being fair, transparent and non-exploitative. The same principle applied to non-minority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and

non-exploitative. All institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the above said triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit-based admissions and preventing maladministration. The admission procedure so adopted by a private institution or group of institutions , if it fails to satisfy also or ay of the triple tests, indicated hereinabove, can be taken over by the State substituting its own procedure. The second question is answered accordingly”

(emphasis supplied)

It is relevant to mention that the law declared by the Supreme Court is binding on all courts. All the authorities in the territory of India are require to act in aid of it. Any interpretation of law or judgment by the Supreme court is the law declared by the Supreme court (Som Mittal vs. Government of Karnataka AIR 2008 SC 1528). We may mention at the cost of repetition that in Islamic Academy Foundation (supra) and PA Inamdar (supra) the Supreme Court has clearly laid down that the function of the Admission Regulation Committee is to oversee admissions in order to ensure that merit is not the casualty. The committee cannot dilute the fundamental right of a group of minority educational institutions imparting same or similar education to admit students by evolving their own method of admission. This is subject to the condition that such a method should be fair, transparent and non-exploitative. But such a minority institution is not required to obtain prior approval of the Government or any statutory authority for exercising its fundamental right guaranteed under Article 30(1) of the Constitution. If any rule or regulation obligates a minority institution to obtain

such an approval, that would void and ineffective. Article 13 of the Constitution declares that any law in breach of the fundamental rights would be void to the extent of such violation. The term law includes within its amplitude any rule, orders by law, regulation, notification and the prohibition binds all such instrumentalities within the State. That being so, the respondent committee cannot direct a group of minority institutions entitled to hold its own CET to obtain its proper approval for holding such a CET. However, such an institution is required to submit all the requisite documents relating to its own CET including the schedule and brochure to the Admission Regulation committee so that it may keep watch on the entrance test and also to ensure fairness and transparency in admission process.

In the instant case, the petitioner was allowed by the respondent to hold its own CET for the academic year 2011-12 (vide Annexure P-1). Admittedly, the petitioner had approached the respondent for grant of permission to hold its own CET for the academic year 2012-2013. The petitioner had also submitted to the respondent all the requisite documents including schedule and brochure and repeated reminders from the petitioner did not evoke any response from the respondent. As stated earlier, the petitioner was not required to obtain prior approval of the respondent for holding its own CET. However, it transpires from the record that during sphinx silence maintained by the respondent on the petitioner's application, the petitioner conducted its own CET and admitted 12 Muslim students. It is relevant to mention that there is not even a whisper in the counter filed on behalf of the respondent to show or suggest that admission process of these 12 students was not fair or transparent. Consequently, admission of the said students cannot be faulted on any legal ground. The university concerned has rightly allowed these students to appear in the examination conducted by it.

Learned counsel for the petitioner has invited out attention to the impugned decision taken by the respondent on the petitioner's application for holding its own CET in support of his contention that it is violative of the right guaranteed under Article 30(1) of the Constitution. The said submission of the learned counsel merits acceptance. English translation of the impugned decision is as under:

“Two CETs for admission procedures are available (MAH-MPH-CET2012 & M. Pharm Asso-CET-2012), the third CET for admission procedure from Association of Minority Pharmacy Colleges, Akkalkuwa (AMPCA-CET-2012) is not feasible for admission of students. They should either participate in the admission process of Government or the admission process of association of Private Un-aided Pharmacy Colleges.“

By the said decision, the petitioner was directed either to participate in the admission process of the Government or the admission process of association of Private unaided Pharmacy colleges as the third CET for admission procedure from the petitioner is not feasible for admission of students. We are constrained to observe that the impugned decision directly stares into the face of Article 30(1) as interpreted by the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 and P.A. Inamdar (supra). The condition imposed in the impugned decision virtually involves an abject surrender of the substantial right of the minorities and the same is inconsistent with the constitutional guarantee enshrined in Article 30(1) of the Constitution as it directly impinges upon the important facet of administration. Needless to add here that

right of a minority community to admit students of its own community is a vital facet of administration. The impugned decision of the respondent debarring the petitioner from holding its own CET is virtual negation of the constitutional protection guaranteed to the minorities under Article 30(1) of the Constitution.

A bare perusal of the impugned decision of the respondent clearly spells out that it has over stepped its jurisdiction and assumed the powers as never given or intended to be given to the committees by the Islamic Academy Education (supra). By the impugned decision the respondent had deliberately deprived the petitioner of its fundamental right to hold its own CET. Similarly, the respondent has no power to direct a group of minority educational institutions imparting same of similar education to join the CET conducted by the Government or by association of Private Unaided Pharmacy Colleges. At this juncture, we may usefully excerpts the following observations of the Supreme Court in P.A. Inamdar case (supra)

“However, we would like to sound a note of caution to such Committees. The learned counsel appearing for the petitioners have severely criticized the functioning of some of the committees so constituted. It was pointed out by citing concrete examples that some of the Committees have indulged in assuming such powers and performing such functions as were never given or intended to be given to them by Islamic Academy. Certain decisions of some of the Committees were subjected to serious criticism by pointing out that the fee structure approved by them was abysmally low which has rendered the functioning of the institutions almost impossible or

made the institutions run into losses. In some of the institutions, the teachers have left their jobs and migrated to other institutions as it was not possible for the management to retain talented and highly qualified teachers against the salary permitted by the committees. Retired High court Judges heading the committees are assisted by experts in accounts and management. They also have the benefit of hearing the contending parties. We expect the Committees so long as they remain functional, to be more sensitive and to act rationally and reasonable with due regard for realities. They should refrain from generalizing fee structures and, where needed , should go into accounts, schemes, plans and budgets of an individual institution for purpose of finding out what would be an ideal and reasonable fee structure for that institution.”

(emphasis supplied)

As minority educational institutions associated with the petitioner, management thereof has unfettered right to admit students of its own choice. Reference may, in this connection be made to the following observations of the Supreme Court in P.A. Inamdar (supra):

“The employment of expressions “right to establish and administer” and “educational institution of their choice” in Article 30(1) gives the right a very wide amplitude. Therefore, a minority educational institution has a right to admit students of its own choice, it can, as a matter of its own free will, admit students of

non-minority community. However, non-minority students cannot be forced upon it. The only restriction on the free will of the minority educational institution admitting students belonging to a non-minority community is, as spelt out by Article 30 itself, that the manner and number of such admissions should not be violative of the minority character of the institution.”

It has also been held by the Supreme Court in T.M.A. Pai Foundation (supra) that a certain percentage of seats can be reserved for admission by the management out of those students who have passed the CET held by itself. It is also relevant to mention that the State Government through its instrumentalities has no power to insist on seat sharing in the petitioner institution. Reference may, in this connection, be made to the following observations of the Supreme Court in PA Inamdar (supra):

“So far as appropriation of quota by the State and enforcement of its reservation policy is concerned, we do not see much of a difference between non-minority and minority unaided educational institutions. We find great force in the submission made on behalf of the petitioner that the States have no power to insist on seat-sharing in unaided private professional educational institutions by fixing a quota of seats between the management and the State. The State cannot insist on private educational institutions which receive no aid from the State to implement the State’s policy on reservation for granting admission on lesser percentage of marks i.e. on any criterion except merit”

(emphasis supplied)



Learned counsel for the respondent has contended that since the cut off date for admission has expired on 31.8.2012, no approval for admission of the said 12 students can be granted by the respondent and as such the present petition has become infructuous. We are unable to appreciate the said submission of the learned counsel. As demonstrated earlier, the respondent committee has powers to monitor the admission process in order to ensure fairness and transparency. It cannot assume the power to give approval to the petitioner institution to give admission as per its entitlement to hold its own CET. The power to give approval to the institutes to give admission as per the system has been embodied in clause (4) of the order dated 24.9.2003, which is as under:-

“for those institutes which have their own system of admission, the committee can give approval to the Institutes to give admission as per the system. Such admission process can be continued for a minimum of 25 years”

The aforesaid clause applies to those institutes which have been established and which have been permitted to adopt its own procedure for the last, at least 25 years. It is relevant to mention that in Islamic Academy of Education (supra) it has been observed by their Lordships of the Supreme Court that “the committee shall have the power to permit an institution, which has been established and which has been permitted to adopt its own admission procedure for the last, at least, 25 years to adopt its own admission procedure.....”. In para No. 17 of the judgment, their Lordships have mentioned names of the institutions, which have since long, had their own admission procedure. The said para reads as under:-

“At this juncture it is brought to our notice that several institutions have since long, had their own admission procedure and that even though they have been admitting only students of their own community no finger has ever been raised against them and no complaints have been made regarding fairness or transparency of the admission procedure adopted by them. These institutions submit that they have special features and they stand on a different footing from other minority non-aided professional institutions. It is submitted that their cases are not based only on the right flowing from Article 30(1) but in addition they have some special features which require that they be permitted to admit in the manner they have been doing for all these years. A reference is made to few such institutions i.e. Christian Medical College , Vellore, St. John’s Hospital, Islamic Academy of Education etc. the claim of these institutions was disputed. However, we do not think it necessary to go into those questions. We leave it open to the institutions which have been established and who have had their own admission procedure for, at lease, the last 25 years to apply to the committee set out hereinafter”

Thus, clause (4) of the orders dated 24.9.2003 applies to those institutes, which have since long had their own admission procedure for the last, at least 25 years and it empowers the committee to give approval to the institute to give admission as per the system. Clause (4) of the said orders has been engrafted in consonance with the directions given by the Supreme Court in Islamic Academy Education (supra). The

said clause does not apply to the group of institutions imparting same or similar education and which has been permitted by the Supreme Court vide decisions rendered in T.M.A. Pai Foundation and P.A. Inamdar (supra) to hold a common entrance test. That being so, clause (4) of the said orders cannot be applied to the petitioner association obligating it to obtain prior approval of the respondent to give admission in the associated colleges.

As regards the petitioner association, the role of the respondent is limited to the extent of ensuring that the CET conducted by it is fair, transparent and non-exploitative. The respondent cannot take away the freedom of management of the petitioner association to hold its own CET so as to reduce it to a satellite of the state. If the respondent committee feels that the CET held by the petitioner was not fair and transparent, it can ask the petitioner to hold another CET for admission of students but it cannot assume powers of giving approval to the petitioner to give admission to those students, who have been selected through the CET, which is fair and transparent. In the instant case, admission of 12 Muslim students selected through the CET held by the petitioner has not been challenged on the ground that the CET held by it was not fair and transparent.

Lastly, it has been contended by the learned counsel for the respondent that the cut off date for approval of students selected through CET conducted under the supervision and control of the Director of Technical Education expired on 31.8.2012, no approval can be granted to the petitioner to admit the said students selected through the CET conducted by it. We have already held that having regards to the facts and circumstances of the case, no prior approval of the respondent was required for admission of the student, through the CET conducted by the petitioner. At this juncture, learned counsel for the petitioner has invited our attention to the provisional

scheme of activities of association of Unaided Private Pharmacy Colleges dated 6.9.2012 (Annexure P-15) which shows that it was allowed to conduct its CET after expiry of the cut off date fixed by the Director of Technical Education. Thus it is obvious that the petitioner has been discriminated against in the matter of giving approval to the admission of the students selected through the CET held by it.

For the foregoing reasons, we find and hold that the impugned decision dated 16.7.2012 of the respondent is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution and the admission of 12 Muslim students admitted by the petitioner cannot be faulted on any legal ground. Relying upon the decisions rendered by the Supreme Court in T.M.A. Pai Foundation and P.A. Inamdar (supra), we find and hold that the petitioner association, being a group of minority educational institutions imparting same or similar education in State of Maharashtra, is entitled to hold its own CET for admission of students. We also find and hold that the petitioner is not required to obtain prior approval of the respondent or any authority of the State Government for conducting the CET, but the CET shall be conducted before expiry of the cut off date fixed by the Director of Technical Education, Government of Maharashtra for admission of students in the Pharmacy Colleges of the State and the CET shall be monitored by the respondent in order to ensure fairness and transparency in the admission process.

**Case No.1645 of 2009**

**Petition to seek direction to the State to refrain from interfering in the internal administration of the petitioner institution.**

**Petitioner:** St. John's High School, Sector 26, Chandigarh Through its Principal-cum Secretary Of the Managing Committee, Mrs. Kavita C. Dass Chandigarh.

- Respondent:**
1. The Chandigarh Administration Through the Advisor to the Administrator UT Secretariat, Sector 9, Chandigarh.
  2. The Home Secretary-cum Secretary Education, Chandigarh Administration UT Secretariat, Sector 9, Chandigarh.
  3. The District Education Officer, Chandigarh Administration, Sector 9, Chandigarh.
  4. Mr. T.K. Goyal, #147, Sector 19-A, Chandigarh.
  5. Mrs. Meeta Goyal, #147, Sector 19-A, Chandigarh.
  6. The Director Public Instruction (Schools), Chandigarh Administration, Sector -9, Chandigarh.

On 3.11.2009, a written complaint was received by the school from Mrs. Meeta Goyal (respondent No.5) and Mr. T.K. Goyal (respondent No. 4), parents of Eash and Eshan Goyal studying in class 7 B of the petitioner school, against the Art Teacher, Mr. Michael Angelo Francis. Despite repeated requests from the petitioner school, Mr. T.K. Goyal neither met the Principal nor produced any evidence against the said teacher. However, a copy of the complaint was served upon the said teacher, directing him to submit his para-wise reply. Pursuant to the said direction, the said teacher faxed his reply, denying all the allegations made against him. Thereafter, he proceeded on leave, providing an opportunity to the school management to conduct a free and fair enquiry against him.

On 22.1.2010, Mr. R.S. Sangwan filed a complaint against Smt. Kavita C. Das, Principal of the school and Mr. Michael Angelo, Art teacher leveling following charges against them:-

- (a) That porn sites were being shown to the students by the Art Teacher Mr. Machael Angelo Francis;

- (b) That the children of the school, who are in tender age are being taught/made to compete to hack sites, log in accounts, internet sites of others and for the purpose and to teach this nefarious exercise, Principal Smt. Kavita C. Dass is facilitating and encouraging the young children for hacking all computer sites;
- (c) That another illegality of piracy of software is being carried out under the instructions of the Principal Smt. Kavita C. Dass, the software which cannot be subsequently derived or used elsewhere or generated subsequently is being pirated within the school for children thereof to carry out the said programmes;
- (d) That the computers have been purchased in the school by the Principal Smt. Kavita C. Dass without asking for / inviting quotations and as such she usurped and weaned away funds required for the purpose of propagation and carrying out of educational activities;
- (e) That for the sake of photography even each and every student is required to make requisite payment to the school but the Principal Smt. Dass does not maintain any such specific account for the same.

The complaint was thoroughly enquired by the Police Inspector Gurmukh Singh and the aforesaid allegations made against the Principal Smt. Dass and the Art Teacher were found to be false and fabricated. Inspector Gurmukh Singh has specifically held that the Art Teacher has nothing to do with the computer system of the school. The said report was submitted to the Dy. DA, who concurred with the findings recorded by the P.I. Gurmukh Singh and forwarded it to the SSP vide orders dated 25.3.2010. Agreeing with the report of the P.O., the SSP ordered for closure of the case vide orders dated 29.3.2010.

Mr. R. S. Sangwan was working as Maintenance Faculty with the petitioner school and his services were terminated by the Principal, Smt. Kavita C. Dass. On 10.12.2009, he filed a complaint against the Principal Smt. Dass and the Art Teacher. The complaint was forwarded to the ES/HS with the recommendation to send it to the SSP for inquiry and action. Thereupon, he directed that a copy of the complaint be sent to the management of the school for enquiry and report within 3 weeks failing which, the matter will be referred to the Police. By the memo No. 193-DPI-UT-A4-24 ( ) 2001 dated 8.1.2010, the Director of Public Instructions directed Sh R.S. Sangwan to file complaint to the Police, if he so desired. Thereafter, Sh. R. S. Sangwan approached the PMO's office and by the Memo No. 16/3/2010-PMP2/115192 dated 22.1.2010, the Advisor to the Administrator UT Chandigarh was directed to take appropriate action on the letter dated 2.1.2010 of Sh. Sangwan.

Shri R.S. Sangwan had also sent a copy of his complaint dated 2.1.2010 against the Principal and the Art Teacher to the Home Secretary, Chandigarh Administration. Thereupon, the Home Secretary, Chandigarh Administration directed the I.G.P., U.T. Chandigarh to enquire into the matter and to send his report within 7 days. By the memo No. U-13034/8/2010 CPD dated 30.3.2010, Dy. Secretary, Ministry of Home Affairs, Government of India, directed the Advisor to the Administrator, Chandigarh Administration, to send the enquiry report against the Principal, Smt. Dass at the earliest. Copy of the said memo was also forwarded to the Home Secretary, Chandigarh Administration with a request to expedite the report. Pursuant to the said directions, the Director of Public Instruction, Chandigarh Administration intimated Deputy Secretary to the Government of India, Ministry of Home Affairs that on examination of Sh. R.S. Sangwan's complaint, he was advised to file a complaint with

the Police if he so desires. (vide memo No. 318-DPI-UT-A4-24 ( ) 2001/279 dated 12.5.2010.

It is alleged that even on an earlier occasion in a case where one of the teachers of the school was alleged to have used corporal punishment on a student, management of the petitioner school was not allowed to conduct its own inquiry against the teacher. Instead the Home Secretary of the Chandigarh Administration (respondent No. 2) directed the SDM (East) UT Administration to hold the inquiry. The said magisterial enquiry was held in the school premises. On 27.7.2009, the SDM (East) Chandigarh submitted his report to the respondent No. 2. Thereafter, the respondent No. 2 sought the legal opinion from the Senior Standing Counsel, Chandigarh Administration, who opined about registration of a criminal case under section 323/352 IPC against the said teacher, besides termination of her services. On 29.7.2009, the petitioner school received a copy of the inquiry report of the SDM and legal opinion of Sr. Standing Counsel, directing the school authorities to take action against the said teacher as a result whereof the petitioner school had no option but to dispense with the services of the said teacher.

It is also alleged that the respondent No. 2 made it a point to regularly get alleged irregularities in the petitioner school highlighted in the press. On these premises it is alleged that the respondents attempted to take over the administration of the petitioner school by harassing its Principal and other staff and also by intervening in the internal management of the petitioner school and thereby blatantly violated the educational rights of the minorities enshrined in Article 30(1) of the Constitution.



Respondent Nos. 1 to 3 and 6 denied the petitioner's case and raised a preliminary objection about non-maintainability of the petition on the ground that the petitioner is guilty of 'suppressio very and suggestion falsi'. It is alleged that as per inquiry report of the respondent No. 3, the Principal Smt. Kavita C.Dass was found guilty of abetting cyber crime in the school by organizing a competition, "to hack the server and login accounts of other members and to hack the network". The Art Teacher of the school, Mr. Michael Angelo Francis was also found guilty of promoting such obscene lyrics as "she fucking hates me" and thereby polluting young impressionable minds. According to the respondents, such blatant and shocking obscenity cannot be justified on any ground and falls outside the domain of the right guaranteed under 30(1) of the Constitution.

It is alleged that instead of initiating any action against the Principal and the Art Teacher, the U.T. Administration merely sent the inquiry report to the management for taking appropriate action. Since the land for constructing the school building was allotted at a very concessional rates by the Chandigarh Administration and provisional recognition was also granted to the petitioner school in terms of the Punjab Education code, the petitioner school cannot claim exemption from the rules and regulations made by the Chandigarh Administration in furtherance of its school policy. It is also alleged that initiation of a magisterial inquiry against a teacher of the school, namely, Ms. Reema Talwar cannot be faulted on any legal ground. It is further alleged that the attitude adopted by the management of the school by not participating in the inquiry against the Art teacher Mr. Michael Angelo Francis and entering into unnecessary correspondence knocks the bottom out of the petitioner's case.

It is further alleged that in Ms. Reema Talwar's case, the management of the petitioner school had acted upon the directions of the Chandigarh Administration and terminated her services but in the case of the Principal and the Art Teacher, the management is adopting an entirely different attitude without any plausible reason thereof. According to the respondents, the management of the petitioner school cannot be allowed and perpetuate illegal, unethical and immoral methods for teaching the students under the garb of the constitutional protection enshrined in Article 30(1) of the Constitution. The petitioner school has not approached the Commission with clean hands and the complaint has been filed just to create undue pressure on the Chandigarh Administration, which has acted purely in the interest of education. No legal right of the petitioner has been infringed and the inquiry report has been sent to the petitioner school for taking appropriate action in the matter.

The respondent Nos. 4 and 5 resisted the petition on the ground that when disturbing facts like showing pornography, use of inappropriate language encouragement of other obscenity, teaching of vulgarity, cyber crime etc was brought to their knowledge they had no option but to approach the Chandigarh Administration by making a written complaint. On 11.11.2009, the respondents handed over incriminating evidence against the Art Teacher, to the District Education Officer as they had a valid apprehension about the possibility of tampering with the evidence or interpreting it otherwise, if the same was handed over to the management of the petitioner school. The complaint was duly inquired into by the Chandigarh Administration and the inquiry report was sent to the management of the school for taking appropriate action against the Principal and the Art teacher. It is alleged that a minority educational institution cannot claim immunity against laws relating to health, hygiene, labour relations, social welfare legislations, public order or morality. In other words, a minority educational

institution cannot take the protection of Article 30(1) of the Constitution to shy away from the process of law. Strong reliance has been placed on the decision rendered by the Apex court in St. Stephen College's vs. the University of Delhi AIR 1992 SC 1630, T.M.A. Pai Foundation vs. the State of Karnataka (2002) 8SCC 481 and PA Inamdar vs. the State of Maharashtra (2005) 6 SCC 537 in support of their said contentions.

It is also alleged that the Art Teacher with the active connivance of the school administration is attempting to settle scores with the respondents, who had lodged a genuine complaint in the interest of their children.

It is relevant to mention that the following facts have not been disputed by the parties:-

- (i) That Smt. Kavita C.Dass is the Principal and Shri Michael Angelo Francis is the Art Teacher of the petitioner school.
- (ii) That Smt. Meeta Goyal is the wife of Shri T.K. Goyal, who is a PCS Officer of the Chandigarh Administration.
- (iii) That at the relevant time, Eash and Eashan Goyal, sons of the respondent Nos. 4 & 5 were studying in class VII-B of the petitioner school.
- (iv) That on receiving the complaint dated 22.7.2009 against a teacher of the petitioner school, namely Ms. Reema Talwar, charging her to have inflicted corporal punishment on a student, the management of the school initiated an inquiry against her;
- (v) That on 23.7.2009, the petitioner school received a letter from the SDM (East) UT Chandigarh stating therein that she had been entrusted to hold an inquiry against Ms. Reema Talwar, by the respondent No. 2;
- (vi) That on 24.7.2009, the said inquiry was held by the SDM (East) in the school premises and on 27.7.2009, the SDM (East) submitted her inquiry report to the respondent No. 2 holding the said teacher guilty of slapping Master Akshay Singh, a student of Section III of the petitioner school ;

- (vii) That the respondent No. 2 sought legal opinion of Sr. Standing Counsel of the Chandigarh Administration on the inquiry report of the SDM(East);
- (viii) That by the letter dated 29.7.2009, Shri Anupam Gupta, Sr. Standing Counsel advised respondent No. 2 to get a case registered against Ms. Reema Talwar u/s 323/352 IPC and also to get her services terminated by the School management;
- (ix) That on 29.7.2009, the Principal of the petitioner school received a letter from the Director, Public Instructions (Schools), Chandigarh alongwith the Enquiry Report of the SDM (East) as well as the legal opinion of Sh. Anupam Gupta, Advocate, directing her to take action against Ms. Reema Talwar under intimation to him;
- (x) That pursuant to the said directions of the Director, Public Instructions (Schools),management of the petitioner school terminated the services of Ms. Reema Talwar;
- (xi) That on 3.11.2009 a written complaint was received from the respondent Nos. 4 and 5 against the Art Teacher, Mr. Michael Angelo Francis;
- (xii) That on the same day i.e. 3.11.2009, the respondent Nos. 4 & 5 were requested to meet the Principal and produce the evidence in support of their complaint vide letter dated 3.11.2009 but despite receipt of the said letter they (respondent No. 4 & 5) neither met the Principal nor produced any evidence before her;
- (xiii) That on 5.11.2009 all the news papers of the Chandigarh carried news items about the complaint against Mr. Michel Angelo Francis;
- (ix) That on 5.11.2009, the managing committee of the petitioner school decided to entrust the inquiry to Bro. A.F. Pinto, Director, Education, CCBI on production of sufficient evidence by the respondent No. 4;
- (x) That the respondent No. 4 did not submit any evidence before the Managing Committee and on 6.11.2009, he sent a letter to the Managing committee stating therein that he didn't have any faith in the conduct of a fair inquiry by the school authorities. He also intimated that the respondent No. 2 had already entrusted the inquiry to the Director of Public Instruction (Schools), Chandigarh Administration;

- (xi) That on 6.11. 2009, itself the Press carried news items relating to service of a notice on the school administration by the UT Administration in connection with the aforesaid episode;
- (xvii) That on 6.11.2009, the District Education Officer, Chandigarh sent a letter to the School Administration directing it to submit its detailed comments within two days in respect of the complaint of the respondent Nos. 4 & 5 against Mr. Michael Angelo Francis, failing which the matter will be reported to the higher-ups;
- (xviii) That on 9.11.2009, the School Administration responded to the letter dated 5.11.2009 of the District Education Officer, Chandigarh by intimating the said officer about entrustment of inquiry to the Inquiry Officer appointed by it;
- (xix) That Justice S.S. Sodhi, a retired Chief Justice was appointed by the School Administration to inquire into the complaint against Mr. Michael Angelo Francis;
- (xx) That on 10.11.2009, a news paper carried a news item about service of another notice on the School Administration by the District Education Officer, Chandigarh (respondent No. 3);
- (xxi) That on 10.11.2009, the School Administration received the letter dated 9.11.2009 of the District Education Officer (respondent No.3) directing the Principal and the Art Teacher to appear before him on 11.11.2009 at 10.30 a.m.;
- (xxii) That on 10.11.2009, itself the School sent a reply to the district Education Officer (respondent No. 3) intimating that a detailed letter narrating the complete sequence of events had been duly delivered at his office on 9.11.1990. it was also stated in the said letter that the enquiry was underway and the school being a minority institution covered under Article 30(1) of the Constitution was free to administer the institution as it deems fit without any interference by the Chandigarh Administration;
- (xxiii) That on 10.11.2009, a representation was also sent to the respondent No. 1 bringing all the facts to the notice of the respondent No. 1;
- (xxiv) That rejecting the pleas of the school administration, the district Education Officer (respondent No. 3) proceeded with the inquiry against the Art Teacher;

- (xxv) That the respondent No. 5 had challenged the appointment of Justice (Retd.) S.S. Sodhi by filing a Writ Petition No. 4404/2010, before the Punjab & Haryana High Court, which was disposed of by the orders dated 12.3.2010 granting liberty to approach the High Court, if no action is taken pursuant to the enquiry, in the event of the guilt of the teacher;
- (xxvi) That Justice (Retd.) S.S. Sodhi exonerated the Art Teacher Michael Angelo Francis from the charges leveled against him holding that “the complaint made by the complainants, Mr. T.K. Goyal and his wife Mrs. Meeta Goyal, was obviously actuated by some ulterior motive, which is wholly unbecoming for an officer belonging to the Punjab Civil Services” vide orders dated 28.3.2010;

It is alleged that harassment of the Principal Smt. Kavita C. Dass continued in the form of various complaints filed by Mr. R.S. Sangwan. In fact a complaint was made to the National Commission for SC/ST regarding discrimination being carried out against scheduled castes children and atrocities upon them. In addition, Shri Arvind Thakur, Chairperson, Global Human Rights Council, Chandigarh also made a similar complaint to the National Commission for SC/ST, New Delhi against Smt. Kavita C. Dass. These complaints were enquired into by the Sub Inspector, Police Station 26, Chandigarh and they were found false and baseless. The enquiry report was forwarded to the concerned authority by the Dy. Superintendent of Police, East Sub-Division, Sector 26, UT Chandigarh with the following endorsement:-

“Ref No.9908-R/W-SSP dt. 03.09.2010 R-2548/DSP/East dt. 07.09.10

**Subject : Discrimination against scheduled castes children and atrocities upon them in St. John’s High School, Sec-26, Chandigarh (Reference attached)**

Forwarded with the attached report of EO and SHO/PS-26, which is in detail. From the enquiries conducted so far, it is found that the

allegations leveled in the representation regarding discrimination against Scheduled Castes students and atrocities upon them in St. John High School, Sec.26, Chandigarh are found totally false and baseless. It seems that Mr. Hemant Goswami, Mr. T.K. Goyal and Mr. R.S. Sangwan are intentionally creating false evidence against the school authorities to defame it for the reasons best known to them. Thus, the instant complaint may kindly be filed. However, if approved, we may obtain legal opinion as to whether any cognizable offence is made out against the complainants for creating false evidence and further supplying the same to various authorities for initiating legal action against the school authorities.

Submitted please.

Dy. Superintendent of Police  
East Sub Divn. Sec. 26  
UT Chandigarh  
Dt. 17.9.10”

A stream of decisions rendered by the Supreme Court commencing with the Kerala Education Bill case and climaxed by P.A. Inamdar vs. State of Maharashtra (supra) has settled the law for the present. The whole edifice of case law on Article 30(1) of the Constitution has been bed rocked on Kerala Education Bill. According to the gist of the authoritative pronouncements of the Supreme Court, a benignly regulated liberty which neither abridges nor exaggerates autonomy but promotes better performance in the right construction of the constitutional provisions enshrined in Article 30(1). Such an approach enables the fundamental rights meaningfully to fulfill its tryst with the

minorities' destiny in a pluralist policy. The constitutional estate of the minorities should not be encroached upon, neither allowed to be neglected nor maladministered.

It has been held by the Supreme Court in St. Xavier's College, Ahmedabad vs. State of Gujarat AIR 1974 (1) SCC 717 that the minority institutions have the right to administer institutions and the right implies the obligation and duty of the minority institutions to render the very best to the students. In the field of administration it is not reasonable to claim complete autonomy. The right to administer is to be tempered with regulatory measures to ensure that the administration is efficient and sound and will serve the academic needs of the institution. Administration connotes management of the affairs of the institution. Autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institution. The management must be free of control so that the founders or their nominees can mould the institution as they think fit and in accordance with their ideas of how the interest of the community in general and the institution in particular will be best served.

The Supreme Court has held in T.M.A. Pai Foundation's case (supra) that the State of any statutory authority cannot under the garb or cover of adopting regulatory measures destroy the administrative autonomy of a minority educational institution or start interfering with the administration of the management of the institution concerned so as to render the right of administration of the institution concerned nugatory or illusory.

It is beyond the pale of controversy that by the orders passed by this Commission in Case No. 1535 of 2006, the petitioner institution has been declared as a minority educational institution within the meaning of Section 2(g) of the NCMEI Act. Needless



to add here that as a minority educational institution, the petitioner institution is entitled to the constitutional protection guaranteed under Article 30(1) of the Constitution.

As stated above, on receiving a complaint against a teacher namely, Ms. Reema Talwar, the petitioner school initiated a preliminary inquiry but this inquiry was hijacked by the Chandigarh Administration. It is an admitted position that the SDM (East) was directed to hold an inquiry against the said teacher and on 24.7.2009, the inquiry was held by the SDM(East) in the school's premises which was a calculated assault on the administrative autonomy of the petitioner school. It is also undisputed that on the inquiry report of the SDM(East), the respondent No. 2 sought the legal opinion of the Sr. Standing Counsel to the Chandigarh Administration and acting upon the legal opinion of the Sr. Standing Counsel, the petitioner was directed to terminate the services of Ms, Reema Talwar. Pursuant to the said directions, services of Ms. Reema Talwar was terminated by the School Administration. This atrocious conduct of the respondent No. 2 directly stares into the face of Article 30(1) of the constitution. A feeble attempt has been made to canvass that since the Government of Punjab had allotted land to the petitioner school at concessional rates, the petitioner school is bound to carry out the directions of the Chandigarh Administration. This contention has to be rejected on the sole ground that allotment of land to the school at concessional rates does not annihilate the right guaranteed under Article 30(1) of the Constitution. Education, is undoubtedly, an obligation of the State but the State aid is not to be confused with the State control over academic policies and practices. We must resist, in the interests of our own democracy, the trend towards the governmental domination of the educational process.

It is an admitted position that on 3.11.2009, a complaint was received by the school from the respondent nos. 4 & 5 (parents of Eash and Eshan Goyal) regarding the alleged despicable conduct of the Art Teacher namely Mr. Machael Angelo Francis. Despite repeated reminders the respondent Nos. 4 & 5 neither met the Principal Smt. Kavita C. Dass nor produced any evidence before the school administration in support of the said complaint. On 5.11.2009, the managing Committee of the school decided to entrust the inquiry to Bro. A.F. Phinto, Director Education CCBI in respect of the said complaint. It is also undisputed that on 5.11.2009, the School Administration again requested the respondent No. 4 and 5 to produce the evidence in support of the said complaint and that on 6.1.2009, the school administration received a letter from the respondent Nos. 4 stating therein that he did not have any faith/trust in the conduct of a fair inquiry by the school administration and that the respondent No. 2 had already entrusted the inquiry to the Director Public Instructions (School) Chandigarh. It is also beyond the pale of controversy that the management of the school had appointed Justice (Retd.) S. S. Sodhi, a retired Chief Justice for holding the inquiry against the said Art Teacher and the respondent Nos. 4 & 5 had not fully participated in the inquiry. Learned counsel for the petitioner has strenuously urged that one man inquiry committee was constituted and comprised of a former Chief Justice of a High Court just in order to bring the element of the transparency and fairness and there was a complete adherence to the principles of natural justice.

Learned counsel for the respondent Nos. 4 & 5 has also attempted to jettison the inquiry report of Justice (Retd.) S. S. Sodhi on various grounds. We do not want to burden this order by mentioning all those grounds. Suffice it to say that we cannot sit in judgment over the said inquiry report. In our opinion, constitution of the said inquiry

committee is relevant only to show that the management of the school had held a domestic inquiry in respect of the complaint made against the Art Teacher.

The facts narrated above clearly indicate that while the school administration was in the process of initiating a domestic inquiry against its Art Teacher, the respondent No. 2, in total disregard and disrespect to Article 30(1) of the Constitution, violated the administrative autonomy of the petitioner school as a minority educational institution by entrusting the inquiry to respondent No. 3. The impugned action of the respondent No. 2 has the effect of displacing the management and entrusting it to the Government. The autonomy of a minority institution in administration is lost. On an exhaustive analysis of the aforesaid decisions of the Supreme Court, the principles which emerge are that nothing should be done to impair the rights of the minorities in the matter of their educational institution and the width and scope of provisions of the Constitution dealing with those rights are not circumscribed. The state or any statutory authority cannot under the garb or cover of adopting measures tend to destroy the administrative autonomy of the institution or start interfering willy nilly with core of the management of the institution, so as to render the right of administration of the institution concerned nugatory or illusory. Such a blatant interference is clearly violative of Article 30(1) of the Constitution. Administrative autonomy of a minority educational institution cannot be curbed by the State Authorities. State authorities can interfere only if there is any maladministration in the minority institution. Any aberration of any member of the teaching or the non-teaching staff of an educational institution inviting disciplinary action does not fall within the domain of maladministration. Thus, the impugned actions of the respondent Nos. 2 & 3 had clearly violated the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

As demonstrated above, a rein of terror was let loose by the Chandigarh Administration against the Principal Smt. Kavita C Dass and the Art Teacher Mr. Michael Angelo Francis. Even the print media was set into motion to browbeat and undermine the administrative autonomy of the petitioner institution. Here a question arises : why Smt. Kavita C. Dass and Mr. Michael Angelo Francis were hounded and harassed by the Chandigarh Administration. Answer to this question lies in the inquiry report dated 28.3.2010 of Justice (Retd.) S.S. Sodhi In his report Justice Sodhi has referred to the affidavit of Mr. Michael Angelo Francis, which throws light on the genesis of the whole trouble. According to Mr. Michael Angelo Francis, respondent Nos 4 & 5 were always actively involved in all activities of the school involving their children. Both the sons of the said respondents had joined the Music Band in 2008 and they had also performed on various occasions in the school. The respondents had been visiting the practice sessions and had been interacting also with Mr. Michael Angelo Francis, who had informed them that their sons are very talented on the guitar and the keyboard and had singing skills. Mr. Michael Angelo Francis further stated that thereafter, the respondent Nos. 4 & 5 started approaching him to include 15 songs of their sons which he was unable to do. This annoyed them, which ultimately culminated in false accusations being made by them against him and the Principal. On a consideration of the evidence produced before him, Justice Sodhi concluded in his report dated 28.3.2010 that the complaint made by the respondent Nos. 4 & 5 was actuated by some ulterior motive, which is wholly unbecoming for an officer belonging to Punjab Civil Services.

It needs to be highlighted that on 12.8.2010, Smt. Kavita C. Dass filed an application before this Commission supported by an affidavit alleging her harassment by the respondent Nos. 2 & 3. Pursuant to the orders dated 12,8,2010, the Chairman of the

Commission wrote a letter to the Administration of the UT, Chandigarh requesting him to restrain the said authorities from harassing Smt. Kavita C. Dass. It transpires from the record that even during pendency of the petition before this Commission, efforts were made to withdraw the provisional recognition of the petitioner school. It is beyond the pale of controversy that provisional recognition was due for renewal and an inspection was carried out by the Education Department on May 4, 2010. It is alleged by the petitioner that no major discrepancies were noticed by the inspecting team. However, 55 days after the inspection and during pendency of the case before the Commission, a notice was served on the petitioner school on 28.6.2010, highlighting certain discrepancies noticed during inspection and threatening to withdraw the provisional recognition automatically without further notice on petitioner's failure to rectify the deficiencies notice by the inspecting team. It appears that the said notice is still hanging over the head of the petitioner school like a Damocles' sword.

Learned counsel of the petitioner has submitted that on 29.6.2010, an English daily of wide circulation published a false and incorrect story "PMO wants porn in class case investigated again". On 30.7.2010, the Principal met the Resident Editor of the said Newspaper and enquired about the basis of such a false and misleading news item. The Principal was informed by the said Editor that basis of the news in question was the inputs provided by Mr. R.S. Sangwan. Learned counsel further submitted that Mr. R.S. Sangwan was a dismissed employee of the petitioner school and as such he had a grudge against the Principal and the management of the school. According to the learned counsel, the then Home Secretary (respondent No. 2), DEO (respondent No. 3), Mr. T.K. Goyal, Mrs. Goyal and Mr. R.S. Sangwan were co-conspirators and they actually conspired to harass the Principal and the Music Teacher Mr. Michael Angelo Francis. It is undisputed that Mr. R.S. Sangwan had sent a complaint to the

Administration of the UT Administration as also to Sh. T.K.A. Nair, Principal Secretary of the P.M., Sh. Ram Niwas, Home Secretary, U.T. Administration. Sh. P.K. Srivastava, the IGP, UT Administration and Sh. S.S. Srivastava, SSP U.T. Administration, Chandigarh against the Principal for pornography, hacking, piracy etc. Thus a consorted maladroitness effort was made to rope in the Principal and the Art Teacher of the school.

On a reflection of the facts of the case, it is luculent that the Principal had undergone mental torture at the hands of the insensible officers. As is perceptible, the mindset of the protectors of law appears to cause torment and insult to the Principal. There can be no trace of doubt that she is bound to develop stress disorder and anxiety which can weaken the strength of will power. It is said that anxiety and stress are slow poisons. This withers away the very essence of life as enshrined in Article 21 of the Constitution.

With the efflux of time, the concept of mental torture has been understood throughout the World, regard being had to the essential conceptions of human dignity. It also includes a treatment that is inflicted that causes humiliation and compels a person to act against his/her will or conscience. Any treatment meted out to a citizen by any authority of the state, which causes humiliation and mental trauma corrodes the concept of human dignity. It has been held by the Supreme Court in Vishwanath vs. Sau. Sarla Vishwanath Agarwal AIR 1991 SC 2176 that “reputation is not only the salt of life but also the purest treasure and the most precious perfume of life. It is extremely delicate and a cherished value on this side of the grave. It is a revenue generator for the present as well as for the posterity”.

It is trite that a man's reputation forms a facet of right to life as engrafted under Article 21 of the Constitution. (Smt. Kiran Bedi vs. Committee of Inquiry & Anr. AIR 1989 SC 714). In Smt. Kiran Bedi's case (supra) their Lordships of the Supreme Court has quoted with approval the following observations from the decision in D.F. Marion vs. Davis 55 ALR 171:-

“the right to enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property.”

In Smt. Selvi and Ors. State of Karnataka AIR 2010 SC 1974 the Supreme Court has held that “a forcible intrusion into a person's mental processes is also an affront to human dignity and liberty often with grave and long lasting consequences.”

The expression 'right to life' enshrined in Article 21 is of wide amplitude and it embraces within its fold the right to live with human dignity and all that goes along with it. (Francis Mullin vs. Administrator, Union Territory of Delhi and Ors. AIR 1981 SC 746; D.K. Basu vs. State of West Bengal AIR 1997 SC 610; Khanak Singh vs. State of U.P. AIR 1963 SC 1295).

The factual matrix of the case as noted above clearly reflects the deliberate insensitive approach to the entire fact situation. As demonstrated earlier the concerted maladroitness effort was made to rope in the Principal and the teacher in certain criminal offences. It

clearly exhibits the imprudent perception and heart of stone of the administrative authorities of the State.

Direct interference in the internal management of the institution and it is tantamount to institution surrendering its administrative autonomy. The situation contemplates the administration to be in the hands of the particular minority community. In order that the management of the institution is free from outside control, the founders must be permitted to mould the institution as they think fit. No part of the management can be taken away by the Government and vest it in another body. As demonstrated earlier the offending actions of the Government officials have taken away the disciplinary action from the Governing body. This robs the founders of that right , that the constitution desires should be theirs.

It is well settled that autonomy in administration means a right to administer effectively as also to manage and conduct the affairs of the institution. The distinction is between restriction on the right of administration and regulation prescribing the manner of administration. The right of administration is day to day administration. The choice in the personnel of management is also part of the administration. If there is maladministration, the State Government or the statutory authorities can take steps to cure the same. There is not even an iota of evidence on record to show or suggest that there was maladministration in the petitioner school. On the contrary, as demonstrated earlier, the impugned actions of the respondents No. 2, 3 & 6 have the effect of displacing the management and entrusting it to the Chandigarh Administration. Thus the autonomy in administration is lost. The calm waters of the administration was not only disturbed but also mixed. The broad approach is to see that nothing is done to impair the rights of the minorities in the matter of administration



and that width and scope of the provisions of the Constitution dealing with those rights are not circumscribed under the guise of preventing maladministration. The right of the Governing body to manage the affairs of the minority educational institutions cannot be taken away. The effect of the impugned actions is that the management of the petitioner institution virtually lost its right to administer the institution.

For the foregoing reasons, we are constrained to observe that the aforesaid impugned actions of the respondent Nos. 2, 3 and 6 are violative of the educational rights of the minorities guaranteed under Article 30(1) of the Constitution. Having regards to the facts and circumstances of the case we hope that henceforth authorities concerned will refrain from interfering in the internal administration of the petitioner institution.

**Case No. 910 of 2012**

**Petition to seek direction to State to grant approval of the appointment of selected and appointed by the management of the petitioner college.**

**Petitioner:** Ashrafia Inter College, Mahul, Azamgarh, Uttar Pradesh.

**Respondent:** 1. District Inspector of School, District Azamgarh, Uttar Pradesh.  
2. The Joint Director(Education District), Azamgarh, Uttar Pradesh.

By this petition, the petitioner Asharfia Inter College, Azamgarh, seeks direction to the respondent No. 1, the District Inspector of School, Azamgarh to grant approval of the appointment of 3 peons namely, Shri Fariyad Ahmed, Santosh Yadav and Ravindra, selected and appointed by the management of the petitioner college. It is alleged that the petitioner college is a minority educational institution covered under Article 30(1) of the Constitution. 3 posts of Peons fell vacant in the petitioner school and Sarva Shri Fariyad Ahmad, Umesh Yadav and Ravindra were selected and appointed against the said vacancies. The requisite documents relating to selection and appointment of

these Peons were sent to the Office of the District Inspector of School, Azamgarh on 26.5.2011 for approval. Despite repeated reminders the District Inspector of School, Azamgarh has not passed any order relating to selection and appointment of the Peons. Hence this petition.

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

The issue which arises for consideration is : whether the impugned action of the District Inspector of School, Azamgarh in not granting approval to the appointment of Sarva Shri Fariyad Ahmad, Umesh Yadav and Ravindra against vacant posts of Peons of the petitioner college is violative of the educational rights of the minorities guaranteed under Article 30(1) of the Constitution.

It is beyond the pale of controversy that the petitioner institution is a minority educational institution covered under Article 30(1) of the Constitution. Article 30(1) gives minorities the right to establish and administer educational institution of their choice. In State of Kerala v. Very Rev. Mother Provincial [1970 (2) SCC 417], the Constitution Bench of Supreme Court explained 'right to administer' thus:

"Administration means 'management of the affairs' of the institution. This management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right."

In the Ahmedabad St. Xavier's College Society v. State of Gujarat [1974 (1) SCC 717 ], a nine Judge Bench of this Court considered the scope and ambit of

minority's right to administer educational institutions established by them. The majority were of the view that prescription of conditions of service would attract better and competent teachers and would not jeopardize the right of the management of minority institutions to appoint teachers of their choice. It was also observed:

"Autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institutions. The distinction is between a restriction on the right of administration and a regulation prescribing the manner of administration. The right of administration is day to day administration. The choice in the personnel of management is a part of the administration. The university will always have a right to see that there is no mal-administration. If there is mal-administration, the university will take steps to cure the same. There may be control and check on administration in order to find out whether the minority institutions are engaged in activities which are not conducive to the interest of the minority or to the requirements of the teachers and the students."

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

In the field of administration it is not reasonable to claim that minority institutions will have complete autonomy. Checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institution. The right of a minority to administer its educational institution involves, as part of it, a correlative duty of good administration."

It has been held by Eleven Judges Bench of Supreme Court in TMA Pai Foundation v. State of Karnataka [2002 (8) SCC 481] that a minority educational institution does not cease to be so merely on receipt of aid from the State or its agencies. In other words, receipt of aid does not alter the nature of character of the minority educational institution receiving aid.

Relying on the decisions rendered by the Supreme Court in T.M.A. Pai Foundation's case (supra) and P.A. Inamdar vs. State of Maharashtra (2005) 6SCC 537, the Supreme Court has held in Secretary, Malankara Syrian Catholic College vs. T. Jose 2007 AIR SCW 132, as under :-

"The general principles relating to establishment and administration of educational institution by minorities may be summarized thus:

(i) The right of minorities to establish and administer educational institutions of their choice comprises the following rights:

a) 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;

b) To appoint teaching staff (Teachers/Lecturers and Head-masters / Principals) as also non-teaching staff; and to take action if there is dereliction of duty on the part of any of its employees;

c) To admit eligible students of their choice and to set up a reasonable fee structure;

d) To use its properties and assets for the benefit of the institution;

(ii) The right conferred on minorities under Article 30 is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position viz-a-viz the majority. There is no reverse discrimination in favour of minorities. The general laws of the land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation etc. applicable to all, will equally apply to minority institutions also.

(iii) The right to establish and administer educational institutions is not absolute. Nor does it include the right to maladminister. There can be regulatory measures for ensuring educational character and standards and maintaining academic excellence. There can be checks on administration as are necessary to ensure that the administration is efficient and sound, so as to serve the academic needs of the institution. Regulations made by the State concerning generally the welfare of students and teachers, regulations laying down eligibility criteria and qualifications for appointment, as also conditions of service of employees (both teaching and non-teaching), regulations to prevent exploitation or oppression of employees, and regulations prescribing syllabus and curriculum of study fall under this category. Such regulations do not in any manner interfere with the right under Article 30(1).

(iv) Subject to the eligibility conditions/qualifications prescribed by the State being met, the unaided minority educational institutions will have the freedom to appoint teachers/Lecturers by adopting any rational procedure of selection.

(v) Extension of aid by the State, does not alter the nature and character of the minority educational institution. Conditions can be imposed by the State to ensure proper utilization of the aid, without however diluting or abridging the right under Article 30(1).

It has also been held by the Supreme Court in the case of Secretary, Malankara

(supra ) that the State can prescribe:

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

In other words, all laws made by the State to regulate the administration of educational institutions, and grant of aid, will apply to minority educational institutions also. But if any such regulations interfere with the overall administrative control by the Management over the staff, or abridges/dilutes, in any other manner, the right to establish and administer educational institutions, such regulations, to that extent, will be inapplicable to minority institutions.

Since the petitioner college is a minority educational institution, Section 16FF of U.P. Intermediate Education Act is applicable in this case. Sub Section (4) of Section 16 FF

ibid clearly declares that the Regional Dy. Director of Education or the Inspector, as the case may be shall not withhold approval for the Selection made under this Section where the person selected possesses the minimum qualification prescribed or is otherwise eligible. There is nothing on the record to show or suggest that the persons selected by the management of the petitioner college do not possess the minimum qualifications prescribed for the post of person or otherwise ineligible. Consequently, the District Inspector of School had no power to withhold the approval for the selection made by the management of the petitioner college. The sphinx silence of the D.I.O.S. on the requests of the management of the petitioner college for approval for the selection and appointment of Sarva Shri Fariyad Ahmed, Santosh Yadav and Ravindra against the vacant posts of peons is virtual negation of the rights guaranteed to the minorities under Article 30(1) of the Constitution.

It has been held by the High Court of Allahabad in H.V.K. Nathan vs. Regional Dy. Director of Education (1998) 2 U.P.L.BEC 901 that if approval is not given within one month of receipt of the papers, approval would be deemed to have been made. Regulation 18 says that within 15 days of the receipt of approval of the authority the manager shall, on authorization under the resolution of the Committee of Management, issue an order of appointment to the candidate so selected and approved requiring the candidate to join duties within ten days of the receipt of the order.

It is alleged that on 26.5.2011 the requisite papers relating to the selection and appointment of Sarva Shri Fariyad Ahmed, Santosh Yadav and Ravindra against vacant posts of peons were submitted to the respondent D.I.O.S. but it did not evoke

any response from the said authority. That being so, the respondent D.I.O.S. must be deemed to have approved the selection and appointment of the said peons.

For the foregoing reasons, we find and hold that Sarva Shri Fariyad Ahmed, Santosh Yadav and Ravindra have duly been selected and appointment against the vacant post of peons and their selection should be deemed to have been approved by the respondent D.I.O.S.. We also find and hold that the impugned action of the respondent D.I.O.S. in not granting approval to the selection and appointment of the aforesaid persons as peons is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. Consequently, the respondent D.I.O.S. is directed to release the pay of the said peons from the date of joining their duties.

### **Case No.403 of 2011**

#### **Petition to seek direction to the State upgradation of the school up to 5<sup>th</sup> standard**

**Petitioner:** Khalid Bind Walid Education And Welfare Society, Khadakpura Tq. Barshitakli, District Akola, Maharashtra Through its President Dr. Bismillah Khan.

**Respondent:** 1. The Secretary, School Education Department, Government of Maharashtra, Mantralaya, Mumbai.

2. The Director of Education, Primary Education Department, Government of Maharashtra, Central Building, Pune.

3. Deputy Director of Education, Amravati Division, Amravati, Tq & Distt. Amravati, Maharashtra.

4. Education Officer (Primary), Zila Parishad, Distt. Akola, Maharashtra.

By this petition, the petitioner school seeks its up-gradation up to 5<sup>th</sup> standard. It is alleged that the petitioner school has been declared by the State Government as a minority educational institution vide orders dated 30.3.2010 (Annexure 1). On 20.2.2009, the petitioner school applied to the competent authority of the State

Government for its up-gradation up to 5<sup>th</sup> standard, which was wrongfully rejected by the respondent. It is also alleged that the petitioner school has all the infrastructural and instructional facilities for its up-gradation up to 5<sup>th</sup> standard and the impugned order of the respondent rejecting the said proposal is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

The petition has been resisted by the Education Officer (Respondent No. 4) on the ground that after receiving petitioner's proposal for its up-gradation upto 5<sup>th</sup> standard, the Block Development Officer, Panchayat Samiti Barshitakli was directed to inspect the petitioner school and to send its report. After inspecting the petitioner school, the Block Development Officer submitted a negative report. On evaluation of the said report, the respondent No. 4 opined that up-gradation of the petitioner school would result in unhealthy competition between Babasaheb Dhabekar Vidyalaya and Savitribai Fule High School and Bharat Urdu Medium Prathmik School. Accordingly, the petitioner's aforesaid proposal was rejected.

The point which arises for consideration is as to whether the impugned order of the respondent No. 4 in rejecting the petitioner's proposal for its up-gradation to 5<sup>th</sup> standard is violative of the educational rights of the minorities enshrined under Article 30(1) of the Constitution.

Article 30(1) of the Constitution gives the minorities a fundamental right to establish and administer educational institutions of "their choice". The rationale behind Article 30(1) of the Constitution is to give protection to minorities to run educational institutions of their choice. These rights are protected by a prohibition against their violation and are backed by a promise of enforcement. The prohibition is contained in



Article 13, which bars the State from making any law or rule or regulation abridging or limiting any of the fundamental rights guaranteed under Chapter III of the Constitution and threatens to veto any law, rule or regulation found inconsistent with

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

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

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

In St. Stephens College Vs. University of Delhi (1992) 1 SCC 558, the Supreme Court has observed that "the words 'of their' 'choice' in Article 30(1) leave vast options to the

minorities in selecting the type of educational institutions which they wish to establish. They can establish institutions to conserve their distinct language, script or culture or for imparting general secular education or for both the purposes.”

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

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

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

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

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

Bearing in mind the mandate of Article 30(1) of the Constitution it becomes clear that when up-gradation of a minority school is asked for, the authority concerned cannot refuse the same without sufficient reasons. Admittedly, the petitioner institution is a minority educational institution and the Sarpanch of Barshitakli has certified that the Taluka Barshitakli is a Muslim concentrated District having Muslim population of 75%. It is alleged that the petitioner school wants its up-gradation to cater to the needs of the slum dwelling population of the Muslims. This fact has not been denied by the respondent. Dr. Bismillah Khan , President of the Khalid Bind Walid Education and Welfare Society is unequivocally has stated in his affidavit that the petitioner school has all the infrastructural and instructional facilities for its up-gradation. This fact has also not been denied by the respondent No. 4. Relying upon the uncontroverted affidavit of Dr. Bismillah Khan, we find and hold that the petitioner institution has all the infrastructural and instructional facilities for its up-gradation up to 5<sup>th</sup> standard and the impugned order of the respondent No. 4 in rejecting the proposal of up-gradation of the petitioner school is violative of the fundamental right of the minorities enshrined in Article 30(1) of the Constitution. Consequently, we recommend to the respondent No. 4 to reconsider the proposal of up-gradation of the petitioner school in the light of the observations made above.

**Case No. 1663 of 2012**

**Petition to seek direction to the State to grant affiliation to the petitioner college for the diploma course approved by the AICTE.**

**Petitioner:** Brown Hills College of Engineering & Technology, Vill. Dhauj, Dist. Faridabad, Haryana, Run by Al-Falah Charitable Trust, 274- Jamia Nagar, Okhla, New Delhi – 110 025 Through its Chairman, Governing Board.

- Respondent:**
1. The State of Haryana Through The Financial Commissioner & Principal Secretary (Technical Education Department) New Secretariat, Sector 17, Chandigarh Also as Chairman Haryana State Board of Technical Education.
  2. The Director General, Technical Education Department, Bays No. 7 to 12, Sector 4, Panchkula, Haryana, Also as Secretary Haryana State Board of Technical Education.
  3. The Additional Secretary, Technical Education Department, Bays No. 7 to 12, Sector 4, Panchkula, Haryana.
  4. Member Secretary, All India Council for Technical Education (AICTE), 7<sup>th</sup> Floor, Chanderlok Building, Janpath, New Delhi – 110 001.

Malicious intent with a streak of vindictiveness is what this petition smacks of. The factual matrix as uncurtained is that the petitioner college is a minority educational institution covered under Article 30(1) of the Constitution. Approved by the AICTE, the petitioner college affiliated to the Maharishi Dayanand University, Rohtak, Haryana vide Annexure P-2. In the month of October 2011, the AICTE announced online approval process for extension of approval, increase in intake, starting diploma courses in second shift in the engineering colleges by issuing approval process handbook 2012-13. Accordingly, on 3.1.2012, the petitioner college applied online to AICTE for starting diploma courses in second shift in mechanical engineering and civil engineering with an intake of 60 seats each. By the letter dated 10.5.2012, the AICTE granted approval to the petitioner college for starting the aforesaid diploma courses vide letter dated 10.5.2012 (Annexure P3). Thereafter on 31.5.2012, the petitioner college applied to the Financial Commissioner and Principal Secretary, Technical Education department, government of Haryana (Respondent No. 1B) for grant of affiliation for the aforesaid courses duly approved by the AICTE. Along with the said application, the petitioner college deposited the processing fee of Rs. 50,000 and the affiliating fee of Rs. 30,000 with the Additional Secretary, Haryana State Board of

Technical Education (Respondent No. 2) vide Annexure P-5. Thereafter, respondent No. 1-B constituted a 3 member inspection committee consisting of experts for verifying the availability of infrastructure and instructional facilities in the petitioner college vide letter dated 19.6.2012 (Annexure P-6). On 14/15.7.2012, the inspection committee inspected the petitioner college and on being satisfied with the availability of the said facilities in the college recommended for grant of affiliation. It is alleged that on 13.8.2012, the petitioner college was verbally informed about the rejection-of its application for grant of affiliation on the basis of the letter dated 12.4.2012 of the respondent No. 1-B (Annexure P-7). On 13.8.2012, the petitioner college submitted a representation to the Respondent No. 2, requesting him to communicate the decision taken on the application filed for grant of affiliation (Annexure P-8). Surprisingly, the said representation did not evoke any response from the respondents. It is also alleged that the petitioner college has all the infrastructural and instructional facilities for the courses approved by the AICTE and as such it is entitled for grant of affiliation. It is further alleged that the petitioner college is the only Muslim minority college in Haryana imparting diploma courses and the impugned action of the respondents in not granting affiliation to the petitioner college for the courses approved by the AICTE is clearly violative of the educational rights guaranteed under Article 30(1) of the Constitution.

The petition has been resisted by the respondent on the ground that the petitioner's application for grant of affiliation was rejected on the ground of non-availability of infrastructural facilities in accordance with the norms prescribed therefor by the AICTE vide order dated 14.8.2012 (Annexure R-1). It is also alleged that the application submitted by the petitioner was incomplete as being violative of Clause 3.6 of Approval Process Handbook issued by the AICTE. It is further alleged that the

respondent had constituted a committee of experts from PEC University of Technology, Chandigarh, Kurukshetra University, Guru Jambheshwar university of Science and Technology, Hissar, YMCA University of Science and Technology, Faridabad, National Institute of Technical Teachers Training and Research, Sector 26, Chandigarh and MDU Rohtak for verifying whether the petitioner college has fulfilled the conditions mentioned in the approval letter issued by the AICTE. The Committee inspected the petitioner institution and found certain deficiencies as per norms prescribed by the AICTE vide report (Annexure R-2). It is further alleged that on the basis of the report of the Expert Committee, the respondent rejected the petitioner's application for grant of affiliation. It is alleged that the AICTE has not taken into consideration of the policy decision of the State Government (Annexure R-5) before granting approval to the petitioner college for starting diploma courses. It is further alleged that since the existing intake capacity of the petitioner institution has not been fully utilized and there is no need for further increase in intake capacity as per the admission chart issued by the Haryana State Counseling Society, the present petition is liable to be dismissed on this count alone.

At the outset we make it clear that this Commission has been created under an Act of Parliament to facilitate exercise of the educational rights of the minorities enshrined in Article 30 (1) of the Constitution. The statement of objects and reasons accompanying the Bill clearly shows the object for constitution of this Commission and it was specifically mentioned therein that the Commission shall have jurisdiction to decide the disputes relating to affiliation of colleges covered under Article 30(1) of the Constitution. At this juncture, we may usefully excerpt the Statement of Objects and Reasons of the Bill, which are as under :-

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

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

3. In view of the commitment of the Government in the National common Minimum Programme, the issue of setting up of a National Commission was a matter

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

4. The salient features of the aforesaid ordinance are as follows:-

- (i) It enables the creation of a National Commission for Minority Educational Institutions;
- (ii) It creates the right of a minority educational institution to seek recognition as an affiliated college to a Scheduled University, notwithstanding anything contained in any other law for the time being in force;
- (iii) It allows for a forum of dispute resolution in the form of a Statutory Commission, regarding matters of affiliation between a minority educational institution and a Scheduled University and its decision shall be final and binding on the parties;
- (iv) The Commission shall have the powers of a civil court while trying a suit for the purpose of discharging its functions under it, which would provide the decisions of the Commission the legal sanction necessary for such purpose; and



- (v) it empowers the Central Government to amend the Schedule to add in, or omit from any University.

5. The Bill seeks to replace the above Ordinance.”

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

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

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

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

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

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

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

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

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

The right to establish educational institutions “of their choice” must, therefore, mean right to establish real institutions which will effectively serve the needs of their

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

Article 30(1) is intended to enlist confidence in minorities against any executive or legislative encroachment on their right to establish and administer educational institutions of their choice. Article 30(1), though styled as a right, is more in the nature of protection for minorities and it was enacted as a guarantee to the minorities. No Government can destroy the said fundamental right under the garb of a policy decision.

It is beyond the pale of controversy that the petitioner college is a minority educational institution covered under Article 30(1) of the Constitution and it is the only college of Engineering and Technology of the State of Haryana established by the Muslim Community. It is also undisputed that the petitioner college has been approved by the AICTE and is affiliated to the Maharishi Dayanand University, Rohtak, Haryana; that in the month of October, 2011, the AICTE announced online approval process for extension of approval, increase intake, grant of diploma courses in second shift in existing engineering colleges by issuing approval process Handbook 2012-13, that in the approval process, the AICTE allowed existing Engineering Colleges to start two divisions of Diploma courses of 60 students each; that on 3.1.2012, the petitioner college applied online to the AICTE for starting of diploma courses in second shift in

Mechanical and civil engineering; that the AICTE had granted approval to the petitioner college for starting diploma courses in the second shift in Mechanical Engineering with an intake capacity of 60 seats and in civil engineering also with intake capacity of 60 seats vide letter of approval dated 10.5.2012 (Annexure P-3); that pursuant to the said approval letter the petitioner college applied to respondent No. 1B and respondent No. 2 for grant of affiliation for the aforesaid courses on 31.5.2012; that the petitioner college had deposited the processing fee of Rs. 50,000 and the affiliation fee of Rs. 30,000 with the respondent No 2 for grant of affiliation vide Annexure P-5; that on 14/15<sup>th</sup> July, 2012 the Inspection Committee constituted by the respondent No. 1 B inspected the petitioner college and that on 10.8.2012, the application of the petitioner college for grant of affiliation was rejected .

It is apt to note here that pursuant to the approval granted by the AICTE for starting diploma course in the second shift, the petitioner college applied to the respondents No. 1B and 2 for grant of affiliation. It is undisputed that the AICTE is the regulatory authority for technical education and in such a case the role of the university or affiliating authority is limited to the extent of granting affiliation on the basis of the approval granted by the AICTE for starting the diploma course in the second shift. The university or the affiliating authority cannot sit over the judgment of the AICTE. None of the said authority can assume the role of the controlling authority of the AICTE. In the instant case respondents No. 1-B and 2 have attempted to transgress their jurisdiction. As the factual narration further unfolds, after receiving the petitioner's application for grant of affiliation, respondent No. 1-B constituted a committee consisting of experts for evaluating the order of the AICTE granting permission for starting diploma courses in the second shift in accordance with the intake capacity

mentioned therein. This is legally impermissible as respondent No. 1-B has attempted to overreach the AICTE which is the only regulatory authority for technical education.

It is also relevant to mention here that the petitioner college has specifically pleaded that on inspection, the said committee was fully satisfied with the infrastructural and instructional facilities for the diploma course approved by the AICTE. The respondents No. 1-B and 2 have denied the said fact. It is alleged that on inspection, the committee noted certain deficiencies as per report Ex.P-2 and on the basis of the said report, the petitioner's application for affiliation was rejected.

It needs to be highlighted that Annexure R-2 is not the report of the Expert committee appointed by respondent No. 1-B. On the contrary, the Annexure R-2 is the letter of the Financial Commissioner and Principal Secretary to the Government of Haryana addressed to the Chairman AICTE. In the instant case arguments were heard on 20.9.2012 and the case was reserved for judgment. Today the Reader produced a letter dated 21.9.2012 of the respondent No. 2 enclosing a xerox copy of the inspection report of the expert committee. It needs to be highlighted that the committee has reported that all essential requirements including time table are available. In view of the said report the contention of the respondents relating to some deficiencies alleged to have been found by the expert committee has to be rejected. The report of the expert committee clearly records that all the infrastructural and instructional facilities are available. In view of the said report there was no justification for the respondents to reject the application of the petitioner college for grant of affiliation. That being so, we find and hold that the petitioner college has all the infrastructural and instructional facilities for starting diploma courses in mechanical and civil engineering in accordance with the letter of approval issued by the AICTE.

It is undisputed that the petitioner college had deposited Rs. 50,000 as processing fee and Rs. 30,000 as affiliation fee. At this juncture, learned counsel for the petitioner has contended that the impugned action of the respondents would not only reflect the non-concern for a minority educational institution, whose fundamental right under Article 30(1) has been violated, but the manner in which its application for affiliation has been rejected clearly exhibits the imprudent perception and the heart of stone of the State. As demonstrated above, the AICTE had granted approval for starting diploma course in mechanical and civil engineering in second shift on the basis of availability of infrastructural and instructional facilities in the petitioner college and the respondents had arbitrarily rejected its application for grant of affiliation on a non-existent ground. Although Article 30(1) of the Constitution does not speak of the conditions under which the minority institutions can be affiliated to a university or statutory authority yet the Article by its very nature implies that where an affiliation is asked for, the authority concerned cannot refuse the same without sufficient proven reasons. It has been held by the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 that affiliation and recognition has to be available to every institution that fulfills the conditions for grant of such affiliation and recognition. It is well settled that any law or executive direction which infringes the substance of the right guaranteed under Article 30(1) is void to the extent of infringement. This is the mandate of Article 13 of the Constitution. The fundamental right guaranteed under Article 30(1) is intended to be effective and should not be whittled down by any administrative exigency. In the instant case, the petitioner's application for affiliation has been rejected arbitrarily on a non-existent ground and the manner in which it has been rejected clearly reflects the deliberate insensitive approach to the entire fact situation. The impugned action of the respondents in rejecting the petitioner's application for grant of affiliation completely

destroys the institutional autonomy and the very objective of establishment of the petitioner college.

For the reasons stated above, the impugned order dated 10.8.2012 is hereby set aside and the respondents are directed to grant affiliation to the petitioner college for the diploma course approved by the AICTE. This case be included in the Report of the Commission to be placed on the floor of both the Houses of the Parliament.

### **Case No. 1210 of 2010**

#### **Petition to seek direction to the State to release the salary from the date of appointment**

**Petitioner:** The Manager, Furqania Junior High School, At. Shahi Talab, P.O. Kheta Sarai, Distt. Jaunpur, Uttar Pradesh – 222 139.

**Respondent:** 1. Zila Basic Shiksha Adhikari, Distt. Jaunpur, Uttar Pradesh.  
2. Director, Basic Education, Lucknow, Uttar Pradesh.  
3. The Divisional Education Director (Basic), Pancham Mandal Ardali Bazar, Near Police Line, Varanasi Mandal, Uttar Pradesh.

By this petition, the Manager of the Furqania Junior High School, which is a minority educational institution covered under Article 30(1) of the Constitution seeks a direction to the respondents to release the salary of Sh. Mohammad Malik Meraj Khan, Headmaster of the petitioner school from the date of his appointment. It is alleged that on 21.8.2009, Mr. Mohammad Malik Meraj Khan was selected and appointed by the management of the petitioner school against the vacant post of the Headmaster. On 24.8.2009, Mr. Mohammad Malik Meraj Khan joined his duties as headmaster of the said school. On 8.9.2009, all the requisite documents relating to selection and appointment of Mr. Mohammad Malik Meraj Khan were submitted to the District Basic Shiksha Adhikari, Jaunpur for releasing the pay. By the order dated 5.10.2009, the District Basic Shiksha Adhikari approved the appointment of Mr. Mohammad Malik



Meraj Khan as Headmaster of the petitioner school. On 23.11.2009, the District Basic Shiksha Adhikari suspended the operation of the said order dated 5.10.2009. By the order dated 14.12.2009, the District Basic Shiksha Adhikari cancelled his order dated 23.11.2009 and restored his earlier order dated 5.10.2009. It is alleged that the Account Officer (Basic Shiksha), Jaunpur did not release the pay of Mr. Mohammad Malik Meraj Khan and referred the matter to Director of Education (Basic), Lucknow through Regional Director, Education, Varanasi. On 12.3.2010 all the relevant documents were submitted in the office of the Regional Director, Education, Varanasi. The Regional Director, Education, Varanasi did not pass any order thereon.

Despite service of notice none entered appearance on behalf of the respondent.

The point for consideration is as to whether the impugned action of the competent authority of the State Government in not releasing the pay of Mr. Mohammad Malik Meraj Khan is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

Autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institution. The State or any University/ Statutory authority can not under the cover or garb of adopting regulatory measures destroy the administrative autonomy of a minority educational institution or start interfering with the administration of the management of the institution so as to render the right of the administration of the institution concerned nugatory or illusory. The State Government or a University cannot regulate the method or procedure for appointment of Teachers/ Lecturers/ Headmasters/ Principals of a minority educational institution. Once a Teacher/ Lecturer/ Headmaster/ Principal possessing the requisite qualifications

prescribed by the State or the University has been selected by the management of the minority educational institution by adopting any rational procedure of selection, the State Government or the University would have no right to veto the selection of those teachers etc.

The State Government or the University cannot apply rules/ regulations/ ordinances to a minority educational institution, which would have the effect of transferring control over selection of staff from the institution concerned to the State Government or the University, and thus, in effect allow the State Government or the University to select the staff for the institution, directly interfering with the right of the minorities guaranteed under Article 30(1).

**The State Government or the University is not empowered to require a minority educational institution to seek its approval in the matter of selection/ appointment or initiation of disciplinary action against any member of its teaching or non-teaching staff.** The role of the State Government or the University is limited to the extent of ensuring that teachers/ lecturers/ Headmasters/ Principals selected by management of a minority educational institution fulfill the requisite qualifications of eligibility prescribed therefor. (St. Xavier's College, Ahmedabad vs. State of Gujarat 1974 (1) SCC 717, T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481, Secretary, Malankara Syrian Catholic College vs. T. Jose 2007 AIR SCW 132).

It has been held by the Supreme Court in State of Himachal Pradesh vs. Parasram AIR SCW 373, that declaration of law made by the Supreme Court cannot be forsaken, under any pretext by any authority. In Brahmo Samaj Education Society

vs. State of West Bengal (2004) 6 SCC 224, the Supreme Court has held that “the State Government shall take note of the declarations of law made by this Court in this regard and make suitable amendments to their laws, rules and regulations to bring them in conformity with the principles set out therein.

The importance of the right to appoint Teachers/ Lecturers/ Head Masters/ Principals of their choice by the minorities, as an important part of their fundamental right under Article 30 was highlighted in *St. Xavier* (Supra) thus:

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

(emphasis supplied)

The aforesaid proposition of law enunciated in *St. Xavier* (Supra) has been approved by the Supreme Court in *T.M.A. Pai Foundation* (Supra). The State has the power to regulate the affairs of the minority educational institution also in the interest of discipline and academic excellence. But in that process the aforesaid right of the management cannot be taken away even if the Government is giving hundred percent grant. The fact that the post of the Teacher/ Headmaster/ Principal is also covered by the State aid, will make no difference. It has been held by the Supreme Court in *Secretary, Malankara Syrian Catholic College vs. T. Jose* 2007 AIR SCW 132 that even if the institution is aided, there can be no interference with the said right. Subject to the eligibility conditions/ qualifications prescribed by the State or Regulating

Authority being met, the minority educational institution will have the freedom to appoint Teachers/ Lecturers/ Headmasters/ Principals by adopting any rational procedure of selection. The imposing of any trammel thereon except to the extent of prescribing the requisite qualifications and experience or otherwise fostering the interests of the institution itself cannot but be considered as a violation of the right guaranteed under Article 30(1) of the Constitution.

It is relevant to mention that the petitioner has followed provisions of the Uttar Pradesh Manyata Prapt Basic School (Junior High School) (Adhyapakon Ki Bharti Aur Seva Sharten) Niyamavali 1978 including the pre-qualifications for selection and appointment of Mr. Mohammad Malik Meraj Khan as the Headmaster. It is relevant to mention that by the order dated 5.10.2009, the District Basic Shiksha Adhikari, Jaunpur had approved the appointment of Mr. Mohammad Malik Meraj Khan as Headmaster of the school. It appears that the Account officer (Basic Shiksha) Jaunpur had played a mischief by referring the matter to the Director Education (Basic) Lucknow through the Regional Education Director, Varanasi. There appears to be no justification for referring the matter to the Directorate of Education. The Regional Director Education, Varanasi was not also justified in detaining the papers submitted to him relating to appointment of Mr. Mohammad Malik Meraj Khan as Headmaster of the petitioner institution. Having regards to the facts and circumstances of the case, we are constrained to observe that the Regional Director, Education, Varanasi had wrongfully detained the papers submitted to him by the Account Officer (Basic Shiksha), Jaunpur for extraneous consideration. However, the impugned action of the Regional Director, Education, Varanasi in detaining the requisite documents sent to it relating to appointment of Mr. Mohammad Malik Meraj Khan is violative of the educational rights of the minorities enshrined under Article 30(1) of the Constitution.

For the foregoing reasons we direct the District Basic Shiksha Adhikari, Jaunpur to release the pay of Mr. Mohammad Malik Meraj Khan from the date of his taking over as Headmaster of the petitioner school.

**Case No.476 of 2011**

**Petition to seek direction to the State Government to grant permission for establishment of Urdu Primary School**

**Petitioner:** Mangrulpir Education Society, District Washim, Maharashtra.

- Respondent:**
1. The Secretary, School Education Department, Government of Maharashtra, Mantralaya, Mumbai.
  2. The Director of Education, Primary Education Department, Government of Maharashtra, Central Building, Pune.
  3. Deputy Director of Education, Amravati Division, Amravati, Wadgaon Road, Amravati, Tq & Distt. Amravati, Maharashtra.
  5. District Committee, Primary Education Zilla Parishad, Washim through Education Officer Primary Zilla Parishad, Washim, Tq & Distt. Washim, Maharashtra.
  6. Education Officer (Primary), Zila Parishad, Distt. Washim, Tq & Distt. Washim, Maharashtra.

By this petition, the President of Mangrulpir Education Society, District Washim, Maharashtra seeks a direction to the State Government to grant permission for establishment of Urdu Primary School at Ashok Nagar, Rahmat Nagar, Mangrulpir, Washim, (MS). The Mangrulpir Education Society is a registered society constituted by members of the Muslim community and it has been granted minority status certificate by the State Government. It is alleged that Mangrulpir is the biggest Taluka in District Washim, Maharashtra. Most of the residents of Mangrulpir are slum dwellers of the Muslim Community. Mangrulpir is 3-4 kms. away from city which has got 3

middle schools. The petitioner wants to establish Urdu Primary School at Ashok Nagar, Rehmat Nagar, Mangrulpir, District Washim where there is no primary Urdu primary or a middle school. On 12.5.2008, the petitioner society submitted a proposal alongwith the requisite documents seeking permission for establishment of Urdu Primary School on permanent non-grant basis for the academic years 2008-09. The proposal was rejected on the ground that there were six Urdu primary school and also for non-submission of the audit report by the society. It is also alleged that there is no Urdu primary school within the radius of 3 kms.of the school proposed to be set up by the petitioner. It is further alleged that the petitioner society has all the infrastructural and instructional facilities for establishment of the proposed school and the impugned action of the State Government in rejecting the petitioner's proposal for establishment of Urdu primary School is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

Despite service of notice none entered appearance on behalf of the respondent.

The question which arises for consideration is as to whether the impugned action of the State Government in rejecting the petitioner's proposal for establishment of Urdu Primary School at Ashok Nagar, Rehmat Nagar, Mangrulpir, Washim (Maharashtra ) is violative of the educational rights of the minorities enshrined in 30(1) of the Constitution?

The petitioner has submitted that the built up area of the school is 2000 sq. ft. in land measuring 6000 sq. ft. earmarked for the proposed school and the petitioner society has all the infrastructural facilities for its establishment. He has further submitted that the society has a bank balance of Rs. 1,11,000/-. The petitioner has also submitted a

copy of the certificate issued by the Education Officer (Primary), Zilla Parishad, Washim certifying that there is no primary or secondary school in Urdu medium in Ashok Nagar, Rehmat Nagar and also nearby vicinity of about 4-5 kms. Mr. Ashfaq Khan Majid Khan, President of the society has filed his affidavit stating that petitioner society has all the infrastructural and instructional facilities for establishment of the proposed school and there is no Urdu medium primary or secondary school in Ashok Nagar, Rehmat Nagar, District Washim (Maharashtra). It needs to be highlighted that the State Government has not even filed reply to controvert the factual matrix of the case. Relying upon the unrebutted affidavit of Mr. Ashfaq Khan Majid Khan we find and hold that there is a genuine need for establishment of the proposed Urdu primary school at Ashok Nagar, Rehmat Nagar to cater to the needs of the Muslims of the locality. The petitioner society has prima facie proves that it has all the infrastructural and instructional facilities for establishment of the proposed school.

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

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

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

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

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



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

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

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

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

For the foregoing reasons we find and hold that the respondents have violated the rights of the minorities enshrined in Article 30(1) of the Constitution by rejecting the

petitioner's proposal for establishment of the proposed Urdu Primary School at Ashok Nagar, Rehmat Nagar, .Mangrulpir, Washim, Maharashtra. Consequently, we direct the respondents to implement the findings of this Commission in terms of Section 11(b) of the National Commission for Minority Educational Institutions Act by reconsidering the proposal submitted by the petitioner society for establishment of Urdu Primary school at Ashok Nagar, Rehmat Nagar, Mangrulpir, Dist. Washim, Maharashtra.

**Case No. 1307 of 2011**

**Petition to seek approval to allow to select and appoint its teaching and non-teaching staff against the sanctioned post**

**Petitioner:** Shibli National College, Azamgarh, Uttar pradesh

**Respondent:**

1. The Regional Higher Education Officer, Government of Uttar Pradesh, Varanasi, Uttar Pradesh.
2. The Education Director (Higher Education), Government of Uttar Pradesh, Directorate of Higher Education, Allahabad , Uttar Pradesh.
3. The Vice Chancellor, V.B.S. Purvanchal University, Jaunpur, Uttar Pradesh

Challenge in this petition is to the order dated 24.3.2011 by the Regional Higher Education Officer, Varanasi, restraining the petitioner institution from filling up any vacant sanctioned post.

By the order dated 5.7.2004, the Government of Uttar Pradesh has declared petitioner institution as a minority educational institution covered under Article 30(1) of the Constitution. The management of the petitioner college advertised for the vacant posts of teaching and non-teaching staff with the prior approval of the Regional Higher Education Officer, Varanasi. While the petitioner institution was in process of constituting a selection committee as per the list of experts approved by the

respondent University, the petitioner institution received impugned letter dated 24.3.2011 restraining its management from filling up the vacant sanctioned posts. It is alleged that the impugned order dated 24.3.2011 is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

The issue which arises for consideration is as to whether the impugned letter dated 24.3.2011 is hit by Article 30(1) of the Constitution?.

It has been held by the Eleven Judges Bench of the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 “Autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institution. The right to appoint teaching and non-teaching staff is a vital facet of right to administer within the meaning of Article 30(1) of the Constitution. The State or affiliating University/ Statutory authority cannot under the cover or garb of adopting regulatory measures destroy the administrative autonomy of a minority educational institution or start interfering with the administration of the management of the institution so as to render the right of the administration of the institution concerned nugatory or illusory. The State Government or the University is not empowered to require a minority educational institution to seek its approval in the matter of selection/ appointment or initiation of disciplinary action against any member of its teaching or non-teaching staff. The role of the State Government or the University is limited to the extent of ensuring that teaching or non-teaching staff selected by management of a minority educational institution fulfill the requisite qualifications of eligibility prescribed therefor. It has been held by the Supreme Court in Secretary, Malankara Syrian Catholic College vs. T.Jose 2007 AIR SCW 132 that “even if the institution is aided, there can be no interference with the said right. Subject to the eligibility conditions/ qualifications prescribed by the State or Regulating Authority being met, the minority

educational institution will have the freedom to appoint its teaching and non-teaching staff by adopting any rational procedure of selection. Their Lordships of the Supreme Court have also held that imposition of any trammel thereon except to the extent of prescribing the requisite qualifications and experience or otherwise fostering the interests of the institution itself cannot but be considered as a violation of the right guaranteed under Article 30(1) of the Constitution.”

In view of the law laid down by the Supreme Court in aforecited decisions, we are of the opinion that the impugned order dated 24.3.2011, restraining the petitioner institution from filling up the vacant sanctioned posts of teaching and non-teaching staff is violative of the educational rights of the minorities enshrined under Article 30(1) of the Constitution. Consequently, the petitioner institution is allowed to select and appoint its teaching and non-teaching staff against the sanctioned post subject to the condition that the selection and appointment process shall be non-exploitative, fair and transparent.

## **CHAPTER 12 – CONCLUSION**

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

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

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

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

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

6. The primary responsibility for recognizing educational institutions and granting minority status certificate lies with the State Government. It was, however, found that many State Governments had not set up any mechanism to consider the request for grant of minority status certificate. In many States, the approach had been lethargic. Commission also found that the officials concerned had not been sensitized about the

rights guaranteed to minorities under Article 30(1) of the Constitution. The result had been that the Commission received large number of applications from the educational institutions for grant of minority status certificate.

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

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

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

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

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

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

Without the financial aid from the State Government, it will be difficult for such educational institutions to sustain themselves and provide reasonable standards of education. Needless to mention here that the teachers at least should be paid a subsistence salary. In many remote and under-developed areas educational institutions run by the minority communities are the only rays of hope for the poor people. The State has a duty to support and strengthen such institutions especially with reference to the constitutional mandate to provide free and universal education for all children in the age group of 6-14 years enshrined under Article 21A. In the context of the operationalisation of the 'Right of Children to Free and Compulsory Education Act 2009', it is imperative that more educational institutions have to be set

up in remote and rural areas for easy accessibility of students. States should not shy away from this constitutional responsibility. It is, therefore, recommended that State Government should be directed to provide grant-in-aid to minority educational institutions located in far flung, remote, tribal and under-developed areas.



**REPORT ON ASSAM VISIT**

In the backdrop of communal clouds crowding on national horizon, the Chairperson of the Committee on Girls' Education, constituted by this Commission (for short the Committee) in collaboration with the ERD Foundation, Guwahati organized a seminar on 'Educational Rehabilitation of Strife Affected Students of BTAD' which was held on 8.9.2012 at Guwahati. I had inaugurated the seminar which was attended by the managers of all premier Muslim educational institutions of the country. Inaugurating the seminar, I laid emphasis on the duty of every citizen to safeguard the health of the society. I appealed to the audience that our aim should not be formatted on the track of hate and negativity. Whatever had happened in the riot affected areas is a human tragedy and the issues arising therefrom should not be communalized, in the interest of our Nation. We must kneel down before the primeval urge of empowering the students of the harvest of hate through education. There are 2,000 such students who have to be adopted for their educational rehabilitation as we the citizens of India are held together by the grace of Almighty within the matrix of a shared spirituality. No child affected by the strife should be discriminated against on the basis of his caste, creed or religion.

Consequent to my appeal the managers of all the minority educational institutions resolved as under:-

1. Students affected by the strife should be divided into 3 categories:
  - b. Students studying in primary schools;
  - c. Students studying in higher educational institutions;
  - d. Girl students.
  
2. All the educational institutions established by the Muslim Community, shall adopt students affected by the strife, irrespective of their caste, creed and religion, according to their intake capacity for their educational rehabilitation. Even the Bodo children shall be adopted by these institutions, if so desired so by their parents or their wards.
  
3. If the adopted child does not want to go out of his home district, local arrangements shall be made by the educational institution concerned, for providing education to him at its expenses.
  
4. If any student affected by the strife has been pursuing higher studies at any place in the State of Assam, all the expenses relating to his educational activities shall be borne by the educational concerned.
  
5. The ERD Foundation shall help educational institutions concerned in securing requisite documents for admission of the adopted students.

6. As far as possible, the educational institutions concerned shall try to keep the family bond of the adopted students live through regular correspondence and other available modes of communication.
  
7. Some of the minority professional institutions of Maharashtra, Karnataka and Kerala had offered to reserve a few seats in medical colleges, dental colleges, engineering colleges and other similar professional colleges for the students affected by the strife.
  
8. Two CBSE affiliated schools shall be established at Guwahati or in the strife affected areas to cater to the needs of the students affected by the harvest of hate. This project shall be funded by some Muslim philanthropists. Some of the participants had announced their share of good will contributions for such a project.

Since the stake holders were keen to take the adoption process to its logical conclusion at the earliest, a Task Force was constituted to oversee the adoption process and also to ensure expeditious decisions on various issues consequent to the adoption of the students by the institutions concerned for their educational rehabilitation and also to oversee the establishment process of the aforesaid two schools. The Task Force will coordinate between different educational institutions involved in the said scheme of adoption. The adoption process will involve multiplicity of Government authorities. The Task Force shall be chaired by the Chairperson of the Committee. The Chairperson of the ERD Foundation, Guwahati and the Managers of the institutions concerned will also serve as its members. Any other person can be

co-opted by the Chairperson in to the Committee as member of the Task Force, if found necessary.

I had a meeting with the Hon'ble Chief Minister of Assam. I apprised him about the need to educate the Muslims of Assam in general and girls in particular, as I believe that communalism can be defeated through education. The Hon'ble the Chief Minister complimented me and the organizers of the said seminar at Guwahati. He had assured me that adequate and prompt steps will be taken to rehabilitate such persons affected by the strife. He has further assured me that the Government shall construct a hostel at Guwahati to cater to the educational needs of the girls belonging to the minority communities of the State. He also assured me that his Government will extend every possible help to the educational institutions concerned in the process of adoption of strife affected students for their educational rehabilitation in right earnestness.

**(M.S.A. SIDDIQUI)**

September 11, 2012

Dated the 22<sup>nd</sup> January 2014

Respected Prime Minister Saheb,

After Muzaffarnagar riot, I called a meeting of some managers of the educational institutions of the Muslim community. During interaction, I appealed to them that our aim should not be formulated on the track of hate and negativity. Whatever had happened in the riot affected area of Muzaffarnagar is a human tragedy and the issues arising therefrom should not be communalized in the interest of our Nation. We must kneel down before the primeval urge of empowering the students of the harvest of hate through education. There are 360 to 400 students, who have to be adopted for their educational rehabilitation as we the citizens of India are held together by the grace of Almighty within the matrix of a shared spirituality.

On my appeal, M/s Khalid Nadvi of Bangalore and Abubaker Mansoor of Moradabad (U.P.) have adopted 71 children for their educational rehabilitation. These children have been admitted in Madarsas/ Schools having lodging and boarding facilities. Concerted efforts are on for adoption of more children for their educational rehabilitation. I am enclosing herewith a copy of the joint letter received from the said persons for your kind information.

Your's sincerely,

**(M.S.A. SIDDIQUI)**

**Hon'ble Dr. Manmohan Singh Ji,  
Prime Minister of India,  
7, Race Course,  
New Delhi.**

Dated the 22<sup>nd</sup> January 2014

Dear Dr. M.M. Pallam Raju Ji,

I am enclosing herewith a copy of the letter dated 22.01.2014 addressed to Hon'ble the Prime Minister of India for your kind information.

Your's sincerely,

**(M.S.A. SIDDIQUI)**