



ANNUAL REPORT

2006-2007



NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS
Gate No. 4, 1st Floor, Jeevan Tara Building,
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CHAPTER 1 – INTRODUCTION

This is the second annual report of the National Commission for Minority Educational Institutions. The Commission was initially established through the promulgation of an Ordinance dated 11th November 2004 which was later on replaced by the National Commission for Minority Educational Institutions Act passed by the Parliament in December 2004. The Ministry of HRD constituted the Commission on 16th November 2004 with its headquarters in Delhi. On 26th November 2004, Government issued notification appointing Justice M.S.A. Siddiqui as the Chairperson and Shri B.S. Ramoowalia and Shri Valson Thampu as the Members of the Commission. During the period of the report they continued to be the Chairperson and Members.

NCMEI Act 2004

The National Commission for Minority Educational Institutions Act 2004 (2 of 2005) was notified on 6th January 2005. The Act constituted the National Commission for Minority Educational Institutions and the key functions and powers of the Commission given in the Act were to:

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

NCMEI Amendment Act 2005

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 making amendments to the Act. Government introduced the National Commission for Minority Educational Institutions (Amendment) Bill 2005 in Parliament. However, in the wake of 93rd constitutional amendment passed by the Parliament incorporating Article 15 (5) to the Constitution which was for promotion of the educational advancement of the Scheduled Castes, Scheduled Tribes and socially and educationally backward classes of the citizens, it became necessary to bring out the amendments to the NCMEI Act through an Ordinance. Accordingly, an Ordinance was notified by the Government on 23rd January

2006 which later on was replaced by the National Commission for Minority Educational Institutions (Amendment) Act 2006 passed by the Parliament and notified on 29th March 2006.

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

This is the first time that a specific Commission has been established by the Central Government for protecting and safeguarding the right of minorities to establish and administer educational institutions of their choice. The Commission is a quasi-judicial body and has been endowed with the powers of a Civil Court. The Act gives the Commission 3 specific rights namely adjudicatory function, advisory function and recommendatory powers. The mandate of the Commission is very wide. Its functions includes, among other things 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 questions relating to the educational rights of the minorities referred to it.

The Commission which started functioning from 2 rooms in Shastri Bhavan moved to its own premises in the 1st Floor, 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.

Government had initially sanctioned 22 posts for the Commission for necessary administrative and office support. Later, Government provided additional 11 posts. Thus, at present the Commission has the following 33 posts.

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

Some of the posts have been filled by the Commission on deputation basis and some others have been filled through direct recruitment. With the influx of large number of petitions/ applications Commission has found it difficult to cope up with the work with the existing staff and has approached the Government for creation of additional posts especially to take care of the judicial matters, which is its core function and also for taking care of computerization.

CHAPTER 2 – CONSTITUTION OF THE COMMISSION

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

The Parliament passed the NCMEI (Amendment) Act 2006 which was notified on 29th March 2006.

The composition of the Commission during the year was as follows:

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

The Functions of the Commission are as follows:

- (a) Advise the Central Government or any State Government on any question relating to the education of minorities that may be referred to it;
- (b) Enquire, *suo motu*, or on a petition presented to it by any Minority Educational Institution or any person on its behalf into complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating to affiliation to a University and report its finding to the appropriate Government for its implementation;
- (c) Intervene in any proceeding involving any deprivation or violation of the educational rights of the minorities before a court with the leave of such court;
- (d) Review the safeguards provided by or under the Constitution, or any law for the time being in force, for the protection of educational rights of the minorities and recommend measures for their effective implementation;
- (e) Specify measures to promote and preserve the minority status and character of institutions of their choice established by minorities;
- (f) Decide all questions relating to the status of any institution as a Minority Educational Institution and declare its status as such;
- (g) Make recommendations to the appropriate Government for the effective implementation of programmes and schemes relating to the Minority Educational Institutions; and
- (h) Do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission.

The Commission is a quasi-judicial body and for the purposes of discharging its functions under the Act has the powers of a Civil Court trying a suit. The powers of the Commission include adjudication in matters of affiliation to a university. If any dispute arises between a university and a minority educational institution relating to its affiliation to that university, the decision of the Commission thereon shall be final.

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

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

Commission has been empowered to investigate into complaints relating to deprivation of the educational rights of minorities. For the purpose of conducting any investigation, the Commission can utilize the services of any officer of the Central Government or the State Government with the concurrence of the concerned Government. For the purpose of such investigation, the officer whose services are utilized may, subject to the direction and control of the Commission: -

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

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

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

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

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

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

CHAPTER 3 – MEETINGS OF THE COMMISSION

The Commission is a quasi-judicial body and is given the powers of a Civil Court. Commission, therefore, conducts formal court sittings. A formal Court Room is part of the premises of the Commission. During the year, Commission has conducted 80 sittings. The details of the dates of sittings are as follows:

Sl. No.	Date of Meeting	No. of Cases
1.	05.04.2006	61
2.	07.04.2006	01
3.	10.04.2006	10
4.	12.04.2006	76
5.	18.04.2006	11
6.	19.04.2006	12
7.	20.04.2006	73
8.	26.04.2006	25
9.	27.04.2006	04
10.	28.04.2006	02
11.	01.05.2006	29
12.	03.05.2006	65
13.	05.05.2006	03
14.	10.05.2006	64
15.	15.05.2006	01
16.	16.05.2006	05
17.	17.05.2006	75
18.	24.05.2006	48
19.	25.05.2006	24
20.	30.05.2006	06
21.	31.05.2006	01
22.	01.06.2006	60
23.	06.06.2006	86
24.	13.06.2006	94
25.	20.06.2006	111
26.	21.06.2006	02
27.	04.07.2006	104

28.	05.07.2006	11
29.	11.07.2006	126
30.	18.07.2006	105
31.	20.07.2006	32
32.	01.08.2006	108
33.	02.08.2006	02
34.	03.08.2006	27
35.	04.08.2006	06
36.	07.08.2006	03
37.	08.08.2006	105
38.	17.08.2006	110
39.	23.08.2006	92
40.	30.08.2006	01
41.	04.09.2006	02
42.	05.09.2006	78
43.	06.09.2006	43
44.	08.09.2006	26
45.	12.09.2006	82
46.	13.09.2006	02
47.	14.09.2006	31
48.	18.09.2006	01
49.	19.09.2006	80
50.	20.09.2006	01
51.	21.09.2006	04
52.	26.09.2006	89
53.	04.10.2006	82
54.	11.10.2006	81
55.	18.10.2006	74
56.	01.11.2006	50
57.	02.11.2006	01
58.	07.11.2006	69
59.	14.11.2006	69
60.	15.11.2006	01

61.	21.11.2006	74
62.	05.12.2006	86
63.	12.12.2006	97
64.	19.12.2006	98
65.	20.12.2006	01
66.	10.01.2007	83
67.	17.01.2007	72
68.	24.01.2007	99
69.	01.02.2007	79
70.	08.02.2007	69
71.	12.02.2007	56
72.	15.02.2007	77
73.	22.02.2007	73
74.	28.02.2007	01
75.	01.03.2007	71
76.	07.03.2007	75
77.	14.03.2007	79
78.	20.03.2007	10
79.	21.03.2007	78
80.	29.03.2007	07
	Total	3932

From the above, it can be seen that Commission has conducted the Court sittings at least once every week. In the months of April, May, August and September the maximum sittings were held. Even with inadequate staff position, the Commission has tried to list as many cases as possible in each sitting to ensure their expeditious disposal. Additional days of Court sittings were convened to take care of urgent and time-bound matters. In cases where requests were made by the petitioner, early dates were given by the Commission on justifiable grounds.

The Commission has not fixed any quorum for the court sittings. All cases which are listed on a particular day are taken up and heard on that day itself and appropriate orders are passed by the Members present. Adequate notice period is given to the respondents. In case of pleading of urgency, 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 by fixing suitable date of hearing. Commission has never insisted for engagement of any counsel

to represent the petitioner. In other words, any petitioner who wants to argue his case is given the liberty to do so.

The Commission's endeavour has been to provide cost-free forum to the members of the minority community for redressal of grievances relating to their educational rights enshrined under the Constitution. Therefore, 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.

In addition to the formal meetings of the Commission as a Court, unscheduled and urgent meetings were also held during the year to dispose off urgent matters. New petitions are considered almost on a daily basis by the Commission and orders are passed for issuing notices to the concerned parties. For Court hearings, days are fixed in advance and notices are issued to the parties to give them adequate time for preparation and appearance before the Commission.

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

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

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

CHAPTER 4 – HIGHLIGHTS OF THE YEAR

Major highlight of the year was the successful conference convened by the Commission on 3rd December, 2006. This was the first time that so many intelligentsia from the Muslim community attended the conference alongwith large number of Madarsa managers and religious leaders and scholars representing different schools of thought and discussed the issue of introduction of modern education in Madarsas and necessity for setting up of a Central Madarsa Board. There was free and frank exchange of ideas and interactions and it was gratifying to note that general consensus was reached in the matter. Details of the conference are given in the Chapter 10 of the report.

This year also witnessed a flood of applications / petitions which had to be considered by the Commission. Despite shortage of staff, Commission had to put in extra effort by arranging extra sittings of the Commission as a Court to ensure that the petitions are considered expeditiously.

Extra effort were made to interact with as many members of the minority community as possible for providing information about the functioning of the Commission as well as providing clarifications to the various issues raised.

CHAPTER 5 – TOURS AND VISITS

During the year, the Commission has undertaken tours to various places. Details of the tours undertaken by the Commission are as follows :

Sl. No.	Dates of Tour	Stations Visited
1.	03.04.06 to 04.04.06	Ranchi
2.	27.03.06 to 02.04.06	Trivandrum
3.	10.04.06	Aligarh
4.	06.04.06 to 07.04.06	Hyderabad
5.	22.04.06 to 23.04.06	Nagpur
6.	18.05.06 to 21.05.06	Indore
7.	2.06.06 to 5.06.06	Rampur
8.	8.06.06 to 9.06.06	Nagpur
9.	23.06.06 to 26.06.06	Lucknow
10.	26.06.06 to 27.06.06	Bhopal
11.	23.08.06 to 28.08.06	Jabalpur
12.	31.08.06 to 1.09.06	Bangalore
13.	6.09.06 to 7.09.06	Hyderabad
14.	19.09.06	Aligarh
15.	30.10.06 to 31.10.06	Ranchi
16.	8.11.06	Lucknow
17.	9.11.06	Jaipur
18.	19.11.06	Kandla
19.	24.11.06 to 25.11.06	Raipur
20.	21.12.06 to 26.12.06	Bangalore
21.	14.01.07	Muzzaffar Nagar
22.	5.02.07 to 6.02.07	Madras
23.	2.03.07 to 4.03.07	Ludhiana
24.	22.02.07 to 24.02.07	Lucknow
25.	7.03.07 to 9.03.07	Mumbai
26.	11.03.07	Roorkee
27.	15.03.07 to 16.03.07	Bareilly
28.	23.03.07 to 25.03.07	Kolkata

The Chairman and Members have visited the above places together or separately as per their convenience. The tours were undertaken with a view to interact with the members of the minority communities in understanding the difficulties faced by them and also to apprise them about their constitutional rights as well as the powers and functions of the Commission. During the tours Commission has also interacted with the State Government officials. In many cases it was found that officers in the Education Department of many State Governments were not fully aware either of the functions or powers of the Commission or of the scope or width of the educational rights of minorities enshrined under Article 30(1) of the Constitution. These visits and interactions were found to be mutually beneficial as the Commission was able to develop first hand knowledge of the extent and diversity of the problems faced by the minority educational institutions at various places. The interactions resulted in broadening the outlook of the providers and managers of the minority educational institutions and it also fostered in them a sense of partnership with the State in the practice of education.

During the tours, meetings were held with representatives of minority educational institutions where the functions of the Commission were explained and procedural formalities involved in approaching the Commission were also explained. The Commission, being a quasi-judicial body, has to function as a Court and many of the stakeholders were not aware of drafting a petition. Many petitions were received by the Commission in letter format without giving full details of the case involved and without any supporting documents. The interactions held at various places provided a forum to address these problems.

Given below are brief resume of some of the visits undertaken by the Commission and interactions held thereon :

Tour of the Chairman to Nagpur on 8-9 June, 2006.

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

community. He cited that Article 51A of the Constitution obligates parents to give quality education to their children.

Tour of the Chairman and Secretary of the Commission to Lucknow on 23rd to 26th June, 2006.

On 23rd June, 2006, a meeting was held at Bapu Bhawan, where senior officers of the State Government including Secretaries of the Departments of Education and Minorities Welfare were present. The Chairman mentioned about the constitutional provisions especially Article 30 relating to the rights of the minorities to establish and administer educational institutions and pointed out that the rules and regulations formulated by the State should be reasonable and in conformity with the rights guaranteed under Article 30. There was a need for amending some of the statutes of the Universities, which are not in conformity with Article 30. The Chairman emphasized that delay should be avoided in granting of minority status certificate. The State Government should also frame guidelines for time-bound disposal of cases relating to grant of NOC. The issues relating to grant-in-aid and introduction modern education in Madrasas were also discussed.

A meeting was convened at Amiruddaula Islamia Degree College, Lucknow on 23rd June 2006 where interaction was held with the representatives of minority educational institutions. The issues discussed included delay in approval of appointment of teaching and non-teaching staff, delay in the grant of minority status certificate, problems relating to Urdu teachers and availability of Urdu books, grant-in-aid, approval for new educational institutions, need for more schools in rural areas etc. Commission provided clarifications on all the issues raised. The Members present were requested to give wide publicity to the powers and functions of the Commission and since it is a quasi-judicial body the complaints should be sent to the Commission in the proper petition format with supporting documents.

Tour of the Commission to Bangalore(Karnataka) on 31st August & 1st September, 2006

On 31st August 2006, the Commission met the representatives of the minority educational institutions at the conference hall of Vidhan Saudha, which was attended by more than 100 representatives. The Chairman of the Karnataka State Minority Commission mentioned about the problems faced by minority educational institutions and highlighted the issues relating to minority status certificate and the percentage of intake of minority community students prescribed by the Government. The Chairman mentioned about the details of Article 30 of the Constitution which is an Article of faith and is meant to protect the rights of the minorities and this right cannot be diluted. He explained the details of the NCMEI Act and the deeming provision relating to grant of NOC. He gave clarifications on various points raised by the members present. The issues raised included grant of minority status certificate on a permanent basis, more

budgetary provisions for minorities, delay in the issue of NOC to start new institutions and for additional / fresh courses, problem relating to compulsory teaching with Kannada as the medium of instruction, admission of students, grant-in-aid, filling up of vacant posts of teaching and non-teaching staff, conduct of entrance test by the minority educational institutions, expansion of Sarva Shiksha Abhiyan, problems relating to Urdu schools etc.

Another meeting was held with representatives of Madrasas where the issue relating to introduction of modern education in Madrasas was discussed. Chairman explained the need for introducing modern education in Madrasas along with religious education and also explained the concept of establishment of a Central Madrasa Board. Commission had also a meeting with Principal Secretary and other officers of Department of education, Government of Karnataka. Issues relating to minority educational institutions were discussed in the meeting. Chairman impressed upon the officers to take appropriate action to mitigate the grievances of the problems faced by the minority educational institutions. Commission also called on the Minister for Higher Education and Minister for Primary and Secondary Education, Govt. of Karnataka.

Tour of the Commission to Hyderabad on 6-7 September, 2006

At Hyderabad, Commission met the representatives of minority educational institutions at a function organized by the A.P. State Minorities Educational Institutions. The issues raised in the meeting included appointment of Principals and teaching staff by the minority educational institutions, unnecessary harassment from State Government officials, issue of minority status certificate on a permanent basis, the percentage of students to be admitted from the minority communities to be fixed by the State Government, grant-in-aid, etc. Chairman gave clarifications to the various points raised by the representatives and told them to send petitions to the Commission for issuing notices to the concerned respondents. He referred the leading judgements of the Supreme Court on the rights guaranteed under Article 30(1) of the Constitution. He explained that minority status certificate cannot be granted on a temporary basis and the issue would be taken up with the State Government. Chairman complemented the Christian community for being pioneers in the field of education. Education is a recognized head of charity and people should guard against commercialization of education. Educational institutions should provide all facilities to ensure academic excellence and the communities should prevent mushrooming of bogus institutions.

A meeting was held with the representatives of the Madrasas where the Chairman explained the concept of having a Central Madrasa Board and introduction of modern education in Madrasas. There was general consensus that modern education should be introduced along with religious education. Many Madrasas are presently teaching modern subjects. A Statutory Central Board would facilitate advancement of modern education with Centralized pattern and would ensure uniform

curriculum and recognition of the course of study. It was also suggested that vocational courses should also be taught along with modern education.

Visit of the Commission to Ranchi on 30-31st October, 2006

Commission interacted with the representatives of minority educational institutions at Project Building Conference Hall at Ranchi. The Chairman informed the audience about the functions and powers of the Commission and the format for drafting of petitions to be submitted to the Commission. Since the Commission is a quasi-judicial body, it is necessary that the petitions should contain all necessary details so that notices could be issued to the proper respondents. Raising of many issues in a single petition would result in avoidable delay in getting replies from various authorities and therefore specific issue should be taken up in each petition. The managers of the minority educational institutions mentioned about their problems and clarifications were given thereon. The issues raised included delay in grant of minority status certificate, delay in permission for upgradation of schools, need to enhance the pay-scales of teaching staff, delay in the release of grant-in-aid, corruption in Government organizations which acts as a stumbling block, neglect of Urdu, requirement of additional courses in Urdu language, enhancing the salary of Madrasa teachers etc. Clarifications were provided on the issues raised and the managers were asked to prefer appropriate petitions to the Commission.

A meeting was held with the representatives of Madrasas where the details of proposed structure of Central Madrasa Board were discussed. There was consensus on establishment of a Central Madrasa Board on the pattern of Central Board of Secondary Education. It was emphasized that the Board should be an autonomous body free from governmental interference.

The Commission called on the Chief Minister and also met with the Minister for Human Resource Development. Commission also met with the Chief Secretary and Secretaries of various departments wherein the problems faced by minority educational institutions were discussed. The Chief Secretary assured that he would immediately get all the issues examined and appropriate orders would be passed as per the advice given by the Commission.

Visit of the Commission to Raipur on 24th – 25th October 2006

A meeting was organized by the Chhattisgarh State Minorities Commission where managers of the minority educational institutions and Madrasas were present. Details of the Commission's functions and powers were explained and some of the cases disposed of by the Commission were discussed. The Chairman elucidated on the judgements rendered by the Apex Court on the educational rights guaranteed under Article 30 of the Constitution. He also explained about the provisions of the NCMEI Act. The representatives of minority educational institutions raised various issues,

which included difficulties in filling up of various posts, grant of minority status certificates, refusal of grant-in-aid, problems of Unani educational institutions, difficulties in getting NOC, etc. Clarifications were provided on the issues and the members were asked to prefer appropriate petitions to the Commission or approach the State Government authorities concerned in the first instance.

A meeting was also held where introduction of modern education in Madrasas were discussed. There was general consensus that introduction of modern education would enable the children of Muslim community to compete with other students. The Chairman also explained to them that establishment of the Central Madarsa Board is essential for standardization and integrated development of Madarsa system of education. There was a broad consensus on establishment of the proposed Central Madarsa Board free from governmental interference.

Commission also held discussion with the Chief Secretary and other Secretaries of the Government where problems relating to the minority educational institutions were discussed in detail. The Chairman enlightened them about educational rights of minorities enshrined under the Constitution. The State Government officers promised to take prompt action on the issues relating these rights.

During the year the Commission was not able to visit many places even though invitations have been received from many quarters. It was the endeavour of the Commission to cover as many places as possible to interact with representatives of minority communities and State Government officials. Commission proposes to cover other places also during the coming years. The interaction Commission had with the representatives of the minority educational institutions at various places has resulted in the stakeholders knowing better about the Commission's functioning. It was realized by the Commission that many persons and particularly members of Muslim community are not even aware of their constitutional rights. They have no idea about functions and powers of the Commission and also the procedure which is being followed by the Commission for disposal of cases. More often, various issues are raised in the single petition, which ultimately results in delay in their expeditious disposal. In fact, such petitions suffer from the vice of multi-fareousness of causes of action. The visits of the Commission provided a forum where interactions resulted in the stakeholders realizing the rights guaranteed under Article 30 and the necessity to approach the State Government authorities for asserting their rights. Commission has explained to the representatives of the minority educational institutions that the Commission is a cost effective forum and did not charge any Court fee. It is not necessary for any one to avail of the service of a counsel and the petitioner can present the case by himself before the Commission.

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

Commission registers cases calendar year-wise. Commission started receiving petitions in February 2005 and in the year 2005 registered 373 cases. During the year 2006, the number of applications were large and total number of applications/ petitions registered were 3050. In addition, the applications related to minority status certificate were scrutinized and in those cases where the petitioners have not applied to the competent authority in the concerned State Government, the petitioners were directed to apply to the competent authority of the State Government in the first instance. Thus 1041 cases were summarily disposed of on this count alone.

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

During the period of the report, Commission passed several orders. Some of the important orders are mentioned in this chapter and in the next chapter. Only two detailed orders are given in the Appendix as it would not be possible to give full text of all the orders in the report. However, Commission would be posting all the orders in its website. 95% of the cases registered in the year 2005 have been disposed of and most of the cases registered during the first two quarters of 2006 have also been disposed of. However, majority of the cases registered in the first quarter of 2007 are ripe for disposal. Cases, finally disposed of the Commission, have been included in Chapters VI and VII.

Case No. 288 of 2005

Appointment as Lecturers

Petitioner : Abdus Shakur Husaini & Ors., Teachers of Milliya Arts, Science & Management Science College, Beed, Maharashtra.

Respondents : 1. The Registrar, Dr. Babasaheb Ambedkar Marathwada University, Aurangabad, Maharashtra.
2. The Secretary, Department of Higher & Technical Education, Mantralaya Extension Building, Mumbai – 400 032.

Milliya Arts, Science & Management Science College, affiliated to Dr. Babasaheb Ambedkar Marathwada University, Aurangabad is a minority educational institution within the meaning of Section 2 (g) of the National Commission for Minority Educational Institutions Act (for short "the Act"). On 31.7.1999, the management of the said college selected and appointed the petitioners as lecturers. The management, thereafter, submitted a proposal to the respondent university for approval of their appointment as lecturers, which was turned down by the respondent university on the ground of non-fulfilment of the educational qualifications prescribed therefor. Feeling aggrieved, the petitioners approached the Commission for approval of their appointment as Lecturers of the said college.

The respondent university resisted the petition on the ground that the petitioners were appointed on 31.7.1999 by the college but the proposal for approval of their appointment was submitted to the university on 24.7.2003. The college could not offer any plausible explanation for the inordinate delay in submitting the said proposal for approval. It was also alleged that the petitioners did not fulfill the educational qualifications prescribed by the respondent university for appointment of lecturers as none of them possessed NET/SET qualifications nor have submitted Ph.D. thesis at the time of their selection and appointment as a result whereof their appointments were not approved by the university. It was further alleged that the minority status has been granted to the college only from 14.2.2000 and, therefore, the rights and benefits of the minority institution can be availed thereafter only by the said college and not prior to it. Since, on the date of appointment of the petitioners, the college did not enjoy the minority status, the college was bound by the ordinance/rules of the respondent for selection and appointment of lecturers.

Commission found that at the time of their selection and appointment, the petitioners did not possess the minimum qualifications prescribed by the respondent university for appointment of lecturers. None of them possessed NET/SET qualification as prescribed by the respondent university. A feeble attempt was made by the petitioners to justify their selection and appointment by contending that since no NET/SET candidate appeared for the interview, they were selected. The petitioners had ample time since 1999 when they were appointed to clear the NET/SET which they did not bother to. Commission observed that it has to be borne in mind that the standard of education imparted by an institution is determined in large measure by the quality of teaching it provides and the standard of selection of teachers has a direct nexus with the standard of teaching in the college. It was, therefore, the responsibility of the university to ensure that proper and uniform standards of teaching are maintained by all the affiliated colleges of the university. According to recent studies, teacher quality is emerging as the most important ingredient in students' achievement. The strongest predictor of how well a state's students performed on national level assessments was the percentage of well-qualified teachers; educators who were fully certified and had majored in their subjects they taught. Conversely, there is also evidence that ineffective teaching can have a lasting impact on students' achievement levels. Commission

pointed out that minority educational institutions cannot be permitted to fall below the standards of excellence expected of educational institutions. Requisite norms and standards laid down by the respondent university for purposes of appointment of a lecturer of the affiliated college cannot be diluted.

Since the petitioners' appointment as lecturers of the college did not conform to the standards prescribed therefor, the respondent university was perfectly justified in withholding its approval. Consequently, the petition, being devoid of merits, was dismissed.

Case No. 20 of 2006

Releasing of grant-in-aid

Petitioner : Master Noor Muhammed Urdu High School, Warispura, Kamptee – 441 002, Distt. Nagpur, Maharashtra.

Respondents :

1. Secretary, School Education Department, Government of Maharashtra, Mumbai.
2. Director of Education, Government of Maharashtra, Pune.
3. Deputy Director of Education, Nagpur Division, Nagpur.
4. Education Officer (Secondary), Zila Parishad Nagpur, Nagpur.

By this petition, the President of Master Noor Muhammed Urdu High School, Distt. Nagpur, Maharashtra sought a direction to the Government of Maharashtra for releasing the grant-in-aid for the academic years 2004-2005 and 2005-2006. According to the petitioner, Master Noor Muhammed Urdu High School, Kamptee is a minority educational institution and as such it is eligible for the grant-in-aid in accordance with the order dated 27.12.2005 passed by the Government of Maharashtra. The petitioner's main grievance was that its grant-in-aid for the aforesaid academic years has been withheld by the Government on invalid grounds.

The Education Officer (Secondary), Zila Parishad Nagpur supported the petitioner's case. According to the Education Officer, by the order dated 26.3.2003, the State Government had granted minority status certificate to the petitioner school. The District Committee had evaluated the school in the academic year 2004-05 and had allotted 88 out of 100 marks and had also recommended the proposal for grant-in-aid to the State Government. The Education Officer has also recommended the said proposal.

The Deputy Secretary, School Education & Sports Department, Government of Maharashtra had informed the Commission about the formula and norms prescribed for evaluating the school permitted to run on no-grant basis, vide letter dated 8.2.2006. According to the said Deputy Secretary, the schools owned by the minorities should have an average attendance of 15 students in each class for which 20 marks are awarded. During the evaluation in 2004-05 by the District and State Level Committee, it was found that the petitioner school had not acquired the certificate regarding its minority status. Consequently, the petitioner school was awarded zero mark for the average attendance by the State Level Committee. Altogether, the petitioner school had obtained 67.5 marks and, therefore, was not found eligible for grant-in-aid.

It emerged from the reply filed by the Deputy Secretary, School Education & Sports Department, Government of Maharashtra that on the basis of the evaluation report of the State Level Committee, the petitioner school was not found eligible for grant-in-aid for the academic year 2004-05 for want of minority status certificate. It needs to be highlighted that the Education Officer has unequivocally stated in his reply that by the order dated 26.3.2003, the State Government had granted minority status certificate to the petitioner school and while recommending the petitioner's case for grant-in-aid he had also attached the said certificate. The aforesaid admission of the Education Officer completely belies the said statement of the Deputy Secretary, School Education & Sports Department, Government of Maharashtra that since minority status certificate was not granted to the petitioner school, it was not eligible for grant-in-aid. On the contrary, the reply filed by the Education Officer clearly proved that the petitioner school, being certified as a minority educational institution by the Government of Maharashtra, was eligible for the grant-in-aid for the academic years 2004-05 and 2005-06. Consequently, Commission was constrained to observe that grant-in-aid for the aforesaid academic years has been denied to the petitioner school on wholly illegal grounds.

For the foregoing reasons, the Government of Maharashtra in the Education Department was directed to reconsider the case of the petitioner school for grant-in-aid for the academic years 2004-05 and 2005-06 as a minority educational institution as recommended by the Education Officer, Zila Parishad Nagpur.

Case No. 1183 of 2006

Establishment of a college for B.Ed. courses

Petitioner : Society for Promotion of Culture and Education, 57, Rawalpura Housing Colony, Srinagar, Kashmir. [Mr. P.A. Inamdar for the petitioner]

Respondent : 1. Chief Secretary of Delhi & Ors. [Sanjay Dewan, Advocate]

The petitioner proposed to establish a college for B.Ed. courses within the territory of Government of NCT of Delhi. The petitioner contended that the said course is fully covered by Entry 66, List I of Schedule VII to the Constitution and the Parliament has enacted the National Council for Teachers Education Act 1993 on the said subject.

Learned counsel for the respondent has fairly conceded that in view of the decision rendered by the Supreme Court in State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors. JT 2006 (4) SC 201, the National Council for Teachers Education (for short "the Council") has final voice in such matters and neither the State nor any authority of the State can interfere with such decision.

Commission observed that under the scheme of the Constitution, particularly Articles 245, 246, 248 and 254 read with Schedule VII thereof, only Parliament has power of coordination and determination of standards in institutions of higher education or research, scientific and technical institutions. State Legislatures have no authority to enact any law in the field covered by Entry 66 of List 1 of Schedule VII. Obviously, therefore, the State Government has no authority to take a policy decision in respect of the subjects covered by Entry 66 of List 1 of Schedule VII for which a specific enactment has been made by Parliament and under the said Act authority has been granted to the Council to take an action.

Commission allowed the petition and the petitioner was directed to approach the Council for its recognition in accordance with the provisions of the Act. On getting recognition from the NCTE, the university concerned is obliged to grant affiliation to the petitioner institution without awaiting for any NOC or permission from the Government.

Case No. 243 of 2005

Permission to fill up the posts of teachers, opening of additional sections and request for grant from the Government

Petitioner: Secretary, Anjuman Urdu Education Teachers and Parents Association, Shahbad, Distt. Gulbarga, Karnataka.

Respondent/s: 1. The Secretary, Department of Higher Education, Government of Karnataka, Karnataka Government Secretariat, M.S. Building, Bangalore, Karnataka.

The petitioner raised grievances regarding Anjuman Urdu Higher Primary School, Urdu Girls Higher Secondary School and Anjuman P.U. College for Women, Shahabad, Karnataka. The main grievances related to filling up of the vacancies of teachers, grant of additional posts of teachers, opening of additional section in the Urdu Girls Higher Secondary School and grant-in-aid.

The Government of Karnataka stated before the Commission that there is a ban on filling the vacancies in aided educational institutions as a measure of economy. However, vacancies of teachers that have been filled prior to 17.1.2004 would be considered for grant-in-aid. Since the cut off date for securing grant-in-aid for private schools and colleges has been 1.6.1987, schools started after that date are not eligible for grant-in-aid.

Commission ordered that in view of the law declared by Supreme Court, it is incumbent upon the Education Department to allow the petitioner's institutions to fill up their vacant posts of teachers. Withholding the permission to fill up the vacant posts of teachers virtually tantamount to impairment of the educational rights of the minorities guaranteed under Article 30 (1) of the Constitution.

The petitioner's other grievance is that the Education Department is not allowing it to open additional sections in Urdu Girls Higher Secondary School. In this context, it would be useful to refer to Article 350A of the Constitution, which is as under :-

“350A. It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provisions of such facilities.”

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

That being so, it is the constitutional obligation of the State Government to provide adequate facilities for instructions in the mother tongue at the primary stage of education to children belonging to the minority community.

Bearing in mind the said constitutional mandate, permission ought to have been granted to the Urdu Girls Higher Secondary School for opening additional sections, as prayed for by the petitioner.

As regard grant-in-aid, Commission felt that it falls within the policy decision taken by the State Government and since the petitioners have not been discriminated against in respect of grant-in-aid and since the policy of the State Government, which appeared to be non-discriminatory, the Commission did not want to intervene. The Commission recommended that the State Government should allow the petitioner's institution to select and appoint its teaching staff in accordance with the law declared by the Supreme Court in T. M. A. Pai Foundation's case. Keeping in view the mandate of Article 350A of the Constitution, the Commission also recommended that State Government grant permission to the Urdu Girls Higher Secondary School, Shahbad, Distt. Gulbarga, Karnataka for opening additional sections.

Case No. 270 of 2005

Admission in College

Petitioner: Ms. Qamarunissa

Respondents: 1. The Principal, Anwarul Uloom College of Education, Malakpet, Hyderabad.
2. The Registrar, Osmania University, Hyderabad.

The petitioner, Ms. Qamarunissa, D/o Shri M.A. Razzak, Secunderabad, filed the petition praying that she may be allowed to write the final B. Ed. Exam in April 2005. She got admission to B. Ed course for the academic year 2003-04 in Anwar-Uloom College of Education, Hyderabad as per the orders of the High Court of Andhra Pradesh in Writ Appeal No. 1617 of 2004. In spite of repeated requests for permission to write the B. Ed. final examination in April 2005, the authorities did not allow her to do so. She along with three others was asked to continue studies with B. Ed. 2004 batch and write the final examinations along with them. The petitioner contended that she should not be held responsible for joining the course of B. Ed. 2003 as late as November 17, 2004 as the admission to the course was allowed consequent to the High Court Order passed on 8.11.2004.

In the reply, the respondent Principal, Anwar-ul-Uloom College of Education, Hyderabad denied the allegations and contended that the petitioner's name did not figure in any of the lists published by the college as she was lower down in the merit list. The vacant seats were later filled by the college through spot admissions and the petitioner did not approach the college at that time. The petitioner along with three others later approached the High Court of Andhra Pradesh and the High Court directed that the petitioners could be admitted to the Institution. The respondent claimed that the Osmania University by its letter dated 19.4.2005 stated that the said students cannot be permitted to appear for the examinations along with 2002-04 batch of B.Ed students as they did not have necessary required attendance. Therefore, the petitioners were permitted to appear for examinations along with 2004-05 batch and that the petitioners are currently pursuing their course.

The petitioner in the rejoinder contended that the college did not advertise the spot admission in the newspapers and therefore she could not appear before the college due to lack of information. The High Court of Andhra Pradesh had allowed them admission as they were able to prove their case before the High Court.

The Commission observed that the petition submitted to the Commission is dated 24.8.2005 and at that point of time it will not be possible to allow the petitioner the relief asked for to write the final year examination of 2005. The technical points

raised by the Osmania University and the respondent college about the lack of required attendance may not be tenable as the petitioner could join the course only in November 2004 after obtaining the judgment of the A.P. High Court in her favour. The fact that the High Court gave relief to the petitioner proves that the petitioner had a strong case for admission to the B. Ed. Course and her plea that the spot admissions were not known to her has been upheld. In other words, the spot admissions conducted by the respondent college have been questioned by the High Court of Andhra Pradesh. In the writ appeal 1617 of 2004 the Court has given the following directions:-

“The learned counsel appearing on behalf of the 5th respondent herein expressed the intention of the institution to admit the appellants herein into B. Ed. Course offered by it. The appellants herein are accordingly directed to report before the 5th respondent – College of Education and they shall be admitted into the B. Ed. Course subject to usual conditions of payment of fee and other formalities. That upon such admission being granted by the 5th respondent – College, the appellants herein shall undergo the Course as per the rules and regulations in respect of the attendance of the students, a copy of which is made available for our perusal by the learned Standing Counsel. The appellants would not be in a position to appear for the examinations to be conducted by the University for this academic year but they will be entitled to continue their studies and attend the classes during the next academic year which would facilitate them for appearing at the examinations to be held for the academic year 2004-05. There shall be an order accordingly.”

From the above order of the High Court, it is seen that the court has ordered admission to the petitioners to the course subject to the rules and regulations in respect of the attendance of the students. Taking into account the fact that the petitioners are not responsible for the late admission, the respondent college and the Osmania University should have taken a lenient view regarding the technicality of fulfillment of the required attendance by the petitioner. If any concession was possible, it could have been given to the petitioners who would not have lost one year of no fault of their own. Commission observed that there is no point in giving any direction to the concerned authorities to have a fresh look at the issue of fulfillment of attendance and grant of concession at that point of time.

The Commission did not want to gloss over the circumstances leading to this unfortunate fiasco. It has also been brought to the notice of the Commission some other instances where the procedures for spot admission were not transparent. Commission made it clear that it is not a happy situation where the fairness and non-transparency of the spot admissions are questioned. It has been brought to the notice of the Commission that many deserving candidates/ students have lost their rightful opportunity of admission to certain courses due to non-transparency of procedures regarding spot admission. Commission, therefore, called upon the concerned authorities in the State Government to have a fresh look at the procedures regarding

spot admission to ensure that the students aspiring to get admission are fully conversant with the procedures and also adequate publicity is given to such spot admissions so that no student loses the opportunity to avail of it. Such a transparent procedure should also ensure that managements of the educational institutions do not play foul and deny admission to rightful and deserving candidates. Commission directed that in the instant case if the respondent college has not followed the set procedures formulated by the State Government authorities, action as deemed proper should be taken against the management of the respondent college.

Case No.182 of 2005

Request to release the original certificates and refund of fees

Petitioner : Shri M. A. Hafeez, S/o Mr. M. A. Samad, H.No.20-7-386/1, Qazi Pura, Fatheh Darwaja, Hyderabad, Andhra Pradesh – 500 065

Respondents : The Principal, Farah College of Engineering & Technology, S.No.103 & 104, Chevella Village, Chevella, Ranga Reddy Distt., Andhra Pradesh

By this petition, the petitioner Shri M. A. Hafeez of Hyderabad sought a direction from the Commission to the Respondent to release the original certificates of his son, M. A. Samad, submitted at the time of the latter's admission to Farah College of Engineering and Technology, R.R. District, A.P in 2001-2002 and to refund the fees levied unlawfully by the Respondent College. The factual matrix of the case, as available on record, is as follows.

At the time of Samad's admission to the said college, the Petitioner was required to give, in addition to the fees for the first year, 3 post-dated cheques for Rs. 44, 500/- each towards fees for the 2nd, 3rd and 4th years. The details of the cheques in question are on record. The Respondent in his reply admits to have collected 'cheques' from the Petitioner, without providing details. Shri Mohammed Abdul Hafeez, as the Petitioner and the father of the aggrieved student, avers through a sworn affidavit that illegal donation was extorted from him by the Respondent College in connection with the admission of his son.

Due to serious ill-health, M. A. Samad, the son of the Petitioner, discontinued his 4-year course in computer science in the Respondent college in the second year of the course, and the same was intimated to the college. Allegedly, the Respondent College refused to release the certificates of the Petitioner as well as to return the post-dated cheques, collected at the time of admission, meant to be encashed to realize the fees that would have become due, year after year, if the Petitioner had continued his studies. Subsequently, the Respondent college encashed one of the three cheques amounting to Rs. 44,500/- two years after the Petitioner's son ceased to be on its rolls.

In his defence, the Respondent alleged that the Petitioner discontinued his studies, not on account of ill-health, but because he was detained by the University. The grounds on which this alleged detention took place are, however, not stated. The Respondent admits to have encashed “after long waiting” the cheque in question, the rationale for which is wholly unintelligible to this Commission. Whatever be the cause for a student’s discontinuance, no educational institution has any lawful right to continue to collect fees out of him or her, after the cessation of his/her tenure with the institution concerned.

Commission refused to entertain the Respondent’s contention that the Petitioner’s claim of having discontinued studies on account of serious ill health is “false and fabricated”. From the evidence available on record, it is obvious that the Petitioner, at the time of discontinuing his studies, was suffering from serious and worrisome ophthalmic disorders and has been under expert treatment in the best eye hospitals in the country. His condition is diagnosed as ‘pale optic disc’ which indicates that the Petitioner’s optic nerves have atrophied to an alarming extent. His ‘visual acuity’ is assessed to be 20/200 which means that what a person with normal eye sight sees at a distance of 200 ft. the Petitioner can see only at a distance of 20 ft. That being the case, the Petitioner could not have pursued a 4-year course in computer science without risking total blindness.

Commission noted that the Petitioner is not an affluent person. His father is a bank employee and the Respondent, in his reply, has stated that the fees were to be paid out of bank loans to be raised over the years. It is a matter of particular concern that an educational institution can be so callous towards the suffering, helplessness and anxiety of a student from the lower middle class, faced with the prospect of life-long visual disability as well as economic hardships aggravated by chronic and incurable illness.

Commission noted that in response to a complaint by the Petitioner, the All India Council for Technical Education (for short “AICTE”) through a letter dated May 16, 2005 directed the Respondent College to return the original certificates as well as refund the amount illegally collected by encashing the disputed cheque for Rs. 44,500/- to the Petitioner, under intimation to the AICTE. Regrettably, this has not been complied with. The Respondent has not offered any explanation as to why this could not be done or should not have been done.

Commission observed that they cannot help wondering why the Respondent institution wants to retain the certificates of the Petitioner, even years after the latter has left the institution and there is absolutely no chance to coerce his return, given the serious nature of his illness. The clue lies in the encashment of the disputed cheque for Rs. 44,500/- ‘two years after’ the student has left the college concerned. The ex-student’s certificates are being used as means of coercion: as guarantees to ensure that the cheques do not bounce as and when they are presented for realization. The

very fact that such guarantees are resorted to proves that the Respondent knows how unlawful it is to encash the cheques collected from the Petitioner. The Respondent knows, besides, that retaining original certificates for such a long period of time is sure to disable the Petitioner from pursuing a field of study that is more benign and less harmful to his eyes. It paralyzes his academic life and kills his future. But this is deemed to be nothing as compared to the coercive power it affords to the Respondent to extort illegal fees from the Petitioner. What emerges is a shocking picture of maladministration, under the cover of minority status. This is a serious matter; but we limit ourselves here to the mere observation that the underlying purpose of minority educational rights, envisaged under Article 30(1), is the educational empowerment of minorities, and not their exploitation or harassment under its aegis.

The practice of collecting post-dated cheques at the time of admission towards fees for the entire course is patently illegal and it amounts to profiteering in the name of education, which is expressly forbidden by the Hon'ble Supreme Court. It is wholly indefensible on the part of the Respondent college to have encashed the disputed cheque for Rs.44,500/- a long time after the Petitioner had ceased to be on its rolls. It is a sad day for education when the providers of education begin to extort donations and fees, and remain deaf and blind to the academic well-being and human suffering of the students.

Given the facts and circumstances of the case, Commission declared that they deemed it expedient in the interests of justice to direct the Respondent College, to release the Petitioner's certificates as well as refund the whole amount of Rs. 44,500 together with penal interest of 10% w.e.f 16th May, 2005 when the AICTE directed the Respondent to do justice to the Petitioner. Commission regreted the non-compliance of the directive given by AICTE and place on record our serious concern at the disrespect for law implied in it. The Respondent was directed to intimate compliance to this Commission within one month of receiving the order.

Case No. 244 of 2005

Restoration of grant-in-aid to the petitioner college.

Petitioner : Secretary, Khaja Education Society, K.B.N. New Hostel Building, Rauza Buzurg, Gulbarga – 585 104, Karnataka

Respondent : Principal Secretary (Higher Education), Department of Higher Education, Government of Karnataka, Government Secretariat, Bangalore, Karnataka

The petitioner has mentioned that Bi Bi Raja Degree College located in Gulbarga, was getting grant-in-aid to the Science Section. The Government has withdrawn the grant and hence the petition.

Bi Bi Raja Muslim Minority College for Women is located in Gulbarga, which is a Muslim dominated District in Karnataka, plagued by economic backwardness. The college was earlier affiliated to Gulbarga University and is now permanently affiliated to Karnataka State Women's University, Bijapur. The college is being maintained by the Petitioner Society and is a minority educational institution. This women's college, which has completed a quarter century of service to the society, is one of the oldest minority educational institutions in the district and was graded "B+" by the NAAC/UGC. The Arts section of the college is covered under the grant in aid scheme of the State. A science section was added in 1989-90 on "non grant basis" on the basis of the permission granted by the State Govt. vide letter No. ED 06 UES 89 Dated 7.7.1989. The scheme envisions that the section so sanctioned becomes eligible for grant after completing 7 years. Accordingly, a proposal for the release of grant for science section was submitted and order for release of the salary grant for science section was received vide order no. ED-67-UPC-2004 dated 1.4.2004 from Deputy Secretary of Higher Education, Govt. of Karnataka. Commission noted that the science section has been producing good results and had 100% success rate in 2004-2005. The Petitioner claims to have complied with all the conditions attached to this scheme. There is nothing on record to prove otherwise. This notwithstanding, the scheme was withdrawn arbitrarily by the Government through letter No. ED 103 UPC 2004 dated 22.2.2005.

A perusal of the excerpts from the "Proceedings of the Government of Karnataka" available on record, revealed the following facts.

The science section of the Petitioner College was sanctioned as per Govt. letter dated 7.7.1989. The Director of Collegiate Education sought an order from the Government to include the Science Section of the Petitioner College in the Salary Grant-in-aid of the Government. The Commissioner of Collegiate education, however, opposed this on the ground that the Petitioner College was started after 1.6. 1987. This stand was revised subsequently to the effect that "no condition should be imposed in started/starting the science section as the Government has already granted permission to start the Science Section from the academic year 1989-90, and keeping in mind the fact that the degree college for women is running by the Minority Society and it is in the backward area in the field of Education and there is no ban on appointing the lecturers in Private Colleges and now the lecturers who are appointed are brought under the salary Grant-in-aid of the Education department. Therefore, the following lecturers working in the said College are brought under Salary Grant-in-aid from the date of issue of this order."

Nothing available on record sheds any light on how this clear and considered stand taken by the Government changed dramatically thereafter. At a time when there is nation-wide concern about the educational backwardness of Muslims, especially acute at the level of higher education and all the more acute in respect of women's education, a concern articulated at length in the Sacchar Committee Report of 2006, it is extremely regrettable that State action in respect of the education of minorities

flies in the face of the national concern in this regard. As regards the ground improvised for the retrograde decision of the State Government, namely that the Petitioner College was started after 1.6.1987, surely this was a known fact at the time of according sanction to the said science section. If this was a valid ground, the right time to invoke it was at the time of granting the initial sanction. Improvising grounds post-facto can be seen, at best, only as inventing excuses which, in real terms, amounts to betraying the trust reposed by the Petitioner College in the concerned government functionaries. This is regrettable in the extreme.

Admittedly, the educational rights envisaged in Article 30(1) do not include the right to receive grant. Provision of grant in aid is, in other words, not a constitutional imperative. But this should not be taken to mean that the grant in aid scheme can be administered in an arbitrary and capricious manner. Just as the Petitioner does not have a right to receive grant, the Respondent does not have a right to mal-administer the grant in aid scheme. By sanctioning the science stream in the Petitioner College under the “non grant scheme” the Government of Karnataka committed itself, as per the rules governing this scheme, to providing salary grant after seven years. The State Government is free to prescribe the conditions regulating the scheme in question and the Petitioner College is obliged to abide by them to the extent of upholding the right to be discriminated against. No case has been made out to the effect that the Petitioner College did not abide by the conditions prescribed at the time of sanction.

Given the facts and circumstances of the case, Commission came to the conclusion that the withdrawal of grant to the science section of the Petitioner College is not only manifestly arbitrary and untenable, but it also amounts to deprivation of the educational rights of the minorities guaranteed under Article 30 of the Constitution. Commission, therefore, directed the State Government to restore grant in aid to the petitioner college.

Case No. 876 of 2006

Complaint against discriminative policies

Petitioner : Minority Welfare Organisation, C/o Nisar Tamboli, 35, Avishkar Colony, Chalisgaon Road, Dhule – 424 001, Maharashtra

Respondents : 1. The Principal Secretary, Department of Higher & Technical Education, Government of Maharashtra, Mantralaya Extension Building, Mumbai – 400 032

2. The Secretary, Minority Welfare Department, Government of Maharashtra, Behind Times of India, V. T., Mumbai, Maharashtra

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

4. The Principal Secretary, Department of Higher & Technical Education, Government of Maharashtra, Mantralaya Extension Building, Mumbai – 400 032

In the representation made by Minority Welfare Organisation, Dhule, it was alleged that the Education Department, Government of Maharashtra is following discriminative policies in respect of grant-in-aid scheme for schools in the State. As per the averments of the Petitioner, the Department of Education, Maharashtra for which the Respondent is responsible, adopts two policies, namely, No Grant (Periodical Grant) and Permanent No Grant (denial of grant) in respect of schools in the State. Schools sanctioned under the first scheme become eligible for grant after a certain period of time; whereas schools covered by the second scheme are permanently debarred from it. Allegedly, the concerned Department has placed several schools run by the majority community in the former category; whereas schools run by the Muslim community are placed in the latter category. The petitioner cited the example of some of the minority educational institutions, which has been discriminative against. The petitioner alleged that the practice adopted by the Education Department is not based on any Government rules and blatantly discriminative and arbitrary and, as such, is violative of the fundamental rights under Article 14 of the Constitution. Excluding minority educational institutions permanently from the grant in aid scheme in a discriminatory and disabling manner falls foul under Article 30(1). By excluding the minority schools from the grant-in-aid, the Government has also excluded them from the other benefits such as Nutritious Diet Scheme and Free Textbook Scheme under the Sarva Shiksha Abhiyan (SSA). Such institutions are also denied grant for teaching aids like computers from the DPDC.

According to the Petitioner, the concept of Permanent No Grant Policy is conspicuous by its absence from any act or rule applicable to primary education in the State. Rule 108 of the Bombay Primary Education Rules, framed under the Act of 1947, prescribes that all recognized schools shall be eligible for grant in aid. The Government cannot give effect a policy contrary to this statutory mandate, as long as this rule holds the field. It is a settled legal dictum that no Government order, notification or circular can supersede statutory rules framed under the Act. Hence the so-called Permanent No Grant Policy of the Government is bad in law and is null and void to the extent of the alleged repugnancy.

Commission took into account the Articles 21A, 46 and 351A of the Constitution. Under the Article 21A, which makes education a fundamental right for children in the age group of 6-14, the State has come under the obligation to provide free and compulsory education to all children in this age group. Under Article 46, the State is obliged to promote, with special care, the educational empowerment of the weaker sections. Article 351A commands the State Government to provide primary education in the medium of mother tongue. These constitutional provisions stare straight into the face of the plea of permanent no-grant policy of the State Government relating to minority educational institutions.

Schools catering to the socially and economically underprivileged cannot survive without grant in aid. If grant is denied or withdrawn, education will become increasingly the privilege of the rich and a rare luxury for the under-privileged. Even as it is true that providing grant is not a constitutional imperative on the part of the State, it is even more true that providing free and compulsory education to all children in the age group of 6-14 is an imperious constitutional imperative, the full implication of which, regrettably, does not appear to have dawned on the relevant State functionaries. Schools under the Permanent Non Grant scheme have to charge fees from the students who are below 14 years of age, whereas students in schools covered by the Non Grant scheme are exempted from the same. The effect of the alleged discriminatory practice is an affront to the spirit of our Constitution.

The Commission observed that education is just about the only ray of hope for the vast multitude of the under-privileged in our country to regain their dignity and to prepare themselves to participate in nation building. It was in recognition of this decisive significance of education that education was transferred from the State to the concurrent list in 1977. This timely and radical step has two major implications: first, retrograde State posturing and unconstitutional discrimination in matters of education anywhere in the Union of India must be recognized as a serious offence against the educational progress of the country as a whole, even if the victims appear to be confined to one State. The Government cannot remain a mute witness to practices that amount to discrimination, exclusion or disempowerment in the field of education to which any citizen or people group, including the religious and linguistic minorities, may be subjected. Sworn allegiance to the Constitution of India implies the sacred duty to ensure that the constitutional ideals of equality and justice are upheld, the rights envisaged in the Constitution are given effect to, and all citizens are enabled to participate in our shared pursuit of realizing the “India of our dreams”.

Commission accordingly recommended to the State Government to reconsider the current policy in respect of sanctioning school on permanent no-grant basis, especially in the light of the Constitutional provisions enshrined under Article 21A, 30, 46 and 351A of the Constitution.

Case No. 310 of 2005

Request for Grant-in-aid scheme in schools

Petitioner : Association of Catholic Educational Institutions of Andhra Pradesh, Amruthavani, 50-Sebastian Road, Secunderabad

Respondents : 1. Commissioner & Director of School Education, Government of Andhra Pradesh, Saifabad, Hyderabad – 500 004

2. The Secretary to Government, School Education Department, Government of Andhra Pradesh, Hyderabad, Andhra Pradesh – 500 004

The Petitioner sought a direction from the Commission to the Govt. of Andhra Pradesh to continue the posts admitted to the Grant-in-aid scheme in schools established and administered by the minorities, and not to abolish them on the retirement or death of the incumbents. In support of this relief the Petitioner submitted that the Christian educational institution in the State, especially those situated in rural areas catering to the poor and rural people, are facing serious problems because the State Government is scrapping the grant-in-aid scheme by abolishing posts admitted to grant-in-aid as and when they fall vacant in this fashion. By doing so, the Government, albeit unwittingly, forces these schools to hike fees, which, in turn, shuts their doors to the poor and the marginalized. The State has a duty to educate its citizens and the educational institutions run by the minorities are partners with the State in carrying out this fundamental duty stemming from the Constitutional imperative enshrined in Article 21A. In the event of schools run by the minorities having to close due to denial of grant-in-aid, the State will have to open new schools, which could be a huge burden on the exchequer. The Petitioner does not allege any discrimination against minority educational institutions vis-à-vis other private non-minority institutions.

The Government of Andhra Pradesh cited paucity of funds as the reason for abolishing grant-in-aid posts.

The Commission observed that at the time of sanctioning or approving an educational institution, the Government concerned enters into a tacit understanding with the management concerned on the basis of the terms and conditions laid down at that point in time. Some of these terms are crucial not only for the health but also for the very survival of these institutions. Provision for grant-in-aid is an instance of this. It does not have to be argued that underlying the grant-in-aid scheme is the fact that the institutions concerned cannot survive without this minimal support from the State. It is in view of this that the Hon'ble Supreme Court has declared that the provision of grant-in-aid cannot be an excuse for depriving educational institutions of their minority rights. The educational institutions have simply no viable choice in the matter. The tendency of State Governments to change at will these crucial terms of commitment on their part is insensitive and unjust, even if this is given a façade of executive fiat. It smacks of a betrayal of trust. What the State creates, thereby, is a one-way relationship dictated wholly by its irresistible will, marked by an unwillingness to heed to the hardships of those who struggle to meet the unmet needs of citizens, especially of the downtrodden segments of the society. While this may pass the muster of the letter of the law, it falls short of the spirit of justice and the scheme embodied in Article 21A of the Constitution.

The Commission endorsed the idea that State policy is not a fixed but a fluid matter and that it has to evolve in response to the flow of events, situations and needs. But what concerned the Commission here is the regrettable fact that in doing so the State is highly selective in its reading of the emergent realities. It is deemed convenient to withdraw minimal grant-in-aid to minority educational institutions and allocate the same to Govt. schools. But, in the process, the serious and retrograde implications of

this step for the educational empowerment of the citizens are overlooked. The State is duty-bound to provide adequate educational facilities, accessible and affordable, to the citizens. It is when the State fails to do so that private enterprise in education emerges to fill the vacuum. Minority and private non-minority educational institutions seek to do just this. They need to be seen, hence, as partners with the Government in a crucial sector of service and philanthropic engagement, and not as aliens and strangers worthy only of distrust and discouragement.

The Commission recommended to the State Government :

- (1) That minority educational institutions be exempted from the purview of Govt. Memo No. 12080/COSE/a2/2004-4 dated. 20.10.2004 and that all posts in these institutions admitted to the grant-in-aid scheme prior to 1.4.1977 be continued as such.
- (2) That every minority educational institution –whether established before or after the cut off date of 1.4.1977 situated in educationally neglected areas where there is no Government school within a 5 K.M radius be supported with grant in aid till the alternate schools are established by the government to meet local educational needs.
- (3) That the A.P Private Educational Institutions Grant-in-Aid (Regulation) Act, 1988 be amended accordingly.

Case No. 311 of 2005

Complaint regarding violation of the educational rights of the minorities

Petitioner : Association of Catholic Educational Institutions of Andhra Pradesh, Amruthavani, 50-Sebastian Road, Secunderabad

Respondents : 1. Commissioner & Director of School Education, Government of Andhra Pradesh, Saifabad, Hyderabad – 500 004

2. The Secretary to Government, School Education Department, Government of Andhra Pradesh, Hyderabad, Andhra Pradesh – 500 004

The petitioner challenged some of the orders issued by the Directorate of Collegiate Education, Hyderabad as they were violative of the educational rights of the minorities guaranteed under Article 30(1) of the Constitution. The State of Andhra Pradesh has observed that while the management of every private minority/non-minority educational institution in the State has a right to select and appoint a qualified person as head of the institution but a minority educational institution does not have a right to appoint persons of its choice against a vacant post which in receipt of grant-in-aid.

Commission considered the various instruction of the Government of Andhra Pradesh in the light of pronouncements made by the Hon'ble Supreme Court in various cases and recommended to the State of Andhra Pradesh to amend the said instructions relating to the applicability to the minority educational institutions so as to bring them in conformity with the law declared by the Supreme Court in T.M.A. Pai Foundation's case.

Case No. 352 of 2005

Request for financial aid

Petitioner : President, Bismillaha Madarsa, Azad Nagar, Maheria, Gali No.7, Subhash Chandra Bose Ward, Jabalpur, Madhya Pradesh

Respondent : The Deputy Secretary, (Minority Cell), Ministry of Human Resource Development, Shahstri Bhawan, New Delhi

The petitioner has requested for financial aid to be given to Bismillaha Madarsa, Jabalpur for teaching modern subjects and also for stitching, embroidering, knitting, painting, computer training, etc.

Ministry of HRD furnished the details of the Centrally Sponsored Plan Schemes of Area Intensive and Madarsa Modernization Programme. This scheme has two components viz. (1) Infrastructure Development, (ii) Modernization of Madarsas. Under the first component, grant is given for construction of school building, toilets, girls hostels etc; and under the second component salary to teachers for teaching modern subjects such English, Mathematic, S. Studies, Hindi, etc. is provided @ Rs. 3000/- per month for primary level teachers and @ Rs. 4000/- per month for secondary level teachers. A lump sum grant (one time) of Rs. 7000/- per madarsa for science/ maths kits and Rs. 7000/- per madarsas for establishment of book banks is also provided through the State Government concerned. The scheme is purely voluntary and the concerned NGO/Agency has to apply in prescribed form to the State Government for financial assistance. The requests received in this Department from the concerned State Governments are considered on merit and recurring grants are released to the States on yearly basis. The State Governments further distribute the funds. The scheme is being implemented and monitored by the concerned State Government.

Accordingly the Commission directed the petitioner to apply to the Central Government through the State Government as per the prescribed procedure.

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

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

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

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

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

Case No. 881 of 2006

Affiliation of Dental College with University of Delhi.

Petitioner : The Bombay Patel Welfare Society, Bharuch, Gujarat.

Respondent : The Registrar, University of Delhi, New Delhi.

The petitioner college applied to the Delhi University for its affiliation in accordance with the provisions of Section 10(1) of the NCMEI Act, 2004. The petition was filed before the Commission since the respondent University did not take any

decision on the petitioner's request for grant of affiliation. The respondent University replied stating that they have rejected the application on the ground of territorial limit prescribed in the Delhi University Act, 1922. They also cited the reason that grant of affiliation to a far-flung professional institution may affect the quality/ academic standards set by the Delhi University.

The Commission considered the issue and rejected the contention of University of Delhi on the territorial ground. Section 10 (1) of the Principal Act (National Commission for Minority Educational Institution Act, 2004) has been amended and new section has been inserted whereby all affiliating universities have been brought under the ambit of the NCMEI Act. Commission observed that Section 10 of the Principal Act, prior to its amendment by the Amendment Act, 2006 conferred a right on a minority educational institution to seek affiliation from any Scheduled University of its choice. At the time the Legislature incorporated into the Principal Act Section 10 (1), it must have been aware of the existence of Section 5 of the Delhi University Act, but yet in Sections 10 (1) and 22 of the Principal Act, it declared that conferral of the right is notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Thus the right to seek affiliation conferred by Section 10 (1) of the Principal Act was not controlled by Section 5 of the Delhi University Act and this right could be enforced in such a manner provided in Section 10 (1) of the Principal Act, as Section 5 of the Delhi University Act was over-ridden by the non-obstante clause in Section 10 (1) and Section 22 of the Principal Act. That apart, provisions of the Principal Act were special and later in point of time as against the Delhi University Act and so the Principal Act is to prevail in case of a conflict of interest over the Delhi University Act, although both the Acts contained non-obstante clauses (Jain Ink Manufacturing Company Vs. Life Insurance Corporation AIR 1981 SC 670; Ashoka Marketing Limited Vs. Punjab National Bank AIR 1991 SC 855; Maharashtra Tubes Limited Vs. State Industrial & Investment Corporation of India (1993) 2 SCC 144; Allahabad Bank Vs. Canara Bank AIR 2000 SC 1535; Solitaire India Limited Vs. Fairgrowth Financial Services Limited JT 2001 (2) SC 639; West Bengal Electricity Regulatory Commission Vs. CESE Ltd. AIR 2000 SC 3588).

Section 12 of the Principal Act confers jurisdiction on the Commission to entertain and resolve the dispute relating to the right of a minority educational institution to seek affiliation from a Scheduled University of its choice. The Principal Act being a special law relating to the right of affiliation of a minority educational institution and also being a subsequent enactment, must prevail over the provisions of Section 5 of the Delhi University Act.

The Commission found that the respondent university cannot deny affiliation to the petitioner on the ground that it has already more such institutions than required and it is not in a position to take on the continuous additional burden of new institutions and colleges as well as increasing student population, as it would infringe the substance

of the right guaranteed under Article 30 (1) of the Constitution. Moreover, such a fact is irrelevant so far as a minority educational institution is concerned. It is also relevant to mention that Entry No.63 of the Seventh Schedule to the Constitution contemplated the Delhi University as a national university with a sprinkling of minority educational institutions affiliated to it.

The Commission was constrained to observe that none of the grounds on which the petitioner's prayer for affiliation has been rejected by the respondent university is legally tenable and the respondent university's action in rejecting the petitioner's prayer for grant of affiliation is violative of the substance of the right enshrined under Article 30 (1) of the Constitution. Accordingly, the petition was allowed and it was ordered that the respondent university shall grant affiliation to the petitioner college.

[Full text of the order of the Commission dated 20th April 2006 is given in the Appendix.]

Case No. 48 of 2005 and 152 of 2005

Complaint about violation of educational rights of the minorities

Case No. 48 of 2005

Petitioner : St. Stephen's College, Delhi- 110 007.

Respondents : 1. The Registrar, University of Delhi, New Delhi.
2. The Secretary, University Grants Commission, Bahadurshah Zafar Marg, New Delhi.

Case No. 152 of 2005

Petitioner : Sri Guru Tegh Bahadur Khalsa College, Delhi.

Respondents : 1. The Registrar, University of Delhi, New Delhi.
2. The Secretary, University Grants Commission, Bahadurshah Zafar Marg, New Delhi.

The petitioners St. Stephen's College and Sri Guru Tegh Bahadur Khalsa College, Delhi which are affiliated colleges of University of Delhi have been established and are managed and administered by members of the Christian and Sikh community, respectively. Both the colleges are minority educational institutions within the meaning of Section 2(g) of the National Commission for Minority Educational Institutions, Act. Both the colleges had filed petitions complaining about violation of educational rights

of the minorities, guaranteed under Article 30 (1) of the Constitution, by the respondent university. Since the features of both cases were common, Commission issued a common order.

The petitioners alleged that the respondent university had treated minority educational institutions established by the petitioners just like all other affiliated colleges. The petitioners had requested the Commission to issue a direction to the University of Delhi for allowing them to appoint Principal and Lecturers as per the right conferred under Article 30 (1) of the Constitution. The respondent university resisted the petitions by stating that the petitioner colleges, being constituent colleges of the Delhi University and are bound by the statutes, ordinances and other rules and regulations made by the university which apply equally to its affiliated and constituent colleges. The composition of the Selection Committee for appointment of principals and teachers prescribed by the University have to be followed by the petitioner colleges. They contended that the ordinances of the Delhi University dealing with the selection of the teaching staff of the colleges affiliated to the Delhi University does not in any manner infringe the rights of the petitioners as minority educational institutions.

Commission rejected the contention of the Delhi University that the petitions are outside the cognizance of the Commission as the petitions relates to violation of the rights of the minorities to establish and administer educational institutions guaranteed under Article 30 (1) of the Constitution and as such the Commission is fully competent to entertain them. Commission found that the ordinance relating to setting up of Selection Committees is not applicable to the minority educational institutions.

It is also well settled that introduction of an outside authority, however high it may be, either directly or through its nominees in the governing body or the managing committee of the minority educational institution to conduct the affairs of the institution, would be completely destructive of the fundamental right guaranteed by Article 30 (1) of the Constitution and would reduce the management to a helpless entity having no real say in the matter and thus destroy the very personality and individuality of the institution which is fully protected by Article 30 (1) of the Constitution.

Commission concluded that the Ordinance XVIII Clause 7 (2) is not regulatory in nature and it violates the rights of the minorities to establish and administer educational institutions of their choice guaranteed under Article 30 (1) of the Constitution. The said Ordinance clearly attracts the wrath of Article 13 of the Constitution which bars the State from making any law abridging or limiting any of the fundamental rights guaranteed under the Constitution and threatens to veto any law found inconsistent therewith. The term 'law' includes within its amplitude any ordinance, order, bye-law, rule, regulation or notification and the prohibition contained in Article 13 binds all instrumentalities within the State. Consequently, the UGC and the respondent university were directed to amend their statutes/ordinances so as to bring

them in consonance with the law declared by the Supreme Court in St. Stephen's College Vs. Delhi University and T. M. A. Pai Foundation & Ors. Vs. State of Karnataka (supra) regarding right to administration of the educational institutions of the minorities guaranteed under Article 30 (1) of the Constitution.

[Full text of the order of the Commission dated 10th May, 2006 is given in the Appendix.]

Case No. 203 of 2005

Recognition of rights under Article 30 (1)

Petitioners : M. P. Christian College of Engineering & Technology, P.B.
No.18, Kailash Nagar, Industrial Estate, P. O. Bhilai, Distt.
Durg, Chhattisgarh.

St. Thomas College, Bhilai, Ruabandha, Bhilai, Distt. Durg,
Chhattisgarh.

Respondents : 1. The Secretary, Technical Education Department, Mantralaya,
D. K. S. Bhawan, Raipur, Chhattisgarh.

2. The Director, Directorate of Technical Education, Byron Bazar,
Raipur, Chhattisgarh.

3. Vice Chancellor, Pt. Ravishanker Shukla University, R.S.U.
Raipur, Chhattisgarh.

By this petition, the petitioner colleges had approached the Commission for the following reliefs:-

- (a) That the petitioners may be allowed to take 100% students in the community quota and a certificate to that effect may be issued;
- (b) that the petitioners may be allowed to fix its own fee as other private engineering institutions have the right to fix the fee; and
- (c) that direction may be issued to the respondent No.3 to recognize the Principal and teachers appointed by the petitioners as teachers in the University and their names should be included in the list of seniority prepared by respondent No.3.

On the petition filed by the petitioners, a notice was served upon the Chief Secretary on 21.7.2005. Subsequently, the petition was amended by the petitioner. Sufficient opportunity was given to the State Government for filing reply, but the State Government did not file the reply. Consequently, the case was proceeded ex parte against the State Government.

The respondent university resisted the petition on the ground that the Commission has no jurisdiction to entertain the petition inasmuch as the reliefs sought by the petitioners do not fall within the ambit of the National Commission for Minority Educational Institutions Act (for short “the Act”). According to the respondent, all the minority educational institutions are required to be regulated in accordance with various laws governing the field. Appointments of teaching staff of colleges are required to be made in accordance with the procedure laid down under Section 26 of the University Grants Commission Act and the Regulations made thereunder. Reliance has been placed on decisions rendered by the Supreme Court in P. A. Inamdar Vs. State of Maharashtra (Civil Appeal No.5041 of 2005) decided on 12th August 2005 and Prof. Yashpal Kapoor Vs. State of Chhattisgarh [Writ Petition (Civil) No. 19 of 2004] decided on 11.2.2005.

Learned counsel for the petitioner submitted that the petitioner No.1 college is an unaided minority educational institution. Strong reliance was placed on a certificate granted by the State Minority Commission, Chhattisgarh regarding minority status of the petitioner college. Commission noted that it needs to be highlighted that the State Minority Commission, Chhattisgarh has not been empowered by any enactment to declare the status of any minority educational institution. That being so, the certificate granted by the said Commission in favour of the petitioner No.1 college cannot be pressed into service for proving the minority status of the petitioner No.1 college. It is pertinent to note here that the petitioner has unequivocally stated in the petition that it is an unaided minority educational institution. Despite service of notice, the State Government did not choose to controvert the averment made by the petitioner college in this regard. Consequently, Commission had no option but to accept the uncontroverted statement made on behalf of the petitioner college and to hold that the petitioner college is an unaided minority educational institution within the meaning of Section 2 (g) of the Act.

In T. M. A. Pai Foundation Vs. State of Karnataka (2002) 8 SCC 481, the Apex Court has held that the expression ‘right to establish and administer an institution’ 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.

So far as appropriation of quota by the State and enforcement of its reservation policy is concerned, the Supreme Court in the case of P. A. Inamdar & Ors. Vs. State of Maharashtra 2005 (5) Supreme 544 has held that the States have no power to insist on seat sharing in the minority educational institutions. That part, Article 15 (5) of

the Constitution also exempts a minority educational institution from the reservation policy of the State. Such imposition of quota of state seats or enforcing reservation policy of the State on available seats in a minority educational institution is violative of Article 15 (5) of the Constitution. As held by the Supreme Court in the case of P. A. Inamdar (supra), minority institutions are free to admit students of their own choice.

In P. A. Inamdar's case (supra), the Apex Court has also held that a minority educational institution is free to devise its own fee structure but the same can be regulated in the interest of preventing profiteering and no capitation fee can be charged. However, the Committees regulating admission procedure and fee structure constituted in terms of the directions given by the Apex Court in the case of Islamic Academy shall continue to exist until the Central Government or the State Governments are able to devise a suitable mechanism and appoint competent authority in consonance with the observations made in the case of P. A. Inamdar (supra).

It is well settled that the administration of educational institutions of their choice under Article 30 (1) of the Constitution means management of the affairs of the institution. As declared by the Supreme Court in the case of T. M. A. Pai Foundation (supra), "this management must be free from control so that the founder 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." The State or any University authority cannot under the cover or garb of adopting regulatory measures destroy the administrative autonomy of the institution or start interfering with the administration of the management of the institution concerned so as to render the right of the administration of the management of the institution concerned nugatory or illusory. Such a blatant interference is clearly violative of Article 30 (1) of the Constitution. As laid down by the Supreme Court in the case of T. M. A. Pai Foundation (supra) that the Managing Committee of the minority educational institutions has the freedom to select and appoint teaching and non-teaching staff of its educational institutions. The State Government or the University, as the case may be, can prescribe the minimum qualification of eligibility for making these appointments and no outside authority can be imposed on the Governing Body or the Managing Committee, as the case may be, in the selection of candidates for the post of teaching and non-teaching staff. A minority educational institution can select and appoint teachers and principals in accordance with its constitution subject to fulfillment of the qualifications laid down by the State Government or the university concerned. In this context, it would be useful to excerpt the following questions and answer given by the majority view of the T. M. A. Pai Foundation's case (supra) :-

"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 facets 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 the conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like the 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, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a judicial officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff.

Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee.”

In Brahmo Samaj Education Society Vs. State of West Bengal (2004) 6 SCC 224, the Supreme Court has held that the State Governments are obliged to take note of the declarations of the law laid down by the Supreme Court and amend their laws, rules and regulations so as to bring them in conformity with the law declared by the Supreme Court.

For the foregoing reasons, the State Government and the respondent university were directed to implement the law declared by the Supreme Court in the case of T. M. A. Pai Foundation and P. A. Inamdar (supra).

Case No. 1020 of 2006

Grant of essentiality certificate/ No Objection Certificate for establishment of a self-financed dental college at Bharuch, Gujarat.

Petitioner : The Bombay Patel Welfare Society, Welfare Complex, Bharuch-Jambusar Road, Bharuch, Gujarat

- Respondents :**
1. The Secretary, Health & Family Welfare Department, Govt. of Gujarat, 7/A, Sardar Bhawan, Sachivalaya. Gandhinagar, Gujarat.
 2. The Joint Secretary, Health & Family Welfare Department, Govt. of Gujarat, 7/A, Sardar Bhawan, Sachivalaya. Gandhinagar, Gujarat.
 3. The Commissioner of Health & Medical Services & Medical Education (Medical Education), Civil Hospital, 2nd Floor, G-Block, Gandhinagar, Gujarat.

The petitioner had approached the Commission aggrieved by the order of the Addl. Director, Medical Education & Research, Gandhinagar, rejecting the appellant's proposal submitted to the State Government for grant of essentiality certificate/ No Objection Certificate for establishment of a self-financed dental college at Bharuch.

The Commission found that the petitioner had fulfilled the necessary requirements of infrastructure, library, staff, etc. and the State Government has delayed the grant of No Objection Certificate for establishment of a dental college. After the notice was issued by the Commission, the State Government rejected the proposal of giving No Objection Certificate. The State Government resisted the petition on the ground that the appellant's proposal for the No Objection Certificate was validly rejection on account of non-availability of consent of affiliation from the statutory local university of the State of Gujarat. The Commission found that the appellant society is a registered minority society and it proposed to establish a self-financed dental college at Bharuch, which is covered under Article 30 (1) of the Constitution and it has all the facilities and infrastructure for the same as per the norms and standards prescribed by therefor. The State Government has rejected the appellant's proposal for grant of No Objection Certificate on the sole ground of non-availability of consent of affiliation from the statutory local university of the State of Gujarat. Thus, the point arises for consideration is whether the State Government's action in rejecting the appellant's proposal on the sole ground mentioned above can be sustained in law.

A bare reading of Section 10(A)(1) ibid makes it clear that a minority educational institution has been granted complete freedom to seek affiliation to any university of its choice subject to such affiliation being permissible within the Act under which the

said university is established. This Section does not confer any power on the State Government to coerce a minority educational institution to seek affiliation to a university of a particular state. It has to be borne in mind that the right of minority to establish and administer educational institution of their choice may be subject to the regulatory power of the State, but such power does not include the right to compel a minority educational institution to seek affiliation to any university of the choice of the State Government. A benignly regulated liberty which neither abridges nor exaggerates autonomy but promotes better performance is the right construction of the constitutional provisions. Such an approach enables the fundamental right meaningfully to fulfill its trust with the minorities' destiny in a pluralist polity. That is the authentic voice of our democracy. To regulate, be it noted, is not to restrict but to facilitate effective exercise of the very right. No Objection Certificate or the essentiality certificate is a facility that the State Government grants to an educational institution. It must be stressed that the refusal to give NOC or the essentiality certificate by the statutory authorities without just and sufficient grounds amounts to violation of the fundamental rights enshrined under Article 30 (1) of the Constitution.

Commission found that there is a serious conflict between the provisions of Section 10(A)(1) of the Act and the decision taken by the State Government in rejecting the appellant's application for grant of the NOC. It is well settled that where a federal law conflicts with a State law on the same subject, the federal law must prevail. Article 246 (1) and (2) and Article 254 (1) of the Constitution provide that to the extent to which a State law is in conflict with or repugnant to a union law, which Parliament is competent to enact, the Union law shall prevail and the State law shall be void to the extent of its repugnancy. The ground on which the NOC was denied to the appellant is clearly repugnant to Section 10 (A)(1) of the Act which gives complete freedom to the appellant to seek affiliation to a university of its choice. It would be unthinkable that if the State Legislature could not have encroached upon a field occupied by Parliament, it could still exercise power by executive fiat by refusing to grant No Objection Certificate to the appellant on the sole ground, which is contrary to the provisions of Section 10 (A)(1) of the Act. In State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors. JT 2006 (4) SC 201., it has been held by the Supreme Court that even if there was a State law which requires something to be done for the approval of the State Government for establishing an educational institution, such law, if it is inconsistent or repugnant with the Central law, it would be void to the extent of repugnancy to the Act of Parliament. Thus, repugnancy exists in fact and the executive directions of the State Government have the effect of repealing directly the provisions of Section 10(A)(1) of the Act. It is well settled that once a law is held to violate a constitutional limitation, it is void and of no effect. The command of the State Government to the appellant college to seek affiliation to a university of the State of Gujarat is virtually a negation of the constitutional protection of autonomy to minorities in establishing and rendering educational institutions of their choice as provided in Article 30 of the Constitution. Thus, the action of the State Government, therefore, was violative of the provision of Section 10 (A)(1) of the Act.

Commission observed that it needs to be highlighted that the State Government has not declined to issue No Objection Certificate to the appellant on the ground of non-availability of adequate infrastructure and clinical material, etc. as per regulations framed by the Dental Council of India. On the contrary, the No Objection Certificate was declined on the sole ground which is violative of the provisions of Section 10(A)(1) of the Act. Consequently, Commission found and held that the appellant is entitled to the grant of No Objection Certificate in terms of Regulation No.6 (2) (e) of the Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity in Dental Colleges) Regulations, 2006 (for short “the Regulations”).

The Commission allowed the appeal and set aside the impugned order dated 21st March 2006 and No Objection Certificate was granted to the appellant.

Case No. 50 of 2005

Establishment of a minority college at Baruipur, South 24 Parganas, Kolkata.

Petitioner : Al-Ameen Memorial Society for Education and Health Programme, Shahjahan Road, Baruipur, Kolkata – 700 144.

Respondent : The Principal Secretary, Higher Education Department, Government of West Bengal, Bikash Bhavan, 6th Floor, Salt Lake City, Kolkata – 700 091.

The Al Ameen Memorial Society for Education & Health Programme, Baruipur, Kolkata approached the Commission with the plea that the Govt. of West Bengal may allow the Society to establish a minority college at Baruipur, South 24 Parganas, Kolkata. Majority of the members of the petitioner Society are from Muslim community. The Society was running a study centre approved by the University of Calicut, Kerala and also runs a junior madrasa for girls. The petitioner contended that the Society is formed with the aim to promote education, establishing educational institutions like schools, colleges etc. and wanted to open a minority college at Baruipur, Kolkata.

In their reply, the Principal Secretary, Deptt. of Higher Education, Govt. of West Bengal stated that the West Bengal State Council of Higher Education is the competent authority under the West Bengal State Council of Higher Education Act, 1994 to examine and consider the prayer of the petitioner relating to establishment of a college/university at Baruipur, South 24 Parganas, West Bengal. The West Bengal State Council of Higher Education examined the matter and did not recommend the establishment of a college by the petitioner Society as there are three other general degree colleges in the neighbouring region. One of the neighbouring colleges, namely, K.K. Das College at Garia has been facing acute dearth of students and the same situation prevails at Sushil Kar College, Champahati and Baruipur College. All the three colleges are

within commutable distance from the proposed site of the new degree college. In view of this, Higher Education Department of Govt. of West Bengal did not recommend establishment of a new degree college by the petitioner Society.

In the rejoinder, the petitioner contended that the three other colleges are not run by the minority community and the area needs a minority college to fulfill the requirement of the Muslim minority community. The petitioner contended that the area proposed for the minority college at Baruipur is about 25 kms. away from the two colleges namely, Dinabandhu Andres College and K.K. Das College and Susil Kar College is about 12 kms. away. The petitioner has informed that the Muslim population was 31.54% in Baruipur sub-division. In the 24 Parganas District, there are areas where the Muslim population is more than 50%. The petitioner, therefore, has contended that a new college, to be established by the Muslim minority community, would definitely cater to the better educational prospects of the minority community.

The sur-rejoinder filed by the Govt. of West Bengal contended that the admission of students, both boys and girls from all communities is possible in the three colleges which are available in the area. The West Bengal State Council of Higher Education has observed that K.K. Das College is not meant exclusively for boys. They also mentioned that five other colleges, namely, K.K. Das College, Sonarpur College, Baruipur College, Sushil Kar College and Samillani College have students coming mainly from Garia, Sonarpur, Baruipur and Champahati. Since full-fledged degree colleges are already in existence in the area and some of the colleges have been facing acute dearth of students and since admission to any of the colleges is not at all a problem, the State Council of Higher Education did not find it reasonable to recommend for a new self-financing college from the stand point of viability and for the maintenance of standard of education in the field of higher learning.

Commission noted that it is relevant to note that Article 30 (1) of the Constitution gives linguistic and religious 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. In Re : Kerala Education Bill, 1957 (AIR 1958 SC 959), Hon'ble the Chief Justice S. R. Das 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.”

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. (Civil Appeal No.5041 of 2005) decided on 12th August 2005 :-

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

The aforesaid observations have been quoted with approval in the case of T.M.A. Pai Foundation Vs. State of Karanataka (2002) 8 SCC 481.

As stated earlier, a meaningful exercise of the rights guaranteed under Article 30 (1) 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.

Needless to add here that the fundamental right guaranteed under Article 30 (1) is intended to be effective and should not be whittled down by any administrative exigency. No inconvenience or difficulties, administrative and financial, can justify infringement of the fundamental right.

Having regard to the facts and circumstances of the case, the Commission was constrained to observe that the stand taken by the State Government is virtually negation of the constitutional protection of autonomy to minorities in establishing and running educational institutions of their choice, as provided under Article 30 (1) of the Constitution. The Commission, therefore, recommended to the State Government for according the requisite permission to the petitioner society to establish its college at Baruipur, South 24 Parganas, Kolkata.

The West Bengal Government implemented the recommendations of the Commission and allowed the petitioner to establish the college at Baruipur, South 24 Parganas, Kolkata.

Case No. 267 of 2005

Permission to start a college to impart education in the stream of Arts, Commerce and Science (Bio-technology and Microbiology)

Petitioner : Secretary, Mehmuda Shikshan and Mahila Gramin Vikas Bahuudheshiya Sanstha, 690/ 691, Golechha Marg, Sadar, Nagpur.

Respondents : 1. The Registrar, Nagpur University, Nagpur
2. The Principal Secretary, Department of Higher & Technical Education, State of Maharashtra, Mumbai.

The petitioner sought a direction to the Government of Maharashtra to grant requisite permission to start a college imparting education in the stream of Arts, Commerce and Science (Bio-technology and Microbiology). The Society is running four other teacher education colleges and has been playing a proactive role in the educational empowerment of the minority community as well as the development of the region. In view of the growing need and demand for education from the community, the Society had approached the Nagpur University, as per the provisions in the Maharashtra University Act of 1994, for permission to start a college for Arts, Commerce and Science streams in the academic year 2004-05. The Nagpur University had kept the application pending for 2 years and did not grant permission on the ground that it is not included in the master plan prepared by the said university.

The Commission found that the sole ground of resistance is that the perspective plan prepared by the University did not provide for the establishment of a similar institution in the location envisaged. The perspective plan came into effect in July 2004, whereas the application in question was moved by the petition society on 31.10.2003. As per Section 82 (4) of the Maharashtra Universities Act, 1994, the university was required to forward all applications before the last day of December each year. The petitioner's application should have been processed by December 2003. Commission observed that the right guaranteed under Article 30 (1) is subject to the power of the State to regulate education and allied matters. But the regulations made by the authority concerned should not impinge upon the minority character of the institution. Therefore, a balance has to be kept between two objectives – that of ensuring the standard of excellence, and that of preserving the rights of the minorities to establish and administer their educational institutions [T.M.A. Pai Foundation Vs. State of Karnataka (2002) 8 SCC 481]. The educational rights of the minorities guaranteed under Article 30 (1) cannot be set at naught on the sole ground that the perspective plan prepared by the respondent university did not provide for the establishment of a similar institution in the location envisaged. This requirement clearly incurs the wrath of Article 13 (2) of the Constitution which injuncts the State from making any law which takes away or abridges the fundamental rights guaranteed under the Constitution. Article 13 (2) also declares that any law made in contravention of the said clause shall, to the extension of such inconsistency, be void.

The Bombay High Court in another case regarding establishment of schools had observed that the master plan to be prepared by the State Government should not stand in the way of grant of permission to establish schools by religious and linguistic minorities which should be done in accordance with their rights under Article 30 of the Constitution. Commission observed that non-provision for the establishment of a similar institution in the location envisaged in the perspective plan is virtual negation of the constitutional protection of autonomy to minorities in establishing or running educational institutions of their choice as provided in Article 30 (1) of the Constitution. The width of Article 30 could not be cut down by introducing the concept of the alleged perspective plan. Needless to add here that Regulations, however, shall not have the effect of depriving the right of minorities to educate their children in their own institutions. That is a privilege which is implied in the right conferred by Article 30 (1) of the Constitution. The Commission concluded that the respondents have violated the educational rights of the minorities guaranteed under Article 30 (1) of the Constitution by denying permission to the petitioner to impart education in the streams of Arts, Commerce and Science (Bio-technology and Microbiology). Consequently, the petition was allowed and the respondents were directed to grant permission to the petitioner to impart education in the streams of Arts, Commerce and Science (Bio-technology and Microbiology) for the academic session 2006-2007.

Case No. 31 of 2005

Violation and deprivation of the fundamental rights

Petitioner : Principal, Karim City College, Jamshedpur – 831 001, Jharkhand

Respondents : 1. The Chief Secretary, Government of Jharkhand, Ranchi, Jharkhand

2. The Registrar, Ranchi University, Ranchi, Jharkhand

The petitioner, Karim City College, Jamshedpur, a minority educational institution, filed a petition complaining about violation and deprivation of the fundamental rights guaranteed under Article 30(1) of the Constitution. According to the petitioner, the college is affiliated to the respondent No.2 University. It was alleged that the respondent Government has no clear-cut policy regarding the strength of sanctioned posts in the Departments of the affiliated minority colleges. These posts should be sanctioned by the State Government with financial assistance. It was alleged that the respondents have wrongfully rejected the petitioner's prayer for permission to start honours courses in subjects like Hindi, English and Geography and that the respondent University had also declined permission to the petitioner college for starting P.G. training in Urdu language. It was also alleged that the provisions contained in the Jharkhand State Universities Act, 2000 (for short "the Act") relating to constitution of Governing Body cannot be made applicable to a minority educational institution as they infringe the fundamental right guaranteed under Article 30 (1) of the Constitution. The petitioner college also complained about non-representation of minority educational institution in the apex bodies of the respondent University. Grievances have also been made regarding the pay, pension and gratuity of the teaching and non-teaching staff of the petitioner college. Lastly, it was alleged that the provisions of Section 60 of the Act relating to constitution of the Governing Body cannot be made applicable to a minority educational institution as they infringe the fundamental right guaranteed under Article 30(1) of the Constitution as interpreted by the Apex Court in T. M. A. Pai Foundation Vs. State of Karanataka (2002) 8 SCC 481.

The respondent No.1, i.e., the State Government resisted the petition on the ground that a policy decision was taken on 9th December 1982 regarding non-sanction of posts in any of the affiliated colleges with the financial assistance and this policy decision is applicable to both non-minority and minority affiliated colleges. It was alleged that the State Government has directed the respondent University to submit its proposal on the application of the petitioner college for starting honours courses in the college, after which the State Government would take appropriate action on receipt of the said proposal. It was further alleged that the respondent University had already made arrangement for Urdu teaching at PG level at Ranchi. Since there is no provision for starting PG training in affiliated colleges, the petitioner college cannot be allowed to start PG teaching in Urdu as per relevant provisions of the Act.

The respondent University denied the petitioner's allegation regarding the alleged discriminatory treatment meted out to the petitioner college. It was alleged that the issue relating to pay, gratuity, pension and other allowances of the teaching and non-teaching staff is subjudice before the High Court of Jharkhand. As regards the petitioner's request for starting PG teaching in Urdu, the respondent University has toed the line of the State Government on the said issue.

During the course of arguments, Dr. M. Zakaria, appearing on behalf of the petitioner has confined the petitioner's case to the following issues :-

1. Grant of permission for starting honours courses in Hindi, English, Geography, Bengali and Philosophy.
2. Grant of permission for starting PG teaching in Urdu language.
3. Constitution of Governing Body of the petitioner college in accordance with the law declared by the Supreme Court in T.M.A. Pai Foundation Vs. State of Karnataka (2002) 8 SCC 481.

It is now well settled that under Article 30(1) of the Constitution, a religious or linguistic minority has a right to establish and administer educational institutions of its choice, which right, however, is subject to the regulatory power of the State for maintaining and facilitating the excellence of its standards. In T. M. A. Pai Foundation's case (supra), it has been observed by their Lordships of the Supreme Court that minority educational institutions could not be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of the exclusive right of management, allowed to decline to following the general pattern. Thus, regulatory measures for ensuring educational standards and maintaining excellence thereof are no anathema to the protection conferred by Article 30 (1) of the Constitution. Bearing in mind the said dictum of the law laid down by the Supreme Court, it cannot be held that the State Government's direction to the respondent University for submission of a fresh proposal after re-inspection of the petitioner college infringes Article 30(1) of the Constitution. That being so, the Commission found no merit in the submission made on behalf of the petitioner that the direction of the State Government to the respondent University for submission of a fresh proposal after re-inspection of the college amounts to harassment to the petitioner college.

It is beyond the pale of controversy that the respondent University has refused permission to the petitioner college for starting PG course in Urdu language. It is contended on behalf of the petitioner college that denial of permission for starting PG course in Urdu language impinges upon the minority character of the petitioner college. The Commission observed that the aforesaid submission of the petitioner college merits acceptance.

A reading of Articles 30(1) and 29(1) of the Constitution together would lead us to conclude that a religious or linguistic minority has a right to establish and administer educational institutions of its choice for effectively conserving its distinctive language, script or culture. It has been held in Ahmedabad St. Xavier's College Society Vs. State of Gujarat [1975] 1SCR 173 that :-

“The real reason embodied in Article 30(1) of the Constitution is 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 as much children of the soil as the majority and the approach has been to ensure that nothing should be done as might deprive the minorities of a sense of belonging, of a feeling of security, of a consciousness of equality, and of the awareness that the conservation of their religion, culture and language and script as also the protection of their educational institutions is a fundamental right enshrined in the Constitution.....”

These observations have been quoted with approval in the decision rendered by the Supreme Court in T. M. A. Foundation (supra). Bearing in mind the said observations of their Lordships of the Supreme Court, Commission was of the opinion that the provisions of Articles 30(1) and 29(1) should be construed according to the liberal, generous and sympathetic approach. This approach should be reflected in the action taken by the State and its instrumentalities upon any legitimate demand or grievance made by a minority community.

It is beyond the pale of controversy that the petitioner college is situated in Jamshedpur, which is 120-125 kms. away from the respondent University; that there are six constituent colleges of the respondent University in Jamshedpur and that Post Graduate teachings in the streams of Arts, Science, Hindi, English, Bengali, Sanskrit and Commerce have been allowed in these colleges by the respondents. It is also undisputed that the respondent University had rejected the demand of the petitioner college for starting PG course in Urdu language.

At the outset, Commission made it clear that the respondents have not rejected the said demand on the ground of non-availability of infrastructure, etc. for starting PG teachings in Urdu. On the contrary, the stand of the respondents is that the respondent University had made arrangements of Urdu teaching at PG level at Ranchi and since there is no provision for starting PG teaching in affiliated colleges, the petitioner cannot be allowed to start PG teaching in Urdu as per the provisions of the Act. In the opinion of the Commission, the said stand of the respondents is wholly inconsistent with the provisions of sub-section (17) of Section 4 of the Act. Sub-section (17) of Section 4 of the Act reads as under :-

“(17) it shall be necessary for the University to arrange and provide for post-graduate teaching in any College at any time and to utilize for the said purposes, the buildings of that College or any portion thereof, and such members of the staff and the articles of furniture, library, books, stores, instruments and other equipments of the College as may be prescribed;”

[emphasis supplied]

It is significant to mention that sub-section (17) of Section 4 of the Act does not make any distinction between an affiliated college or a constituent college. On the contrary, the expression ‘any college’ employed in sub-section (17) *ibid* is of wide amplitude and it embraces within its fold every college affiliated to the University. That being so, there was absolutely no justification for the respondents for rejection of the demand of the petitioner college for starting PG teaching in Urdu language.

It needs to be highlighted that Urdu language has a primary importance for the integration of the largest Indian minority, the Muslims, into the natural mainstream. It has to be borne in mind that a language must never be confused with a religion. According to Dr. Samuel Johnson, languages are the pedigree of a nation. The languages including Urdu in the Eighth Schedule of the Constitution are the pedigree of the people of India. Unfortunately, after partition, Urdu language has been identified with Islam. Today, 99% of those who declare Urdu as their mother tongue are Muslims and thus Urdu has now become the language only of the Muslims. In fact, some of the State Governments are responsible for making Urdu as the language of Muslims. It is relevant to mention that despite all Constitutional guarantees against discrimination, Urdu has been systematically eliminated from the curriculum of minority educational institutions. The Constitution defines India as a secular State, but at times some of the decisions taken by the decision making people completely betray the concept of secularism. Commission felt that the survival of Urdu is a vital question which demands political will and strategy to address. Needless to add here that Urdu is a flower of national and international value and it should not be an “endangered species”. In this context, we may usefully excerpt the following observations of Dr. Zakir Husain’s stand on Urdu while speaking at the Urdu Research Institute on 27.11.1959. He said :-

“I feel that this language is prophetic of the blossoming of the new life which we Indians desire for our country in the era of its freedom...the longing to build out of distinctive and diverse elements a common culture, as the Ganges and the Jamuna together make one mighty stream... Urdu is not the language of the community or a religion, it was not imposed by any government, or created artificially with a particular motive. It is the language of the people, of the common people... It is the language of the *faqirs* and saints, who were desperately anxious to communicate the love which overflowed their hearts to the common people... Urdu is, therefore, the language of affection and love, the language of tolerance, of an intercourse animated with goodwill... As Urdu is not a language confined to a particular religion and those who speak and understand it are

found all over the country, it should be foremost amongst the means of forging national unity... To regard a language in which we find the whole literature of the Arya Samaj, a language which the Christians have utilized to the full for their religious purposes as a Muslim language and thereby cultivate narrow mindedness is neither honest nor wise..."

It is the Constitutional obligation of the State to provide every facility to Muslims who want to conserve their language, script and culture. Consequently, Urdu language has to be saved from extinction through teaching in different schools, colleges and universities. Needless to add here that the Urdu is also a victim of political geography. Although it is the largest minority language, it received the least support from the State and the present case is a classic example of the State's indifference towards conversation of this beautiful language. The State Government should have been responsive to the demand for facilities needed to teach Urdu at the Post Graduate level. It is the responsibility of the State and its instrumentalities to ensure that students from minority communities do not suffer any disadvantage due to non-availability of schools and colleges in their primary language.

For the foregoing reasons, Commission found and held that the impugned action of the respondent in rejecting demand of the petitioner for starting PG teaching in Urdu is a virtual negation of the Constitutional protection of autonomy to minorities in running educational institutions of their choice as provided in Article 30 (1) of the Constitution. Commission, therefore, recommended to the respondents for grant of permission to the petitioner college for starting PG course in Urdu language.

One of the rights upheld by the Supreme Court in T.M.A. Pai Foundation case is the right of a minority educational institution to constitute its governing body. On the issue regarding constitution of Governing body of the petitioner college, Commission observed that the right to constitute the governing body of a minority educational institution is perhaps the most important facet of the right to administer an educational institution and the imposition of any trammels thereon is void to the extent of infringement of Article 30(1). According to Section 60 of the Jharkhand State Universities Act, 2000, the governing body of an affiliated college shall have three nominees of the Vice Chancellor, one nominee of the State Government, principal of the college, one member elected by such donors from amongst themselves, one member elected by and amongst the teachers of the college and one member co-opted by the Governing Body. Since the composition of the Governing body in accordance with Section 60 completely destroys the administrative autonomy of the petitioner college as minority educational institution. Commission found that the Section 60 is a blatant violation of the rights given under Article 30(1) of the Constitution. The Commission directed the State Government to take appropriate steps to get Section 60 of the Act suitably amended so as to bring it in conformity with the law declared by the Supreme Court in T.M.A. Pai Foundation case.

Case No. 276 of 2005

Sanction for additional sections in School

Petitioner : The Secretary, Hafeez Abdul Quader Raj Welfare & Educational Society, Mulla Burhan Tekdi, Bagban Galli, Nanded – 431 604, Maharashtra

- Respondents :**
1. The Secretary, School Education Department, Government of Maharashtra Mantralaya, Mumbai – 400 032
 2. The Director, Directorate of Education, Maharashtra State, Central Building, Pune
 3. The Deputy Director, Divisional Education Deputy Director, Education Deputy Director Office, Gandhi Chowk, Latur, Maharashtra
 4. The Education Office (Sec.), Zila Parishad, Nanded, Maharashtra

By this petition, the Secretary of Hafeez Abdul Quader Raj Welfare and Educational Society, Nanded, Maharashtra sought a directive from the Commission to the Govt. of Maharashtra to accord sanction for VIII to standard X in Raj Urdu High School, Modhammdeya Colony, Millat Nagar, Maltekdi Road, Nanded, Maharashtra, under its management. The Petitioner Society started a primary school in the name of Raj Urdu Primary School, Nanded, under government sanction and runs standards I to VII. Raj Urdu High School, Modhammdeya Colony, Millat Nagar, Maltekdi Road, Nanded is situated in a Muslim-majority slum area. The first proposal for starting high school classes (from Standard 8 to 10) was made with the State Government in the academic year 1999-2000, along with a challan for Rs.5000/-, through Education department of Zilla Parishad, Nanded. The concerned department turned down this application on the grounds that the girls admitted were less than 30% and that audited statement of accounts for 3 years were not enclosed. The Petitioner made two subsequent proposals, dated 10th April, 2000 and 10th May 2000, purportedly after curing the defects. Under one pretext or the other these requests have been disallowed. The petitioner sought sanction by the Government of Maharashtra to the High School classes from the year 2000-01 on unaided basis.

The Government in its reply stated that decision was taken to refuse the request of the petitioner since other schools are available in the area. Commission felt that the argument that a new Urdu High school should not be sanctioned for fear that it could endanger other schools in the locality, it is patently senseless. The right guaranteed to religious and linguistic minorities under Article 30(1) “to establish and administer educational institutions of their choice” is not subject to a presumed and

fictitious right on the part of existing institutions to be protected against competition. It is not the contention of the respondents that the educational facilities of the kind offered by the Petitioner institution are sufficient even to meet the present needs, much less to address future needs. Nonchalant attitudes like this and cavalier way of handling educational aspirations are mainly responsible both for the gross neglect of Urdu medium education and the continued educational backwardness of the Muslim community. The Commission has also found that strong recommendations have been made by the important public servants in the light of Article 350A of the Constitution, which is also not been considered by the State Government.

The Commission felt that it is a pity that their concerted views are wrecked over the callousness of the Babu-dom. It is high time that attitudes therein are changed from restriction to empowerment, which can come through a modicum of respect for the empowering spirit of our Constitution. Article 30(1) is about enabling the minorities to cater to their educational empowerment. It is not about insuring entrenched interests in the field of education against any likely competition! Healthy competition is not only lawful but also necessary for the promotion of educational excellence. By averting this unlawfully the officers concerned deny the right of likely beneficiaries to have better quality education, which is a gross disservice. The Commission is seriously concerned that these patterns of bureaucratic negativity persist and are rampant throughout the country. There is a need to raise awareness regarding their crippling effect on our national progress and educational development.

Commission was not convinced that the Petitioner's right to establish an Urdu Secondary School can be kept in suspended animation on the pretext that the State Government has already sanctioned four other schools in the same locality. It is not clear from the material available on record if they are Urdu medium schools. Or, if they are sufficient to meet the educational needs of the area, especially taking into account Article 21A which mandates that every child in the 6-14 age group be given education. It is pertinent to mention here is that the Petitioner proposes to set up an unaided educational institution, with no financial burden to the State exchequer. The onus to face the competition and to survive is squarely on the Petitioner. The Apex Court, while affirming the power of the State to regulate the scope of the rights under Article 30(1) has also prescribed that such regulations be reasonable. In our opinion, denying the right of the Petitioner society to establish an Urdu Secondary School, on the excuse that other schools exist in the area, is a blatant violation of the fundamental right guaranteed under Article 30 (1) of the Constitution. The Petitioner's submission that the proposed school is in Mohamadiya Colony, Nanded and that none of the other schools is situated therein. There is no school within a distance of 2 to 3 Kms. This is, moreover, a slum area. The respondents have not disputed these averments and are, hence, taken to be factually correct.

The Commission found that by denying permission to the petitioner school to establish a new Urdu school in Mohamadia Colony, Millat Nagar, Maltekdi Road,

Nanded, Maharashtra, the competent authority of the State Government has violated the fundamental rights enshrined under Article 30 (1) read with Article 350-A of the Constitution. The Commission, therefore, strongly recommended to the State Government to accord the requisite sanction to the petitioner school taking into account the mandate of Articles 30 (1), 20-A, 21-A, 51-A and Article 350-A of the Constitution.

Case No. 603 of 2006

Request for sanction to start the Science stream in School

Petitioner : The Dayadara Higher Secondary School, AT. PO. Dayadara – 392 020, Distt. Bharuch, Gujarat

Respondents : 1. The Commissioner, Mid-day Meals and Schools, Gandhinagar, Gujarat
2. The District Education Officer, Bharuch, Gujarat

By this petition, the Dayadara Educational Society, Distt. Bharuch sought a direction to the Government of Gujarat to sanction the Science Stream in the Dayadara Higher Secondary School, Bharuch, Gujarat which was established and is maintained by the said society. The said school was granted minority status by the GSEB in 1978. This school runs classes from Standard VIII to XII from which about 456 students from 22 nearby villages benefit, with 125 students usually enrolled in standard XI. Due to increased needs, an additional division with an intake of 125 students for the same standard was applied for and the same has been sanctioned. Documentary and visual evidence has been adduced by the petitioner to establish that the school has excellent infrastructure facilities and competent teaching faculty. This, notwithstanding, the school lacks a science stream, which is felt to be a serious deficiency. It is to be noted that 5 other schools in the vicinity also lack science stream. Consequently, the Muslim children in this locality are denied the opportunity of science education. Due to paucity of funds, the management is unable to run science stream without state aid.

Refuting the claim of the petitioner school, the Joint Director of Education, Gandhinagar alleged that the petitioner has not applied to the Education Department of the State Government for permission to start a granted Higher Secondary School for science stream through proper channel. Further, it is alleged that as per the provisions contained in G.R. No.BMS/1199-741(1)-g dated 30.6.1999, the petitioner would not qualify if he had applied, as there is a school – namely Amity School, Bharuch, which is in the radius of 15 kms. from the petitioner school.

As per the averments of the respondent, the petitioner school stands in no chance of getting permission to start a science stream. The question that arises for consideration is whether the educational rights of the minorities enshrined under Article 30 (1) are violated by the stand taken by the respondent.

Commission noted that Article 30 (1) of the Constitution gives linguistic and religious 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. In Re : Kerala Education Bill, 1957 (AIR 1958 SC 959), Hon'ble the Chief Justice S. R. Das 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.”

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. (Civil Appeal No.5041 of 2005) decided on 12th August 2005 :-

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

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

The aforesaid observations have been quoted with approval in the case of T.M.A. Pai Foundation Vs. State of Karanataka (2002) 8 SCC 481.

As stated earlier, a meaningful exercise of the rights guaranteed under Article 30 (1) 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. The petitioner’s right guaranteed under Article 30 (1) of the Constitution cannot be denied on the ground that there is another school within the radius of 15 kms. from its school. Needless to add here that the fundamental right guaranteed under Article 30 (1) is intended to be effective and should not be whittled down by any administrative exigency. No inconvenience or difficulties, administrative and financial, can justify infringement of the fundamental right.

Having regard to the facts and circumstances of the case, Commission was constrained to observe that the stand taken by the State Government is virtually a negation of the constitutional protection of autonomy to minorities in establishing and running educational institutions of their choice, as provided under Article 30 (1) of the Constitution. The Commission, therefore, recommended to the State Government for sanctioning the science stream to the petitioner school as and when an application through proper channel is made by the petitioner in this regard.

Case No. 14 of 2005

Request for Grant-in-Aid and appointment of teaching/ non-teaching staff

Petitioner : Principal, Republic High School, Lal Darwaja, Ahmedabad

Respondent : The District Education Officer, Patnagar, Yojana Bhawan, Gujarat College Compound, Ellis Bridge, Ahmedabad – 380 006

The petitioner school had approached the Commission requesting for the direction to be given to the State Government to give grant-in-aid to the petitioner school. The Petitioner also wanted the Government to fill the vacant posts of teachers. The petitioner contended that right to select and appoint the teaching and non-teaching staff of an educational institution covered by Article 30(1) of the Constitution is an important facet of right to administration within the meaning of Article 30(1) of the Constitution.

The Commission observed that the stand taken by the State Government that the petitioner must seek prior approval of the State Government for selection and appointment of its teaching staff is clearly violative of the rights enshrined in Article 30(1) of the Constitution.

Consequently, in view of the decision rendered by the 11 Judges Bench of the Supreme Court in T.M.A. Pai Foundation (supra), the petitioner school is allowed to select and appoint teaching/non-teaching staff in accordance with the sanctioned posts and the conditions of eligibility prescribed therefor by the State Government or the Controlling Authority.

Case No. 1034 of 2006

Releasing of grant-in-aid

- Petitioners :**
1. The Vishal Maharashtra Education Society, A-5, Khurshid Grace, 919, Kasba Peth, Pune-411011 (Through its President Dr. W. R. Khan)
 2. Vishal Maharashtra Education Society's, Urdu Primary School, S.No.110, Ramtekdi, Pune – 411 013 (Through its Head Mistress Smt. Khan Nikhat Valimohammed)

- Respondents :**
1. The Chief Secretary, Government of Maharashtra, Mantralaya, Mumbai – 400 032
 2. The Principal Secretary, School Education Department, Government of Maharashtra, Mantralaya, Mumbai – 400 032
 3. The Director of Education, Maharashtra State Central Building, Pune
 4. The Deputy Director of Education, Pune Region, Dr. Ambedkar Road, Campu, Pune-411 001
 5. The Education Officer (Primary), Zila Parishad, Pune – 411 001
 6. The Administrative Officer, School Board Pune Municipal Corpn., Old Topkhana, Shivajinagar, Pune – 411 005

By this petition, the petitioner sought a direction to the State Government for releasing the grant-in-aid for the year 2003-04 till date.

It is beyond the pale of controversy that the petitioner school is a minority educational institution covered by Article 30 of the Constitution; that the petitioner school is an aided school and its grant has been withheld by the State Government on the ground that the petitioner school had not recruited the teachers from the backward classes community in accordance with the reservation policy as prescribed in the Government order/Corrigendum No.SSN-2103(50/03)/Second.Edu.-2 dated 18.2.2005 (hereinafter to be referred to as “the impugned order”).

The petitioner, being aggrieved by the impugned order filed the present petition contending that it was in breach of the fundamental right guaranteed to it under Article 30 (1) of the Constitution to establish and administer educational institutions of its choice. It is also contended that the action of the State Government in withholding the grant-in-aid on the ground that the petitioner school had failed to recruit the teachers from the backward classes in accordance with the reservation policy is illegal, unconstitutional and an infringement of the fundamental right of the petitioner guaranteed under Article 30 (1) of the Constitution.

Learned counsel for the respondent contended that since the petitioner school is an aided minority educational institution, it was not exempt from appointing teaching and non-teaching staff from backward classes in accordance with the reservation policy, and as such the impugned action of the State Government cannot be faulted on any valid ground. He further contended that minorities do not have an unfettered right under Article 30 (1) to administer and manage their educational institutions; that the State and its agencies can regulate certain facets of administration of private educational institutions by minorities, in particular by prescribing the conditions relating to appointment of teaching and non-teaching staff from the backward classes in accordance with the reservation policy.

The petitioner contended that the right to appoint teaching and non-teaching staff is the most important facet of minorities’ right to administer under Article 30 (1) of the Constitution and receipt of aid by any minority institution does not in any way fetter or abridge their constitutional right to administer educational institutions, and therefore the impugned order requiring appointment of teachers from backward classes is inapplicable even to an aided minority educational institution as the same is violative of Article 30 (1) of the Constitution.

The Commission cited the dictum laid down in various judgments with the Supreme Court and held that the State Government cannot deny the grant-in-aid to the petitioner college and directed the State Government to release grant-in-aid from the academic year 2003-04 till date.

Case No. 2000 of 2006

Recognition to D.Ed. (Marathi) courses.

Petitioner : Jamia Islamia Ishaatul Uloom, Akkalkuwa, Distt. Nandurbar, Maharashtra

Respondent : Regional Director, Western Regional Committee, National Council for Teacher Education, Manas Bhawan, Shyamla Hills, Bhopal, Madhya Pradesh

The petitioner institution submitted its application to the respondent Council for grant of recognition to D.Ed. (Marathi) courses in terms of Sections 14 (1) and 15 (1) of the NCTE Act, 1993. By the order dated 30th October 2006, the respondent Council found the petitioner institution fit for grant of recognition subject to fulfillment of conditions relating to staff profile. The petitioner in his affidavit informed the Commission that deficiencies pointed out by the respondent Council has been rectified.

The Commission observed that the educational institution is being established by the Members of Muslim community, who enjoys the rights under Article 30 of the Constitution. It is obvious that the right to seek recognition or affiliation is inherent in that right. If the respondent Council withholds the permission as sought by the petitioner without any just and reasonable ground that is virtually negation of the Constitutional protection guaranteed under Article 30 (1) of the Constitution.

The Commission directed the respondent Council to grant recognition as sought by the petitioner, subject to the condition that the petitioner institution shall supply information to the respondent Council relating to appointment of qualified faculty members as per NCTE norms by 15th January 2007. The respondent Council shall make inspection of the petitioner institution on or before the 31st of January 2007. If the petitioner institution fails to make the requisite staff appointments, the said recognition shall stand withdrawn.

Case No. 1314 of 2006

Rejection of proposal for filling up the vacant posts of Lecturers

Petitioner: Sunni Inter College, Victoria Ganj, Lucknow.

Respondent/s: 1. The Secretary (Higher Education), Government of Uttar Pradesh, Secretariat, Lucknow, Uttar Pradesh

2. The Director of Education, (Higher Education), Government of Uttar Pradesh, Sarojini Naidu Marg, Civil Lines, Allahabad, Uttar Pradesh

3. The Directorate of Higher Education, Government of Uttar Pradesh, Sarojini Naidu Marg, Civil Lines, Allahabad, Uttar Pradesh
4. Shri Rajender Yadav, Deputy Director, Minorities Welfare Department, Government of Uttar Pradesh, 6th Floor, Indira Bhavan, Lucknow, Uttar Pradesh
5. The District Inspector of Schools, Lucknow, Uttar Pradesh

The petitioner had approached the Commission as three posts out of the four sanctioned post of Lecturers in the college were lying vacant and Distt. Education Officer, Lucknow had rejected the proposal for filling up the posts. Since the career of the students in the college was affected, the petitioner wanted permission to fill up the vacant posts of Lecturers.

Citing the pronouncements made by the Supreme Court on various judgements relating to rights under Article 30(1) of the Constitution, Commission remarked that the impugned action of the District Education Officer, Lucknow in rejecting the proposal of the petitioner college to fill up the three vacant posts of Lecturers is violative of the educational rights of the minorities guaranteed under Article 30 (1) of the Constitution. Even obtaining prior approval of the controlling authority in filling up the sanctioned posts of a minority educational institution clearly infringes the educational rights of the minorities guaranteed under Article 30 (1) of the Constitution.

Accordingly, the petitioner college was allowed to select and appoint three lecturers against the sanctioned vacant posts in accordance with the conditions of eligibility prescribed thereof by the State Government or the controlling authority.

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

No reference in terms of Section 11 (a) of the NCMEI Act was received either from the Central Government or State Government. Central Government has forwarded some petitions to the Commission for appropriate orders. Reference to these cases has been made in Chapters 6 & 7.

CHAPTER 9 – STUDIES UNDERTAKEN BY THE COMMISSION

During the year, the Commission received a large number of applications. There was a flood of applications for minority status certificates. The Commission found that the rush of applications was the result of the huge backlog, which has been created by many State Governments due to non-issuance of such certificates or inordinate delay in handling such matters. The Commission had to cope with such large number of petitions / applications and with the meager number of staff available, it was not possible to initiate any action on undertaking studies. The Commission hopes to undertake studies in the next year after getting additional staff and also hopes that the number of petitions would stabilize to a reasonable number.

Sub-section (d) and (g) of Section 11 of the NCMEI Act are as follows :-

- “(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;
- (g) make recommendations to the appropriate Government for the effective implementation of programmes and schemes relating to the Minority Education Institutions;”

From the above, the Commission has to study specific issues and make appropriate recommendations.

The Commission during its interaction with stakeholders at various places and also from the analysis of the petitions received so far has identified certain issues and areas of concern, which would be taken up for making case studies.

One of the stark realities brought to the notice of the Commission is the dismal state of affairs of educational facilities available for the poorer sections of the minority communities. During interactions Commission had at various places, it was found that girls have proved themselves to be no less capable and talented than boys. However, the education of the girl child continues to suffer utter neglect. This situation is prominent in the case of Muslim girls. Education of girl child is one of the least priority area. Especially with the backwardness and social taboos attached, the girl child in the Muslim community is the worst sufferer. Commission wants to address this disturbing scenario and for this purpose propose to constitute a Committee of eminent women educationists to recommend ways and means for ameliorating the bleak situation. Education of women is far more crucial for the progress, health and dynamism of a society and this neglected field has to be addressed properly.

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

India is a land of diversity; a mosaic of many castes, communities, languages, religions and cultures. In exercise of our freedom, we have chosen to be a socialist, secular, democratic Republic. The essence of secularism in our country is the recognition and preservation of different groups of people with diverse languages and beliefs integrating them into a whole and united India. Our Constitution reflects the pluralistic essence of the Indian society and the right of each segment to self development, but as an integral part of a nation in the making. Article 30 of the Constitution, which is an instrument of protective discrimination furthering substantive equality, confers a special right on the religious and linguistic minorities to mitigate their numerical handicap and to instill in them a sense of security and belonging.

We live in a competitive world today, where education in general, and professional education in particular, are in great demand. The common people are aware of the advantages of modern education and even the uneducated aspire for modern standard of living. India is today a booming and burgeoning economy, moving gradually to centre stage in the comity of nations. However, a larger percentage of Muslim children in the age group of 6-13 are out of the school and remain under-privileged as compared even to SC\ST children. Due to poverty, the percentage of Muslim students in higher education falls at a faster rate than it does in respect of any other community. The indices to the educational backwardness of Muslims in India are alarming. As per the Census of 2001, only 55% of Muslim men and 41% of Muslim women in India are literate; whereas the corresponding figures for non-Muslims are 64.5% and 45.6%. Only one in 101 Muslim women is a graduate, whereas one out of 37 women in the general population is a graduate. What is even more worrisome is the fact that the drop-out rate for Muslims rises steeply as they move up the pyramid of education. Muslims are 53% worse off as compared to the national average in respect of higher education. Muslim women at the graduate level are fewer by 63%. For the Muslim community to be brought on par with the rest of the society educationally, 31 million more Muslims have to be educated by 2011. Particularly alarming is the anomaly that the greatest concentration of the educationally un-empowered and unemployable Muslim youth are in urban and semi-urban areas. If the current state of affairs continues, a large proportion of Muslims could vanish from the map of India's educated workforce. Needless to add here that for an enlightened and inclusive democracy, it is necessary that all sections and classes of people are well educated and intellectually equipped to shoulder the responsibility for a free nation. As the Muslim community has lagged behind educationally over the decades, it is necessary to advance, foster and promote the education of this community at a quicker pace and as a matter of priority.

The index of the educational development of a community is, perhaps, the most significant factor in shaping public perceptions about its participation in nation building which, in turn, defines its image and respectability in public life. The obverse of

participation is alienation. To fail to promote integration and empowerment is to invite, albeit unwittingly, developmental paralysis and emotional alienation. Education has been widely recognized as a powerful tool for integration, especially in a religiously, culturally and linguistically plural society like ours. The current educational backwardness of Muslims portends a double loss. Members of the community lose out in terms of the emerging, unprecedented opportunities of a globalizing world. The country loses in terms of the inability of a substantial segment of its population to participate gainfully in its forward march to greater prosperity and quality of life.

Role of Madarsas :

Madarsas are centers of free education. They are also bastions of social service, where knowledge of humanism and universal brotherhood, which is one of the basic tenets of ISLAM, is imparted and human values are taught. They are the nucleus of the cultural and educational life of Muslims. These Madarsas, as an invaluable instrument of traditional education, have played a vital role in spreading literacy among the down-trodden segments of the Muslim society. Madarsa education is, hence, an emotive issue of deep resonance for Muslims. They are found even in the remotest rural areas, where often no other educational facilities exist.

In recent years, Madarsas have become targets of a sustained campaign of hatred and vilification. Unfortunately such campaigners are not familiar with the Madarsa education. To some extent, the promoters of Madarsa system are also responsible for this state of affairs as they have done nothing to foster interfaith understanding for consolidative co-existence in an inclusive society. These Madarsas form a parallel education system which completely blocks the roads of economic growth and prosperity of the Muslims who resort to it. Some of the clerics want Madarsas to flourish on account of their vested interests. Madarsas have had the lamentable effect of keeping the down-trodden segment of the Muslim community ignorant and exploited by the privileged.

Most of the Madarsas are averse to the introduction of modern education. Some of the books taught in this system are antiquated and others have become irrelevant to the global society we live in. It is a welcome trend, however, that some of the Madarsas have introduced modern education complemented with religious education. In majority of these Madarsas, though, the students have no access to modern secular education. This not only breeds a sense of alienation, but also isolates them from the inclusive society that India is. General secular education will open the doors of perception and act as the natural light of mind for our people to live pro-actively in the total context.

The Madarsas should no longer continue to be like a fixed stone in the midst of the flowing river of life. Change is the only constant in temporal life. No community can live gainfully today ignoring humankind's march to progress in diverse areas of knowledge and know-how. Nor should anyone want to live in a secular, pluralistic society in gross neglect of the prevailing climate of perceptions, assumptions and expectations.

A community cannot be a human island without self-exiling itself from the mainstream to its own disadvantage. Read positively, the anxiety about the current Madarsa education is seen best as a cry to modernize and mainstream the Muslim community. The proof of the spiritual vitality of a community is its ability to profit from adverse criticism and antagonistic circumstances.

In the words of Sir Winston Churchill: “The stern compression of circumstances, the twinges of adversity, the spur of slights and taunts in early years, are needed to evoke that ruthless fixity of purpose and tenacious mother wit without which great actions are seldom accomplished.” Attainment of peace and prosperity for the individual and society is the ultimate aim of education. The purpose of education is to equip and empower students to cope with the world in which they live, benefiting from available opportunities as well as contributing to the common good. When a person or community fails to do so, the problem of self devaluation and disempowerment becomes real and acute. What was once an asset ceases to be so and threatens to become a liability. The problem is not so much with the Madarsa education per se; the problem is that it has remained anchored in the dim and distant past, developing a crisis of relevance in respect of the tools and skills relevant to the society in which we live. This issue goes beyond the question of modernization and the anxiety it awakens in certain quarters mistaking it as ‘westernization’. The crucial question is whether or not Madarsa education should empower or disempower those who resort to it.

Crisis of relevance :

There is no uniform or scientific curriculum for Madarsas. In most of the Madarsas, even the basic infrastructure needed for a primary school, including proper building and teaching equipments is not available. The Madarsas subsist on small donations and charities and are cash-strapped at all times. These Madarsas have outdated system of examination and evaluation. What students learn in Madarsas is very largely based on religious instructions that fail to equip them with the skills required today. Muslims in India must realize that they are actually scraping the bottom of the education barrel in an era of internationalism. Information Technology and further cultural transmission through the electronic media has brought the international community very close to each other. In order to attain integrity, peace and prosperity and basic security of their life, the Muslim community must concentrate their efforts on the task of restructuring their system of education in general and Madarsa education in particular.

The urgency for streamlining Madarsa education towards providing comprehensive education is evident from the following fact alone. The educated elite in the Muslim community belong, almost wholly, to the stream of modern and secular education. A virtual split has come into being between them and the products of Madarsa education.

The Muslim community is, thus, fragmented, ironically, through education. This is ironic because education is the foremost means for integration, not fragmentation. This regrettable phenomenon has inter-community not less than intra-community ramifications. There is a need to foster technological competences as well as awareness of multiculturalism through Madarsa education.

A Century of Knowledge :

This is the century of knowledge. Knowledge makers are the richest assets of the modern world. The purpose of education must be to empower knowledge makers. Youth in the form of intellectual capital is becoming the richest intangible asset and human development index is now the indicator of a nation's progress and ranking. The Madarsas will need to be revitalized to meet the challenge of the modern world. Strong emphasis will need to be laid on quality of education and expanding the base of science, information and technology. But we must bear in mind that advancement of science and technology without the element of spirituality has a dehumanizing effect which is to be eschewed. An education that confines itself to mere imparting of knowledge is no education. Gandhi ji held knowledge without character and science without humanity to be deadly sins. To Albert Einstein, 'science without religion is lame and religion without science is blind'. Swami Vivekanand had said in 1839 that with the development of science and technology, if humanity is to survive, there should be a synthesis of science and spirituality. Accordingly, the Madarsas must focus on the relevance of Islamic teachings to modern pluralistic, secular and inclusive society. There is a need for an integrated curriculum combining traditional Islamic themes and subjects as well as the contents of the subjects according to national syllabi.

Madarsas : Need for Standardization :

There is a need to standardize the system of Madarsa in tune with the emerging global scenario without compromising the basic principles of Madarsa education. It is possible for Madarsas to provide modern education and yet retain their essential spiritual character. They can safeguard their autonomy and remain free from interference by the Government. Standardization of Madarsa system and mainstreaming of the Madarsa education has its relevance in our country which is fast emerging as a Super Power. Educational institutions are the instruments for the conversion, discovery and distribution of knowledge as well as for the creation of knowledge makers. The Madarsas can create an inclusive environment to promote social justice as a step towards creating a fair and just society, free from discrimination and fragmentation.

Need for an Integrated Approach :

It is relevant to note here that Article 51A of the Constitution prescribes the duties of every citizen, which include the duties to develop the scientific temper, humanism, the spirit of inquiry and reform and to strive towards excellence in all spheres

of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. Every action of the citizen and the State must, therefore, ensure observance of these constitutional values. That being so, there is genuine need for a comprehensive, systematic and integrated approach to the Madarsa education for the new millennium, based upon the universal teachings of Islam, free of polemics and sectarianism. In the backdrop of Article 51A, it is in the interest of the Muslim community to wake up to the need for a systematic transformation of its thinking and behavioral change as a desirable objective to be achieved through systematic and planned education, which must represent a vision of interfaith understanding, peace and prosperity for their community. The Muslim students need to be galvanized and they must be provided with every facility to develop the scientific temper, humanism and the spirit of inquiry and reform as Article 51-A (J) exhorts them “to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement”.

National Policy on Education (NPE) 1986 has adopted the concept of national system of education. It implies that up to a certain level all students, irrespective of caste, creed, location or gender, will have access to education of comparable quality. The policy lays special emphasis on removing disparities and equalizing of educational opportunities by attending to the specific needs of those who have remained educationally backward so far. Suitable incentives, therefore, have to be provided to educationally backward sections of the society. The Government has always shown concern for, and paid attention to, the education of such groups in the interest of equality and social justice.

Special focus on the education of backward minorities is a significant feature of the National Policy on Education and a number of schemes have been launched in the past to promote this objective. Area Intensive Programme for Educationally Backward Minorities, Modernization of Madarsa Education, Scheme for Appointment of Urdu Teachers and Part time Arabic/ Persian Teachers are some of them. It is high time that a new approach is attempted wherein all these schemes are implemented in an integrated fashion.

The importance of classical Indian languages including Arabic and Persian in preserving the cultural heritage, maintaining social harmony and national unity need no special emphasis. Traditional institutions like Madarsas and Maktabas have been playing an important role for centuries in preserving Arabic and Persian languages and the cultural heritage of the country is enriched by its synergy with Islamic traditions. The High Power Panel on Minorities, set up by the Government of India in 1980, while reviewing the Madarsa Education system, has emphasized the need for its modernization. It stated “Religious institutions like Maktabas and Madarsas can play a useful role in imparting general and elementary technical education to their students”. Introduction of modern education in Madarsas will help in the balanced growth of a student’s total personality and lead to the creation of a tolerant and inclusive society.

The need to establish a Central Madrasa Board for the co-ordination and standardization of Madrasa system of education and also for its integrated development and mainstreaming was examined in detail in a series of consultations held by this Commission with educationists, religious scholars and eminent citizens associated with Madrasa education. In order to elicit a wider spectrum of opinions and to facilitate a free interaction on the subject of introduction of modern education in Madrasas and the need to set up an autonomous body like Central Madrasa Board, a national consultation of the prominent spiritual leaders, educationists, intellectuals and religious scholars was held on 03rd December, 2006 in the auditorium of India Islamic Cultural Centre, Lodhi Road, New Delhi which was inaugurated by the Hon'ble Minister for Human Resource Development, Government of India. It turned out to be one of the best attended and keenly participated exercises of its kind in which every one felt free to express their views without fear or favour. For obvious reasons it is neither possible nor necessary to belabour here a full account of the views and concerns expressed by so many speakers. Suffice it to say that an overwhelming majority of them endorsed the idea of setting up a Central Madrasa Board so as to standardise and mainstream Madrasa education, which has become a crying need today.

Commission has recommended to the Government to establish a Central Madarsa Board as an autonomous body, through an Act of Parliament, duly insulated against Governmental interference, given the extreme sensitivities and anxieties that lurk in this domain. In view of the endemic anxieties that pertain to the reform of Madarsa education, the proposed scheme recommended by the Commission for the Central Madarsa Board incorporates adequate provisions and safeguards against governmental interference in the Madarsas and guarantees the autonomy of the Central Madarsa Board. This leaves no margin whatsoever for any reasonable anxiety on the part of the clerics and the self-styled custodians of Islam in India. Affiliation to the Central Madarsa Board is purely voluntary and an affiliated Madarsa can pull out of affiliation at any time. The Central Madarsa Board will not have the power to dictate the theological content of Madarsa education.

Since the proposal is with the Government, Commission do not want to give full details of the recommendations. Commission hopes that the Government would take a final decision in the matter at the earliest.

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

One of the fundamental rights bestowed by Article 30 of the Constitution is to get recognition as a minority educational institution. It was surprising to find that many of the State Governments and Union Territories have not established any system to grant minority status certificate.

Commission wrote to all the State Governments and Union Territories in this regard and was astounded to find that some of the State Governments and Union Territories were not even aware that they were required to consider such cases and establish appropriate authorities for considering the applications of minority status certificate. It was equally intriguing to find that some State Governments had constituted different authorities to handle the matter like separate authorities for school education, higher education, technical education etc. and there was hardly any coordination between various departments handling education. This has resulted in different criteria being adopted by different authorities in the same State. Plethora of authorities is quite confusing resulting in the representatives of the minority educational institutions running around to find out the concerned authority. It was surprising to find that in certain cases, the education department of the concerned State returned the application for minority status certificate to the petitioner by merely stating that they are not concerned about the issue without identifying the competent authority and directing the institution to approach that authority. This is a ludicrous state of affairs.

Some State Governments promised to rectify the defects but we found to our dismay that there was inordinate delay in the preparation of the guidelines. The departments of some of the State Governments showed the tendency to work in isolation which resulted in lack of coordination. All these have confused the stakeholders who were made to run from pillar to post. Commission has emphasized the fact that there should be one nodal authority in each State Government/ Union Territory who would handle such matters. Commission had also told the State Governments and Union Territories to nominate a nodal officer to whom the Commission could send the petitions and the nodal officer in turn can coordinate with different departments and send a consolidated reply to the Commission.

Commission feels that there should be a single guideline for each State Government/ Union Territory and as far as possible, there should be only one authority to decide the issue regarding grant of minority status certificate.

Decentralisation can be considered for receiving application at District/ Zilla Parishad/ Taluka level who can receive the application and after due inspection/ scrutiny can forward the application to the nodal authority in a time-bound manner say 30 days or 45 days. In many cases Commission had to invoke its original jurisdiction and

grant minority status certificate looking at the inordinate delay by the State Government authorities. In some cases the period of delay has been more than one year. Such inordinate delay obviously can be interpreted as disinclination of the concerned authority to consider the matter.

Another issue which has been brought to the notice of the Commission is the tendency of some State Governments to grant minority status certificate for a period of 1 year or 3 years. The minority educational institution is forced to approach the authorities again and again to get the minority status certificate renewed for further period. The grant of minority status certificate for a temporary period is not acceptable. It has been held by the Supreme Court in N. Ammad vs. Manager, Emjay High School AIR 1999 SC 50 that when the Government declared an institution as a minority educational institution it has recognized a factual position that the institution was established and is being administered by a minority community. The declaration is only an open acceptance of a legal character which should necessarily have existed antecedent to such declaration. Thus, a minority status certificate can't be granted for a short duration. The certificate once granted can be withdrawn on loosing the minority status by such an institution or it can be withdrawn on contravention of any of the conditions mentioned in Sec. 12 C of the NCMEI Act.

Commission has conveyed the above views to the concerned State Governments and has also granted permanent minority status certificate in all such cases.

Commission recommends that the present situation has to undergo a change. Commission calls upon all the State Governments and Union Territories to immediately notify appropriate guidelines (if not already done) taking into account the provision given in Article 30 (1) of the Constitution and pronouncement made by the apex court in various judgments relating to this article.

CHAPTER 12 – CONCLUSION

Commission has received certain suggestions for amendments to the Act. During the functioning of the Commission certain bottlenecks have been seen, which is required to be removed for implementation of the provisions of the Act. It is also necessary to make some of the provisions clear and unambiguous, which is not subjected to any interpretation. On the basis of careful consideration of the issues the Commission makes the following recommendations for amendment to the Act:

Amendment to Section 2 (g)

Section 2 (g) of the Act defines a minority educational institution as under:

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

Justification for amendment

A bare reading of the section makes it clear that a University has been excluded from the definition of a minority educational institution. The exclusion of a University from the definition of a minority educational institution runs counter to the dictum of law laid down by the two constitutional Benches of the Supreme Court. In *Syed Azeez Basha vs. Union of India* (AIR 1968 SC 662) the Supreme Court has held that the words “educational institution” employed in Article 30 (1) of the Constitution are of wide import and would include a university also. In *TMA Pai Foundation vs. State of Karnataka* 2002 [(8) SCC 481] it has been held by the Supreme Court that the expression “education” in Article 30 (1) of the Constitution means and includes education at all levels, from the primary school level upto the postgraduate level and it also includes professional education. The Supreme Court has further held that the expression “educational institutions” means institutions that impart education. It has been held by the Supreme Court in *Brahmo Samaj vs. State of West Bengal* (2004) (6 SCC 224) that it is the duty of the State to take note of the law declared by the Supreme Court and amend its Acts and statutes so as to bring them in consonance with the law declared by the Apex Court. Consequently, the words “other than a University” occurring in Section 2 (g) of the Act have to be deleted.

It is also pertinent to point out that the Central Educational Institutions (Reservation in Admission) Act, 2006 passed by the Parliament defines minority educational institutions as under: -

Section 2 (f)

“Minority Educational Institutions” means an institution established and administered by the minorities under clause (1) of article 30 of the Constitution

and so declared by an Act of Parliament or by the Central Government or declared as a Minority Educational Institution under the National Commission for Minority Educational Institutions Act, 2004.

In the above definition, University has not been excluded. Therefore, the exclusion of University in the definition of 'minority educational institution' in Section 2(g) of NCMEI Act, 2004 would not be in consonance with the above-mentioned definition.

Similarly, the word "or" employed in Section 2 (g) of the Act has to be substituted by the word "and".

It has been held by the Supreme Court in Azeez Basha's case (supra) that the words "establish" and "administer" in Article 30 (1) of the Constitution must be read conjunctively so that minorities will have the right to administer educational institutions of their choice provided they have established them. The Article can not be read to mean that even if the institution has been established by somebody else, a religious or linguistic minority can claim the right to administer it, even though it might have been administering it from sometime before the Constitution came into force. Even if it is established by a single member on behalf of the minority community, it is entitled to be administered in accordance with Article 30 (1).

After incorporating the said amendments, the amended Section 2 (g) will be read as under; -

"Minority Educational Institution" means a college or an educational institution established and administered by a person or group of persons from amongst the minorities".

Section 10 (1)

Sub-section 1 of Section 10 of the NCMEI Act is as under:

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

Justification for amendment

A bare reading of the above provision gives an impression that 'No Objection Certificate' is required for establishment of a minority educational institution in all cases. As per the provisions of various laws regulating the establishment of minority educational institutions, especially relating to technical and professional colleges, it is not mandatory to get the 'No Objection Certificate' from the competent authority under

the State Government. The competent authority in the NCMEI Act has been defined as follows:

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

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

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

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

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

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

Section 12 B

Section 12 B of the Act provides right to appeal against the order of rejection of the application for grant of minority status certificate to a minority educational institution. Sub-section (4) lays down the procedure for disposal of the appeal filed before the Commission.

Sub-section (4) is as under:

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

Justification for amendment

The requirement of consultation with the State Government for deciding an appeal is against the principles of natural justice. It is well settled that statutory enactments must ordinarily be construed according to their plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unworkable or totally irreconcilable with the rest of the statute. If an appeal provided under Section 12B is to be decided with the consent or concurrence of the State Government, then that procedure will be offending the principles of natural justice. It virtually takes away the substantive right of appeal created in favour of an aggrieved party, as the result of the appeal will depend not on the merits of the case, but on the consent of the respondent and that would result in gross injustice to the appellant. It is hardly likely that that was the intention of the Legislature, as such an interpretation would lead to absurdity or injustice to one of the parties in the proceedings.

The aforesaid expression also leads to an inference that what the Parliament had given with one hand is taken away with the other. The expression “**and in consultation with the State Government**” completely destroys the right of appeal created in favour of the aggrieved party.

Therefore, it is recommended that the expression “**and in consultation with the State Government**” in sub-section 4 of Section 12B of the NCMEI Act may be deleted.

We have already mentioned in Chapter 11 about the problems being faced by the minority educational institutions in obtaining minority status certificate. For the sake of brevity, we don't want to repeat it here.

It is the duty of all the State Governments and Union Territories to establish a single-window system for grant of minority status certificate. Decentralisation can be considered for receipt of applications at District/ Zilla Parishad/ Taluka level where, after receipt of application, scrutiny/ inspection can be done within a time-bound period before forwarding the application to the nodal authority for grant of minority status certificate. All State Governments and Union Territories should set up such a system and give wide publicity to it. We also recommend to the Government of India to write to all the State Governments and Union Territories appropriately in this regard.

Many instances have been brought to the notice of the Commission where statutes, rules and regulations made by the State Government are inconsistent with the provisions of Article 30. The Apex Court in its various judgements has clearly pointed out the rights enshrined under Article 30(1). If any provision of a law made by the legislature of a State is repugnant to any provision of the law made by the Parliament which the Parliament is competent to enact or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List then, subject to the

provisions of Article 254, the law made by Parliament shall prevail and the law made by the Legislature shall to the extent of repugnancy be void. Commission during its visits to various States has advised the State Government authorities to amend / modify the laws and rules so that they are in consonance with the rights enshrined under Article 30. Commission recommends that the Central Government should also impress upon the State Governments and Union Territories to immediately look into all the concerned laws, rules and regulations to see that amendments are carried out, if necessary, to bring them in consonance with the rights given under Article 30 of the Constitution.

The Central Government is also requested 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.

Many instances have been brought to the notice of the Commission where the State Governments are reluctant to grant recognition to new educational institutions established by minority communities. Commission has seen that such tendency is primarily based on reluctance to provide grant-in-aid. There were instances where the State Government wanted to withdraw from its role to provide grant-in-aid. While grant-in-aid is not a constitutional imperative, Commission has seen that in many cases the minority educational institutions located in rural, remote and tribal areas cannot be asked to fend for themselves as it is impossible to collect fees from the poorer sections of the society. Without the financial aid from the State Government, it will be difficult for such educational institutions to sustain themselves and provide reasonable standards of education. Needless to mention here that the teachers at least should be paid a subsistence salary. In many remote and under-developed areas educational institutions run by the minority communities are the only rays of hope for the poor people. The State has a duty to support and strengthen such institutions especially with reference to the constitutional mandate to provide free and universal education for all children in the age group of 6-14 years enshrined under Article 21 A. 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.

In Chapter 10, the Commission had recommended to the Government to establish a Central Madarsa Board as an autonomous body through an Act of Parliament. Commission hopes that the Government would act upon the recommendations made by and bring forward a suitable legislation for establishment of a statutory Central Madarsa Board.

ANNEXURES

**THE NATIONAL COMMISSION FOR MINORITY
EDUCATIONAL INSTITUTIONS ACT, 2004
(2 OF 2005)**

as amended by
The National Commission for Minority
Educational Institutions (Amendment) Act, 2006
(18 of 2006)

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

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

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.-

- (1) This Act may be called the National Commission for Minority Educational Institutions Act, 2004.
- (2) It extends to the whole of India except the State of Jammu & Kashmir.
- (3) It shall be deemed to have come into force on the 11th day of November, 2004.

2. Definitions.- In this Act, unless the context otherwise requires, -

- (a) "affiliation" together with its grammatical variations, includes, in relation to a college, recognition of such college by, association of such college with, and admission of such college to the privileges of, a ¹[***]University;
- ²[(aa) "appropriate Government" means, –
 - (i) in relation to an educational institution recognized for conducting its programmes of studies under any Act of Parliament, the Central Government; and
 - (ii) in relation to any other educational institution recognized for conducting its programmes of studies under any State Act, a State Government in whose jurisdiction such institution is established;]
- (b) "college" means a college or teaching institution (other than a University) established or maintained by a person or group of persons from amongst a minority community;
- (c) "Commission" means the National Commission for Minority Educational Institutions constituted under section 3;
- ²[(ca) "Competent authority" means the authority appointed by the appropriate Government to grant no objection certificate for the establishment of any educational institution of their choice by the minorities;]
- (d) "degree" means any such degree as may, with previous approval of the Central Government, be specified in this behalf by the University Grants Commission, by notification in the Official Gazette;

1. The word "Scheduled" omitted by Act 18 of 2006, Sec. 2 (w.e.f. 23.1.2006).

2. Ins. by Act 18 of 2006, sec. 2 (w.e.f 23.1.2006).

- ¹(da) “educational rights to minorities” means the rights of minorities to establish and administer educational institutions of their choice;
- (e) “Member” means a member of the Commission and includes the Chairperson;
- (f) “minority”, for the purpose of this Act, means a community notified as such by the Central Government;
- (g) “Minority Educational Institution” means a college or institution (other than a University) established or maintained by a person or group of persons from amongst the minorities;
- (h) “prescribed” means prescribed by rules made under this Act;
- (i) “qualification” means a degree or any other qualification awarded by a University;
- (j) ²[***]
- (k) “technical education” has the meaning assigned to it in clause (g) of section 2 of the All India Council for Technical Education Act, 1987 (52 of 1987);
- (l) “University” means a university defined under clause (f) of section 2 of the University Grants Commission Act, 1956 (3 of 1956), and includes an institution deemed to be a University under section 3 of that Act, or an institution specifically empowered by an Act of Parliament to confer or grant degrees.

CHAPTER II

THE NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS

3. Constitution of National Commission for Minority Educational Institutions.-

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

COMMENTS

Central Government is to constitute the National Commission for Minority Educational Institutions consisting of a Chairman and two Members to be nominated by it.

4. Qualifications for appointment as Chairperson or other Member.-

- (1) A person shall not be qualified for appointment as the Chairperson unless he, —
- (a) is a member of a minority community; and
- (b) has been a Judge of a High Court.
- (2) A person shall not be qualified for appointment as a Member unless he,—
- (a) is a member of a minority community; and
- (b) is a person of eminence, ability and integrity.

1. Ins. By Act 18 of 2006, sec. 2 (w.e.f. 23.1.2006).

2. Clause (j) omitted by Act 18 of 2006, sec. 2 (w.e.f. 23.1.2006); before omission, clause (j) stood as under: “(j) “Scheduled University” means a University specified in the Schedule.”

COMMENTS

A person to be appointed as Chairman should be a member of a minority community and should have been a Judge of a High Court and a person to be appointed as member should be a member of a minority community and should be a person of eminence, ability and integrity.

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

- (1) Every Member shall hold office for a term of five years from the date on which he assumes office.
- (2) A Member may, by writing under his hand addressed to the Central Government, resign from the office of Chairperson or, as the case may be, of Member at any time.
- (3) The Central Government shall remove a person from the office of Member if that person —
 - (a) becomes an undischarged insolvent;
 - (b) is convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude;
 - (c) becomes of unsound mind and stands so declared by a competent court;
 - (d) refuses to act or becomes incapable of acting;
 - (e) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission; or
 - (f) in the opinion of the Central Government, has so abused the position of Chairperson or Member as to render that person's continuance in office detrimental to the public interest:

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

- (4) A vacancy caused under sub-section (2) or otherwise shall be filled by fresh nomination and a person so nominated shall hold office for the unexpired period of the term for which his predecessor in office would have held office if such vacancy had not arisen.
- (5) The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed.

6. Officers and other employees of Commission.-

- (1) The Central Government shall provide the Commission with a Secretary and such other officers and employees as may be necessary for the efficient performance of the functions of the Commission under this Act.
- (2) The salaries and allowances payable to, and the other terms and conditions of service of, the Secretary, officers and other employees appointed for the purpose of the Commission shall be such as may be prescribed.

7. Salaries and allowances to be paid out of grants.-

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

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

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

9. Procedure to be regulated by Commission.-

- (1) The Commission shall meet as and when necessary at such time and place as the Chairperson may think fit.
- (2) The Commission shall regulate its own procedure.
- (3) All orders and decisions of the Commission shall be authenticated by the Secretary or any other officer of the Commission duly authorized by the Secretary in this behalf.

**¹CHAPTER III
RIGHTS OF A MINORITY EDUCATIONAL INSTITUTION**

10. Right to establish a Minority Educational Institution.-

- (1) Any person who desires to establish a Minority Educational Institution may apply to the Competent authority for the grant of no objection certificate for the said purpose.
- (2) The Competent authority shall, —
 - (a) on perusal of documents, affidavits or other evidence, if any; and
 - (b) after giving an opportunity of being heard to the applicant, decide every application filed under sub-section (1) as expeditiously as possible and grant or reject the application, as the case may be:

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

- (3) Where within a period of ninety days from the receipt of the application under sub-section (1) for the grant of no objection certificate, —
 - (a) the Competent authority does not grant such certificate; or
 - (b) where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate, it shall be deemed that the Competent authority has granted a no objection certificate to the applicant.
- (4) The applicant shall, on the grant of a no objection certificate or where the Competent authority has deemed to have granted the no objection certificate, be entitled to commence and proceed with the establishment of a Minority Educational Institution in accordance with the rules and regulations, as the case may be, laid down by or under any law for the time being in force.

Explanation.— For the purposes of this section, —

- (a) “applicant” means any person who makes an application under sub-section (1) for establishment of a Minority Educational Institution;
- (b) “no objection certificate” means a certificate stating therein, that the Competent authority has no objection for the establishment of a Minority Educational Institution.

10A. Right of a Minority Educational Institution to seek affiliation.-

- (1) A Minority Educational Institution may seek affiliation to any University of its choice subject to such affiliation being permissible within the Act under which the said University is established.
- (2) Any person who is authorized in this behalf by the Minority Educational Institution, may file an application for affiliation under sub-section (1) to a University in the manner prescribed by the Statute, Ordinance, rules or regulations, of the University:

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

COMMENTS

Any Minority Educational Institution can seek recognition as an affiliated college of a Scheduled University of its choice.

1. Chapter III subs. by Act 18 of 2006, sec. 3 (w.e.f. 23.1.2006); before substitution, Chapter III stood as under:

“CHAPTER III

RIGHT OF A MINORITY EDUCATIONAL INSTITUTION

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

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

CHAPTER IV

FUNCTIONS AND POWERS OF COMMISSION

11. Functions of Commission.-

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

- (a) advise the Central Government or any State Government on any question relating to the education of minorities that may be referred to it;
- ¹[(b) enquire, *suo motu*, or on a petition presented to it by any Minority Educational Institution, or any person on its behalf into complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating to affiliation to a University and report its finding to the appropriate Government for its implementation;
- (c) intervene in any proceeding involving any deprivation or violation of the educational rights of the minorities before a court with the leave of such court;
- (d) review the safeguards provided by or under the Constitution, or any law for the time being in force, for the protection of educational rights of the minorities and recommend measures for their effective implementation;
- (e) specify measures to promote and preserve the minority status and character of institutions of their choice established by minorities;
- (f) decide all questions relating to the status of any institution as a Minority Educational Institution and declare its status as such;
- (g) make recommendations to the appropriate Government for the effective, implementation of programmes and schemes relating to the Minority Educational Institutions; and
- (h) do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission].

COMMENTS

The National Commission for Minority Educational Institutions has to advise the Central Government or any State Government on any question relating to education of minorities referred to it. It has to look specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and dispute relating affiliation to a University and has to do other acts and things necessary, incidental or conducive to the attainment of all or any of the objects of the Commission.

12. Powers of Commission.-

- (1) If any dispute arises between a minority educational institution and a ²[***] University relating to its affiliation to such University, the decision of the Commission thereon shall be final.
- (2) The Commission shall, for the purposes of discharging its functions under this Act, have all the powers of a civil court trying a suit and in particular, in respect of the following matters, namely: —
 - (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

1. Subs. by Act 18 of 2006, sec. 4, for

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

(c) to do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission” (w.e.f. 23.1.2006).

2. The word “Scheduled” omitted by Act 18 of 2006, sec. 5 (w.e.f. 23.1.2006).

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

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

²**12A. Appeal against orders of the Competent authority.-**

- (1) Any person aggrieved by the order of refusal to grant no objection certificate under sub-section (2) of section 10 by the Competent authority for establishing a Minority Educational Institution, may prefer an appeal against such order to the Commission.
- (2) An appeal under sub-section (1) shall be filed within thirty days from the date of the order referred to in sub-section (1) communicated to the applicant:
Provided that the Commission may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period.
- (3) An appeal to the Commission shall be made in such form as may be prescribed and shall be accompanied by a copy of the order against which the appeal has been filed.
- (4) The Commission, after hearing the parties, shall pass an order as soon as may be practicable, and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.
- (5) An order made by the Commission under sub-section (4) shall be executable by the Commission as a decree of a civil court and the provisions of the Code of Civil Procedure, 1908 (5 of 1908), so far as may be, shall apply as they apply in respect of a decree of a civil court.

12B. Power of Commission to decide on the minority status of an educational institution.-

- (1) Without prejudice to the provisions contained in the National Commission for Minorities Act, 1992 (19 of 1992), where an authority established by the Central Government or any State Government, as the case may be, for grant of minority status to any educational institution rejects the application for the grant of such status, the aggrieved person may appeal against such order of the authority to the Commission.
- (2) An appeal under sub-section (1) shall be preferred within thirty days from the date of the order communicated to the applicant:
Provided that the Commission may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period.
- (3) An appeal to the Commission shall be made in such form as may be prescribed and shall be accompanied by a copy of the order against which the appeal has been filed.
- (4) On receipt of the appeal under sub-section (3), the Commission may, after giving the parties to the appeal an opportunity of being heard, and in consultation with the State Government, decide on the minority status of the educational institution and shall proceed to give such direction as it may deem fit and, all such directions shall be binding on the parties.

1. Ins. by Act 18 of 2006, sec. 5 (w.e.f. 23.1.2006).

2. Ins. by Act 18 of 2006, sec. 6 (w.e.f. 23.1.2006)

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

12C. Power to cancel.-

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

- (a) if the constitution, aims and objects of the educational institution, which has enabled it to obtain minority status has subsequently been amended in such a way that it no longer reflects the purpose or character of a Minority Educational Institution;
- (b) if, on verification of the records during the inspection or investigation, it is found that the Minority Educational Institution has failed to admit students belonging to the minority community in the institution as per rules and prescribed percentage governing admissions during any academic year.

12D. Power of Commission to investigate matters relating to deprivation of educational rights of minorities.-

- (1) The Commission shall have the power to investigate into the complaints relating to deprivation of the educational rights of minorities.
- (2) The Commission may, for the purpose of conducting any investigation pertaining to a complaint under this Act, utilize the services of any officer of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.
- (3) For the purpose of investigation under sub-section (1), the officer whose services are utilized may, subject to the direction and control of the Commission,-
 - (a) summon and enforce the attendance of any person and examine him;
 - (b) require the discovery and production of any document; and
 - (c) requisition any public record or copy thereof from any office.
- (4) The officer whose services are utilized under sub-section (2) shall investigate into any matter entrusted to it by the Commission and submit a report thereon to it within such period as may be specified by the Commission in this behalf.
- (5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such further inquiry as it may think fit.

12E. Power of Commission to call for information, etc.-

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

Provided that, —

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

- (2) Where the inquiry establishes violation or deprivation of the educational rights of the minorities by a public servant, the Commission may recommend to the concerned Government or authority, the initiation of disciplinary proceedings or such other action against the concerned person or persons as may be deemed fit.
- (3) The Commission shall send a copy of the inquiry report, together with its recommendations to the concerned Government or authority and the concerned Government authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken, or proposed to be taken thereon, to the Commission.
- (4) The Commission shall publish its inquiry report and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

12F. 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.

13. Financial and administrative powers of Chairperson.-

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

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

CHAPTER V

FINANCE, ACCOUNTS AND AUDIT

14. Grants by Central Government.-

- (1) The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilized for the purposes of this Act.
- (2) The Commission may spend such sums of money as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

15. Accounts and audit.-

- (1) *The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.*
- (2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General.
- (3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

16. Annual Report.-

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

17. Annual report and audit report to be laid before Parliament.-

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

CHAPTER VI MISCELLANEOUS

18. ¹[*]**

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

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

20. Directions by Central Government.-

- (1) In the discharge of its functions under this Act, the Commission shall be guided by such direction on questions of policy relating to national purposes, as may be given to it by the Central Government.
- (2) If any dispute arises between the Central Government and the Commission as to whether a question is or is not a question of policy relating to national purposes, the decision of the Central Government shall be final.

21. Protection of action taken in good faith.-

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

22. Act to have overriding effect.-

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

23. Returns or information.-

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

24. Power to make rules.-

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

1. Section 18 omitted by Act of 2006, sec. 7 (w.e.f. 23.1.2006); before omission, section 18 stood as under:

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

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

- (2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-
- (a) the salaries and allowances payable to, and the other terms and conditions of the service of, the Chairperson and Members under sub-section (5) of section 5 and of the Secretary, officers and other employees under sub-section (2) of section 6;
 - ¹(aa) the forms in which appeal under sub-section (3) of the section 12A and sub-section (3) of section 12B shall be made;
 - (b) the financial and administrative powers to be exercised by the Chairperson under section 13;
 - (c) the form in which the annual statement of accounts shall be prepared under sub-section (1) of section 15;
 - (d) the form in, and the time at, which the annual report shall be prepared under section 16;
 - (e) any other matter which is required to be, or may be, prescribed.
- (3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

25. Power to remove difficulties.-

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

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

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

26. Repeal and saving.-

- (1) The National Commission for Minority Educational Institutions Ordinance, 2004 (Ord. 6 of 2004) is hereby repealed.
- (2) Notwithstanding the repeal of the said Ordinance, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE

²[****]

1. Ins. by Act 18 of 2006, sec. 8 (w.e.f. 23.1.2006).
 2. The Schedule omitted by Act 18 of 2006, sec. 9 (w.e.f. 23.1.2006).

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, PART II,
SECTION-3, SUB-SECTION (i)]

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

New Delhi, the 23rd September, 2005

NOTIFICATION

G.S.R.- In exercise of the powers conferred by sub-section (1) read with clause (d) of sub-section (2) of section 24 of the National Commission for Minority Educational Institutions Act 2004 (2 of 2005), the Central Government hereby makes the following rules, namely: -

1. Short title and commencement.-

- (1) These rules may be called the National Commission for Minority Educational Institutions (Annual Report) Rules, 2005.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.-

In these rules, unless the context otherwise requires,—

- (a) “Act” means the National Commission for Minority Educational Institutions Act, 2004 (2 of 2005);
- (b) “Commission” means the National Commission for Minority Educational Institutions constituted under section 3 of the Act;
- (c) All other words and expressions used in these rules but not defined, and defined in the Act shall have the same meanings respectively assigned to them in the Act.

3. Form, manner and the time of furnishing of Annual Report,—

- (1) The Commission shall furnish to the Central Government the Annual Report in regard to any proposed or existing programme for the promotion and the development of the minority educational institutions giving a true and full account of its activities in the form set out in the appendix to these rules.
- (2) The annual report of the previous financial year referred to in sub-rule (1) shall be submitted by the Commission to the Central Government within a period of three calendar months after the close of each financial year.

APPENDIX

[See rule 3]

FORM OF ANNUAL REPORT OF THE NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS

1. Introduction
2. Constitution of the Commission
3. Meetings of the Commission
4. Highlights of the year
5. Tours and visits
6. Analysis of the petitions and complaints received during the year.
7. Cases regarding deprivation of rights of minority educational institutions and affiliation to scheduled universities.
8. References from Central Government and State Governments and Commission's recommendations.
9. Studies undertaken by the Commission.
10. Recommendations for integrated development of education of the minorities.
11. Instances of violation or deprivation of educational rights of the minorities.
12. Conclusions.

No. F. 7-30/2005-MC

(Sunil Kumar)

Joint Secretary to the Government of India

To
The Manager
Government of India Press
Ring Road,
New Delhi- 110 064.

Copy forwarded to:

1. Lok Sabha Secretariat, New Delhi
2. Rajya Sabha Secretariat, New Delhi.
3. Secretary, Ministry of Law and Justice, Legislative Department, Shastri Bhawan, New Delhi.
4. Chairman, National Commission for Minority Educational Institutions, New Delhi.

TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II
SECTION (3), SUB-SECTION (1)

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

New Delhi, the 22nd September, 2005

NOTIFICATION

In exercise of the powers conferred by sub-section (1) of section 24 read with clause (b) of sub Section 2 of Section 24 of the National Commission for Minority Educational Institutions Act 2004, the Central Government hereby makes the following rules, namely: -

1. Short title and commencement.-

- (1) The rules may be called the National Commission for Minority Educational Institutions (Financial and Administrative Powers) Rules, 2005.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.-

In these rules, unless the context otherwise requires, -

- (a) "Act" means the National Commission for Minority Educational Institutions Act, 2004 (2 of 2005),
- (b) "Chairperson" means the Chairperson of the Commission,
- (c) words and expressions used here in and not defined in these rules, but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Powers of the Chairperson.-

The Chairperson shall have the powers in respect of matters specified in the Schedule to these rules: -

Provided that the exercise of financial powers shall be subject to any procedural or other instructions or rules issued by the Central Government from time to time.

SCHEDULE
(See rule 3)

1. Appointments and promotions against vacancies in respect of sanctioned posts.
2. Grants of leave.
3. Establishment matters generally.
4. Contingent expenditure within the amount allotted for this purpose in the sanctioned grant each financial year.
5. Re-appropriation from one sub-head to another.
6. Write off of losses and deficiencies in stores under intimation to the Central Government.
7. Disposal of worn out articles.
8. Hiring of vehicles for official use.
9. Sanction of advances and its recoveries for the proper functioning of the Commission.
10. Hiring of accommodation for official use with the permission of the Central Government.

No. F. 7-6/2005-MC(P)

(Sunil Kumar)
Joint Secretary to the Government of India

To

The Manager
Government of India Press
Ring Road, Maya Puri,
New Delhi- 110 064.

Copy forwarded to:

1. Lok Sabha Secretariat, New Delhi
2. Rajya Sabha Secretariat, New Delhi.
3. Secretary, Ministry of Law and Justice, Legislative Department, Shastri Bhawan, New Delhi.
4. Chairman, National Commission for Minority Educational Institutions, New Delhi

TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II
SECTION 3, SUB-SECTION (i)

Ministry of Human Resource Development
(Department of Secondary and Higher Education)

Shastri Bhawan, New Delhi

01.05.2006

NOTIFICATION

G.S.R..... (E).- In exercise of the powers conferred by sub-section (1), read with clause (c) of sub-section (2), of Section 24 of the National Commission for Minority Educational Institutions Act, 2004 (2 of 2005), and in consultation with the Comptroller and Auditor General of India, as required under sub-section (1) of section 15 of the said Act, the Central Government hereby makes the following rules, namely: -

1. Short title and commencement.-

- (1) These rules may be called the National Commission for Minority Educational Institutions (Annual Statement of Accounts) Rules, 2006.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.-

In these rules, unless the context otherwise requires.—

- (a) “Act” means the National Commission for Minority Educational Institutions Act, 2004 (2 of 2005);
- (b) “Audit Officer” means the Comptroller and Auditor-General of India or any person appointed by him in connection with the audit of the accounts of the Commission;
- (c) “Chairman” means the Chairman of the National Commission for Minority Educational Institutions;
- (d) “Commission” means the National Commission for Minority Educational Institutions constituted under section 3;
- (e) “Form” means a form appended to these rules;
- (f) “Secretary” means the Officer appointed by the Central Government under sub-section (1) of section 6;
- (g) “Section” means a section of the Act;

(h) Words and expressions used but not defined in these rules and defined in the Act shall have the meaning respectively assigned to them in the Act.

3. Accounts of the Commission.-

- (1) The annual statement of accounts of the Commission for every financial year beginning with the financial year 2004-2005 shall be prepared by the Secretary.
- (2) The annual statement of accounts duly approved by the Commission shall be submitted by the Secretary to the Central Government by such date as may be specified by the Central Government.
- (3) The Secretary shall supervise the maintenance of the accounts of the Commission, the compilation of financial statement and return and shall also ensure that all accounts, books, connected vouchers and other documents and papers of the Commission required by the Audit Officer for the purpose of auditing the accounts of the Commission are placed at the disposal of that officer.
- (4) The accounts of the Commission including initial accounts shall be maintained in Form 'A' and the Schedules thereto.
- (5) The annual statements of accounts shall be signed and authenticated by the Secretary.
- (6) The annual statement of accounts shall be submitted to the Audit Officer on or before the 30th June following the year to which the accounts relate, and the Audit Officer shall audit the accounts of the Commission and report thereon.
- (7) The Commission shall, within thirty days of receipt of Audit Report, remedy any defect or irregularity pointed out therein and report to the Central Government and the Audit Officer about the action taken by it thereon.

[No. F. 7-12/2005-MC]

(Sunil Kumar)

Joint Secretary to the Government of India

**MINISTRY OF HUMAN RESOURCE DEVELOPMENT
(Department of Secondary and Higher Education)**

NOTIFICATION

New Delhi, the 6th July, 2006

G.S.R.416(E).- In exercise of the powers conferred by sub-section (1) read with clause (a) of sub-section (3) of Section 24 of the National Commission for Minority Educational Institutions Act, 2004 (2 of 2005), the Central Government hereby makes the following rules, namely: -

1. Short title and commencement.-

- (1) These rules may be called the National Commission for Minority Educational Institutions (Salaries and Allowances and Conditions of Service of Chairperson and Other Members) Rules, 2006.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definition.-

In these rules, unless the context otherwise requires,

- (a) "Act" means the National Commission for Minority Educational Institutions Act, 2004 (2 of 2005);
- (b) "Chairperson" means the Chairperson of the Commission;
- (c) "Commission" means of the National Commission for Minority Educational Institutions constituted under Section 3;
- (d) "Section" means a section of the Act;
- (e) All other words and expressions used herein and not defined but defined in the Act shall have the same meanings respectively assigned to them in the Act.

3. Salaries and Allowance.-

- (1) Save as otherwise provided in sub-rule (2), the Chairperson and every Member shall be paid a salary of twenty six thousand rupees per month with Dearness Pay and Allowances less the pension equivalent to retirement benefits according to the instructions of the Ministry of Finance. They shall be entitled to house rent allowance, traveling allowance and telephone facilities as admissible to a Secretary to the Government of India. Provided that in the case of appointment as a Chairperson or a Member, who is a retired person

from the Central Government or a State Government or Union Territory Administration or a Semi-Government or public sector undertaking or a recognized research institution or other autonomous or statutory body, the salary payable shall not exceed rupees twenty-six thousand per month with dearness pay and allowances less the pension and pension equivalent of retirement benefits according to the instructions of the Ministry of Finance.

- (2) If at the time of his appointment to the Commission, a Member is in service of the Central or a State Government or a Union Territory Administration, he shall have the option to receive his salary upto the age of superannuation in accordance with the rules applicable to him under the Central or State Government or Union Territory Administration, as the case may be, and thereafter, the provisions of these rules shall apply.
- (3) The Chairperson, Members and Staff of the Commission shall be the public servants within the meaning of Section 21 of the Indian Penal Code.
- (4) In case any Member is already occupying Government accommodation, he is allowed to retain the same. No traveling allowance shall be provided at the time of joining the Commission and on relinquishing of charge.

4. Leave.-

- (1) The Chairperson and every Member shall be entitled to leave as follows:-
 - a. earned leave, half pay leave and commuted leave in accordance with the Central Civil Services (Leave) Rules, 1972; and
 - b. extraordinary leave, as admissible to the temporary Government servants under the Central Civil Services (Leave) Rules, 1972.
- (2) Where a Chairperson or Member retires on attaining the normal age prescribed for retirement under terms and conditions governing his service before his appointment to the Commission, he shall be entitled to cash equivalent of leave salary for earned leave, if any, at his credit on the date of retirement, upto a maximum period of 300 days. In case of a Chairperson or Member who is re-employed after retirement, he shall on termination of his re-employment be entitled to cash equivalent in respect of earned leave at his credit on the date of retirement of re-employment upto a maximum period of 300 days, including the period for which encashment was allowed to him at the time of earlier retirement.

Note: Cash equivalent of earned leave shall be computed in accordance with the provisions of Central Civil Service (Leave) Rules, 1972.

5. Leave sanctioning authority.-

The Chairperson shall be the authority competent to sanction leave to the Members and the Central Government shall be the authority competent to sanction leave to the Chairperson.

6. Retirement from parent service on appointment in Commission.-

The Chairperson or a Member who, on the date of his appointment to the Commission, was in the service of the Central or a State Government or a Union Territory Administration, shall be deemed to have retired from such service with effect from the date of his appointment as the Chairperson or a Member of the Commission.

7. Pension.-

- (1) The Chairperson or a Member, who at the time of his appointment as such, was in the service of the Central or a State Government or a Union Territory Administration shall, without prejudice to rule 6, at his option to be exercised within a period of six months from the date of his appointment in the Commission or on or before the date of his superannuation, whichever is earlier, be entitled to draw his pension and other retirement benefits as per the rules applicable to the service to which he belonged with effect from the date of his appointment as Chairperson or Member, as the case may be.
- (2) If a Chairperson or Member, who at the time of his appointment as such was in the service of the Central or a State Government or a Union Territory Administration does not exercise the option specified in sub-rule (1), he shall count his service as Member for pension and retirement benefits under the rules applicable to the service to which he belonged immediately before such appointment.

8. Provident Fund.-

- (1) The Chairperson or a Member, who on the date of his appointment to the Commission as such was in the service of the Central or a State Government or a Union Territory Administration and who had been admitted to the benefits of General Provident Fund may, at his option, continue to subscribe to that Fund until the date on which he retires according to the rules applicable to him in that service. In case of the Contributory Provident Fund, the employer's contribution payable to that Fund shall, as from the date of Chairperson or Member's appointment to the Commission, be payable by the Commission during the tenure of appointment as such Chairperson or Member on the basis of emoluments which he would have drawn in the post he held immediately before appointment.

Explanation :

- (1) The Chairperson or a Member exercising his option under this sub-rule shall communicate his option in writing to the Central Government within six months of his appointment and the option so exercised shall be final.
- (2) The Chairperson or a Member, including the persons who has exercised an option under sub-rule (1) of rule 7 or sub-rule (1) of rule 8 or under both, shall

be entitled to be admitted to the benefits of the Contributory Provident Fund Scheme and for this purpose shall be governed by the Contributory Provident Fund (India) Rules, 1962 as amended from time to time:

Provided that the Chairperson or Member shall cease to contribute to any other Provident Fund from the date of admission to the Contributory Provident Fund Scheme under these rules.

9. Service conditions of Chairperson or Members of special status.-

Without prejudice to any of the provisions in these rules, the Central Government may by order, if it is considered necessary, sanction salaries, allowances and other facilities to the Chairperson or a Member in accordance with any special status that may be conferred on the incumbent.

10. Journeys on tour.-

- (1) A Chairperson, who is or has been, a Judge of a High Court shall be governed by the provisions applicable to a minister of State of the Union of India, as regards his entitlement for traveling allowance and daily allowance etc.
- (2) A Member shall, while on tour, be entitled to travelling allowance and daily allowance at the same scale and at the same rates as are applicable to a Group 'A' officer of equivalent pay-scale in the Central Government.
- (3) The Chairperson and Members shall be their own Controlling Officers in respect of bills relating to their travelling allowances and daily allowances.

11. Accommodation.-

- (1) Every person appointed to the Commission as Chairperson or a Member shall subject to approval by the Cabinet Committee on Accommodation, be entitled to the use of an official residence from the Central Government, on the basis of a licence fee at the rates prescribed by the Central Government from time to time.
- (2) A Chairperson, who is a retired judge of a High Court, shall be entitled to the use of an official residence from the Central Government on the same terms and conditions as are applicable to a Minister of State of the Union of India.
- (3) Residential accommodation for the Chairperson or a Member, where Central Government accommodation is not available, may be hired on lease by the Central Government subject to such ceilings on hire charges as may be specified by the Central Government from time to time.
- (4) When the Chairperson or a Member is not provided with or does not avail himself of the accommodation referred in sub-rules (1) and (2), he may be paid every month house rent allowance as may be admissible from time to time to an officer of the equivalent pay scale in the Central Government.

- (5) When the Chairperson or a Member occupies an official residence beyond the permissible period, he shall be liable to pay such additional licence fee or other charges as are leviable under the corresponding rules of the Central Government governing allotment of accommodation and in addition, be liable to be evicted in accordance with the rules applicable to the officers drawing equivalent pay in the Central Government.

12. Facility of Conveyance.-

- (1) A Chairperson, who was a judge of a High Court, shall be entitled to the facility of a staff car on the same terms and conditions as are applicable to a Minister of State of the Union of India.
- (2) A Member shall be entitled to the facility of a staff car for journeys for official and private purposes in accordance with the rules governing the use of staff car facilities applicable to officers of the Central Government drawing equivalent pay in the Central Government.

13. Facility of Medical Treatment.-

- (1) A Chairperson or a Member shall be entitled to medical treatment and hospital facilities as provided in the Central Government Health Scheme Rules, 1954.
- (2) Notwithstanding anything contained in sub-rule (1), the Chairperson shall be entitled, at his option, to avail of health service facilities available to a Minister of State of the Union of India and a Member shall be entitled, at his option, to avail of health service facilities available to a Secretary to the Government of India.

14. Residuary provisions.-

The condition of service of the Chairperson or Members for which no express provision has been made in these rules shall be determined by the rules and orders for the time being applicable to a Secretary to the Government of India.

[No. F. 7-16/ 2005-MC (P)]

SUNIL KUMAR, Jt. Secy.

**MINISTRY OF HUMAN RESOURCE DEVELOPMENT
(Department of Secondary Education)**

NOTIFICATION

New Delhi, the 14th September, 2006

**National Commission for Minority Educational Institutions
(Procedure for Appeal) Rules, 2006**

G.S.R. 553 (E):- In exercise of the powers conferred by Sub-section (1) read with clause (aa) of Section 24 of the National Commission for Minority Educational Institutions Act, 2004 (2 of 2005), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.-

- (1) These rules may be called the National Commission for Minority Educational Institutions (Procedure for Appeal) Rules, 2006.
- (2) They shall come into force on the date of their publication in the official Gazette.

2. Definitions.-

In these rules, unless the context otherwise requires,—

- (a) “Act” means the National Commission for Minority Educational Institutions Act, 2004 (No.18 of 2006);
- (b) “appeal” means an appeal made to the Commission under sub-section (1) of section 12A or under sub-section (1) of Section 12B of the Act;
- (c) “appellant” means a person making an appeal to the Commission under Sub-section (1) of Section 12A or under Sub-section (1) of Section 12B of the Act.
- (d) “Chairperson” means the Chairperson of the Commission nominated by the Central Government under sub-section (2) of section 3 of the Act;
- (e) “competent authority” means an authority appointed by the appropriate Government to grant No Objection Certificate for the establishment of any educational institution of their choice by the minorities or to grant minority status certificate to any minority educational institution;
- (f) “Form” means a form appended to these rules.
- (g) “Pleader” has the same meaning assigned to it in clause (xv) of section 2 of the Code of Civil Procedure, 1908 (5 of 1908);
- (h) “Secretary” means the Secretary of the Commission.
- (i) The words and expressions used herein but not defined in the Act shall have the same meaning respectively assigned to them in the Act;

3. Language of the Commission.-

- (1) The proceedings of the Commission shall be conducted in English or Hindi.
- (2) No appeal, reference, application, representation, document or other matters shall be accepted by the Commission unless the same is accompanied by a true copy of translation thereof in English or Hindi.

4. Procedure for filing appeals.-

- (1) A memorandum of appeal shall be presented in the Form annexed to these rules by the appellant either in person, or by a pleader authorized by him for such purpose to the Secretary or shall be sent by registered post addressed to the Secretary.
- (2) An appeal sent by post under sub-rule (1) shall be deemed to have been presented to the Secretary on the day on which it is received in the office of the Secretary.
- (3) The memorandum of appeal under sub-rule (1) shall be presented in four complete sets in a paper book Form along with an empty file size envelope bearing full address of the respondent and where the number of respondent is more than one, as many extra copies of the appeal in a paper book Form as there are respondents together with unused file size envelopes bearing full address of each respondent to be furnished by the appellant.

5. Presentation and scrutiny of the memorandum of appeal.-

- (1) The Secretary shall endorse on every memorandum of appeal the date on which it is presented under rule 4 or deemed to have been presented under that rule and shall sign the endorsement.
- (2) If, on scrutiny, the memorandum of appeal is found to be in order, it shall be duly registered in a book of appeal and such book shall be called the register of appeal.
- (3) If the memorandum of appeal on scrutiny is found to be defective, and the defect is of a formal nature, the Secretary may allow the appellant such time to rectify the defect as he may deem fit.
- (4) If the appellant fails to rectify the defect within the time allowed in sub-rule (4), the Secretary may, by order and for reasons to be recorded in writing, decline to register such memorandum of appeal and inform the appellant accordingly.
- (5) An appeal against the order of the Secretary under sub-rule (5) shall be made, within fifteen days of making of such order, to the Chairperson, whose decision shall be final.

6. Contents of memorandum of appeal.-

Every memorandum of appeal filed under rule 4 shall set forth, concisely under distinct heads, the grounds of such appeal, without any argument or narrative, and such grounds shall be numbered, consecutively. Every appeal shall be typed in double space on one side on these paper of good Quality.

7. Documents to accompany memorandum of appeal.-

Every memorandum of appeal shall be in quadruplicate and shall be accompanied by four copies of the order, under appeal, attested by a notary or the pleader.

8. Rejection or amendment of Memorandum of appeal.-

- (1) Where the memorandum of appeal is not submitted in the manner prescribed above, it may be rejected, or be returned to the appellant for the purposes of being amended within a time to be fixed by the Commission or be amended then and there.
- (2) Where the Commission rejects any memorandum, it shall record the reasons for such rejection.
- (3) Where a memorandum of appeal is amended, the Chairperson, or such officer, as he appoints in this behalf, shall sign or initial the amendment.

9. Application for condonation of delay.-

- (1) Where an appeal is filed after the expiry of the period of limitation specified therein, it shall be accompanied by an application supported by an affidavit setting forth the facts on which the appellant relies to satisfy the Commission that he had sufficient cause for not filing the appeal within such period.
- (2) If the Commission sees no reason to reject the application, a notice thereof shall be issued to the respondent and the matter shall be finally decided by the Commission before it proceeds to deal with the appeal under rule 10.

10. Power to dismiss appeal without sending notice to the authority under whose order the appeal is preferred.-

- (1) The Commission after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day may dismiss the appeal.
- (2) If on the day fixed or any other day to which hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Commission may make an order that the appeal be dismissed.
- (3) Where the Commission dismisses an appeal under sub-rule (1), it shall deliver an order recording in brief the grounds for doing so.

11. Time within which hearing under rule 10 should be concluded.-

Every appeal shall be heard under rule 10 as expeditiously as possible and endeavour shall be made to conclude such hearing within sixty days from the date on which the memorandum of appeal is filed.

12. Day for hearing of appeal.-

- (1) Unless the Commission dismisses the appeal under rule 10, it shall fix a date for hearing the appeal.
- (2) Such day shall be fixed with reference to the current business of the Commission.

13. Publication and service of notice of day for hearing appeal.-

- (1) Notice of the day fixed under rule 12 shall be affixed in the office of the Commission, and a like notice shall be sent by the Commission to the competent authority from whose order the appeal is preferred, and shall be served on the respondent or on his pleader, and all the provisions applicable to such summons, and to proceedings with reference to the service thereof prescribed by the Code of Civil Procedure, shall apply to the service of such notice.
- (2) Instead of sending the notice to the competent authority from whose decree the appeal is preferred, the Commission may itself cause the notice to be served on the respondent or on his pleader under the provisions above referred to.
- (3) The notice to be served on the respondent shall be accompanied by a copy of the memorandum of appeal.
- (4) Notwithstanding anything to the contrary contained in sub-rule (1), it shall not be necessary to serve notice of any proceeding incidental to an appeal on any respondent other than a person impleaded for the first time in the Commission, unless he has appeared and filed an address for the service in the offices of the competent authority, or has appeared in the appeal.
- (5) Nothing in sub-rule (4) shall bar the respondent referred to in the appeal from defending it.

14. Right to begin.-

- (1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.
- (2) The Commission shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

15. Dismissal of appeal for appellant's default.-

- (1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Commission may make an order that the appeal be dismissed.
Explanation.— Nothing in this sub-rule shall be construed as empowering the Commission to dismiss the appeal on the merits.
- (2) **Hearing of appeals *ex parte*.**— Where, on the day fixed for hearing or any other date to which the hearing may be adjourned, the appellant appears and the respondent does not appear, the appeal shall be heard *ex parte*.

16. Re-admission of an appeal dismissed for default.-

Where an appeal is dismissed under rule 15, the appellant may apply to the Commission for the re-admission of the appealed and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called

on for hearing, the Commission shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

17. Power to adjourn hearing and direct persons appearing interested to be made respondents.-

- (1) Where it appears to the Commission at the hearing that any person who was a party to the proceedings before the competent authority from whose order the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Commission may adjourn the hearing to a future day to be fixed by the Commission and direct that such person be made a respondent.
- (2) No respondent shall be added under this rule, after the expiry of the period of limitation for appeal, unless the Commission, for reasons to be recorded, allows that to be done, on such terms as to cost as it thinks fit.

18. Re-hearing of appeal on the application of respondent.-

Where the appeal is heard *ex parte* and order is pronounced against the respondent, he may apply to the Commission to re-hear the appeal; and, if he satisfies the Commission that the notice was not duly served, or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Commission shall re-hear the appeal on such terms as to cost or otherwise as it thinks fit to impose upon him.

19. Upon hearing respondent may object to order as if he had preferred a separate appeal.-

- (1) Any respondent, though he may not have appealed from any part of the order, may not only support the order but may also state that the finding against him by the competent authority in respect of any issue ought to have been in his favour; and may also take any cross-objection to the order which he could have taken by way of appeal provided he has filed such objection in the Commission within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Commission may see fit to allow.

Explanation.— A respondent aggrieved by a finding of the competent authority in the order on which the order appealed against is based may, under this rule, file cross-objection in respect of the order in so far as it is based on that finding.

- (2) Such cross-objection shall be in the form of a memorandum, and the provisions of rule 6, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.
- (3) Where, in any case, in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Commission thinks fit.

20. Where evidence on record is sufficient, Commission may determine case finally.-

Where the evidence upon the record is sufficient to decide the appeal, the Commission may finally decide the appeal.

21. Production of additional evidence in appeal.-

- (1) The parties to the appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Commission. But if -
 - (a) the competent authority from whose order the appeal is preferred has refused to admit evidence which ought to have been admitted, or
 - (b) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the order appealed against was passed, or
 - (c) the Commission requires any document to be produced or any witness to be examined to enable it to pronounce order, or for any other substantial cause,
the Commission may allow such evidence or document to be produced, or witness to be examined.
- (2) Wherever additional evidence is allowed to be produced by the Commission, the Commission shall record the reason for its admission.

22. Mode of taking additional evidence.-

Such document may be produced or such witness examined or such evidence adduced before the Commission.

23. Order when and where pronounced.-

The Commission, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the competent authority from whose order the appeal is preferred, to which reference may be considered necessary, shall pronounce order, either at once or on some future day of which notice shall be given to the parties or their pleaders.

24. Dissent to be recorded.-

Any member of the Commission dissenting from the order of the Commission shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

25. Adjournment of hearing.-

The Commission may if sufficient cause is shown at any stage of proceedings grant time to the parties or any of them, and adjourn the hearing of the appeal.

26. Order to be signed and dated.-

Every order of the Commission shall be in writing and shall be signed by the Presiding Officer who pronounced the order.

27. Copies of orders to be furnished to parties.-

Certified copies of the orders shall be furnished to the parties on the application to the Commission.

28. Certified copy of orders to be sent to the competent authority whose order was appealed from.-

A copy of the order, certified by the Secretary, or such officer as the Chairperson appoints in this behalf, shall be sent to the competent authority which passed the order appealed from.

29. Inspection of records and certified copies of orders.-

- (1) Any person who is a party in an appeal or a pleader authorized by such person may make an application for inspecting the records of such appeal to the Secretary and the Secretary may allow the inspection of the record by such person or the pleader, as the case may be .
- (2) Any person or a pleader authorized by such person may make an application to the Secretary for obtaining a certified copy of any order of the Commission and the Secretary shall order furnishing of a certified copy of such order to such person or the pleader, as the case may be.
- (3) Every certified copy of the order of the Commission shall be prepared in the office of the Commission and shall be authenticated by the Secretary or any officer authorized by him in this behalf.

30. Orders and directions in certain cases.-

The Commission may make such orders or give such directions as may be necessary or expedient to give effect to its orders or prevent abuse of its process or to secure the ends of justice.

31. Working hours of the Commission.-

Except on Saturdays, Sundays and other public holidays, the office of the Commission shall, subject to any other order, made by the Chairperson, remain open daily from 9:30 A.M. to 6:00 P.M. but no work, unless of an urgent nature, shall be entertained after 4:30 P.M. on any working day.

32. Sitting hours of the Commission.-

The sitting hours of the Commission shall ordinarily be from 10:30 A.M. to 1:30 P.M. and 2:30 P.M. to 5:00 P.M. subject to any general or special order made by the Chairperson of the Commission.

33. Holidays.-

Where the last day for doing any official act falls on a day on which the office of the Commission is closed, and by reason thereof, such an act cannot be done on that day, it may be done on the next opening day.

34. Powers and functions of the Secretary.-

- (1) The Secretary shall have the custody of the records of the Commission and shall exercise such other powers as may be assigned to him by the Chairperson.
- (2) The official seal of the Commission shall be kept in the custody of the Secretary.
- (3) Subject to any general or special direction by the Chairperson, the seal of the Commission shall not be affixed on any order, notice or other process, save under the authority in writing of the Secretary.

35. Seal and emblem.-

The official seal and emblem of the Commission shall be as in form no. 5.

[No. F. 7-12/2006-MC (P)]
SUNIL KUMAR, Jt. Secy.

FORM NO.1
[See rule 4]
MEMORANDUM OF APPEAL UNDER SECTION 12A (1)
AND 12B (1) OF THE NATIONAL COMMISSION FOR
MINORITY EDUCATIONAL INSTITUTIONS ACT, 2004

For use of Commission's office

Date of filing

Date of receipt by post

Registration No.

Signature
Secretary

IN THE NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS

..... Appellant
..... Respondent (s)

Details of appeal:

1. (a) Name and address of the Institution
(b) Name and address of the President/Secretary of the Trust/Society
2. Whether the appellant institution's claim is based on religious or linguistic minority?
3. Whether the appellant institution has been established or administered by :-
 - (a) Religious minority, or
 - (b) Linguistic minority
4. Particulars of the respondent(s) including address for service of notice
5. Particulars of the order under appeal:-
 - (i) Order Number
 - (ii) Date of the order
 - (iii) Name of the authority, whose order has been challenged in the appeal.
6. *Limitation.*— The appellant further declares that the appeal is within the limitation prescribed under the Act.

7. *Facts of the case and orders passed by the competent authority.*— The facts of the case are given below:

(Give herein a concise statement of facts and grounds of appeal against the order passed by the competent authority).

8. *Matter not pending with any other Commission, etc.*- The appellant further declares that the matter regarding which this appeal has been made is not pending before any Commission of law or any other authority or any other Tribunal.

9. *Relief sought.*— In view of the facts mentioned in paragraph eight above, the appellant prays for the following reliefs; (specify below the reliefs sought by the appellant) .

11. *Details of index.*— An index in duplicate containing the details of the documents to be relied upon is enclosed.

12. List of enclosures:

VERIFICATION

I, (name in full in block letters) son/ daughter/ wife of Shri do hereby verify that the contents of paras 1 to 12 are true to my personal knowledge and belief and that I have not suppressed any material facts.

Signature of the Appellant

Place

Date

Form No. 2

[See rule 13 (1)]

INTIMATION TO COMPETENT AUTHORITY OF ADMISSION OF APPEAL

(Title)

To

.....
.....

You are hereby directed to take notice that the appellant (*Name of the appellant*) has preferred an appeal to this Commission from the order passed by you therein on the day of20.....

You are requested to send with all practicable dispatch all material papers in the proceeding on or before theday of 20.....

Dated the Day of 20.....

Secretary

Form No. 3

[See rule 13]

**NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE
HEARING OF THE APPEAL**

(Title)

Appeal from the order dated the day of 20..... passed
by (*name of the competent authority*)

To

..... Respondent.

TAKE notice that an appeal from the order of (*Name of the
competent authority*) in this case has been presented by the appellant and registered
in this Commission, and that the day of20....., has been fixed by this
Commission for the hearing of this appeal.

If no appearance is made on your behalf by yourself, your pleader, or by some
one by law authorized to act for you in this appeal, it will be heard and decided in your
absence.

GIVEN under my hand and the seal of the Commission, this day
of 20.....

Secretary

Form No. 4

[See rule 17]

**NOTICE TO A PARTY TO A PROCEEDING NOT MADE A PARTY TO THE
APPEAL BUT JOINED BY THE COMMISSION AS A RESPONDENT**

(*Title*)

To

.....
.....

WHEREAS the appellant, named above, has preferred an appeal to this Commission from the order passed against him in the proceedings before.....
(*Name of the competent authority*) and it appears to this Commission that you are interested in the result of the said appeal.

This is to give you notice that this Commission has directed you to be made a respondent in the said appeal and has adjourned the hearing thereof till the
day of20....., at 10.30 A.M. If no appearance is made on your behalf on the said day and at the said hour, the appeal will be heard and decided in your absence.

Given under my hand and the seal of the Commission, this day
of 20.....

Secretary

Form No. 5

[See rule 35]

NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS

SPECIMEN SEAL OF THE COMMISSION



**MINISTRY OF HUMAN RESOURCE DEVELOPMENT
(Department of Secondary and Higher Education)**

NOTIFICATION

New Delhi, the 14th September, 2006

G.S.R. 554 (E).- In exercise of the powers conferred by sub-section (1), read with clause (c) of sub-section (2) of Section 24 of the National Commission for Minority Educational Institutions Act, 2004 (2 of 2005) and in consultation with the Comptroller and Auditor General of India, as required under sub-section (1) of section 15 of the said Act, the Central Government hereby makes the following rules to amend the National Commission for Minority Educational Institutions (Annual Statement of Accounts) Rules, 2006, namely: -

1. Short title and commencement.-

- (1) These rules may be called the National Commission for Minority Educational Institutions (Annual Statement of Accounts) Amendment Rules, 2006.
 - (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the National Commission for Minority Educational Institutions (Annual Statement of Accounts) Rules, 2006, for Form 'A', the following form shall be substituted, namely:

Form – A

**The National Commission for Minority Educational Institutions
FORM OF FINANCIAL STATEMENTS (NON-PROFIT ORGANISATIONS)
Name of Entity : National Commission for Minority Educational Institutions
BALANCE SHEET AS AT _____**

(Amount-Rs.)

CORPUS/CAPITAL FUND AND LIABILITIES	Schedule	Current Year	Previous Year
CORPUS/CAPITAL FUND	1		
RESERVES AND SURPLUS	2		
EARMARKED/ENDOWMENT FUNDS	3		
SECURED LOANS AND BORROWINGS	4		
UNSECURED LOANS AND BORROWINGS	5		
DEFERRED CREDIT LIABILITIES	6		
CURRENT LIABILITIES AND PROVISIONS	7		
TOTAL			
ASSETS			

FIXED ASSETS	8		
INVESTMENTS-FROM EARMARKED/ ENDOWNED FUNDS	9		
INVESTMENTS-OTHERS	10		
CURRENT ASSETS, LOANS, ADVANCES ETC.	11		
MISCELLANEOUS EXPENDITURE (to the extent not written off or adjusted)			
TOTAL			
SIGNIFICANT ACCOUNTING POLICIES	24		
CONTINGENT LIABILITIES AND NOTES ON ACCOUNTS	25		

FORM OF FINANCIAL STATEMENTS (NON-PROFIT ORGANISATIONS)
Name of Entity : National Commission for Minority Educational Institutions
INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD / YEAR ENDED

(Amount-Rs.)

INCOME	Schedule	Current Year	Previous Year
Income from Sales/Services	12		
Grants/Subsidies	13		
Fees/Subscriptions	14		
Income from Investments (Income on Invest. from earmarked/endow. Funds transferred to Funds)	15		
Income from Royalty, Publication etc.	16		
Interest Earned	17		
Other Income	18		
Increase/(decrease) in stock of Finished goods and works-in-progress	19		
TOTAL (A)			
EXPENDITURE			
Establishment Expenses	20		
Other Administrative Expenses etc.	21		
Expenditure on Grants, Subsidies etc.	22		
Interest	23		
Depreciation (Net Total at the year-end - corresponding to Schedule 8)			
TOTAL (B)			
Balance being excess of Income over Expenditure (A-B)			
Transfer to Special Reserve (Specify each) Transfer to/ from General Reserve			
BALANCE BEING SURPLUS/ (DEFICIT) CARRIED TO CORPUS/ CAPITAL/ OTHER FUND			
SIGNIFICANT ACCOUNTING POLICIES	24		
CONTINGENT LIABILITIES AND NOTES ON ACCOUNTS	25		

FORM OF FINANCIAL STATEMENTS (NON-PROFIT ORGANISATIONS)
Name of Entity : National Commission for Minority Educational Institutions
INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD / YEAR ENDED

(Amount-Rs.)

SCHEDULE 1-CORPUS/ CAPITAL FUND:	Current Year	Previous Year
Balance as at the beginning of the year		
Add: Contributions towards Corpus/ Capital Fund		
Add/ (Deduct) : Balance of net income/ (expenditure) transferred from the Income and Expenditure Account		
BALANCE AS AT THE YEAR - END		

SCHEDULE 2 - RESERVES AND SURPLUS:	Current Year	Previous Year
1. Capital Reserve:		
As per last Account		
Addition during the year		
Less: Deductions during the year		
2. Revaluation Reserve:		
As per last Account		
Addition during the year		
Less: Deductions during the year		
3. Special Reserves:		
As per last Account		
Addition during the year		
Less: Deductions during the year		
4. General Reserve:		
As per last Account		
Addition during the year		
Less: Deductions during the year		
TOTAL		

FORM OF FINANCIAL STATEMENTS (NON-PROFIT ORGANISATIONS)
Name of Entity : National Commission for Minority Educational Institutions
SCHEDULES FORMING PART OF BALANCE SHEET AS AT _____

(Amount - Rs.)

SCHEDULE 3 - EARMARKED/ ENDOWMENT FUNDS	FUND-WISE BREAK UP				TOTALS	
	Fund ww	Fund xx	Fund YY	Fund ZZ	Current Year	Previous Year
a) Opening balance of the funds						
b) Additions to the Funds:						
i) Donations/ grants						
ii) Income from investments made on account of funds						
iii) Other additions (specify nature)						
TOTAL (a + b)						
c) Utilisation/ Expenditure towards objectives of funds						
i. Capital Expenditure						
- Fixed Assets						
- Others						
Total						
ii. Revenue Expenditure						
- Salaries, Wages and allowances etc.						
- Rent						
- Other administrative Expenses						
Total						
Total (c)						
NET BALANCE AS AT THE YEAR-END (a+b+c)						
<p><u>Notes</u></p> <p>1) Disclosures shall be made under relevant heads based on conditions attaching to the grants.</p> <p>2) Plan Funds received from the Central / State Governments are to be shown as separate Funds and not to be mixed up with any other Funds.</p>						

FORM OF FINANCIAL STATEMENTS (NON-PROFIT ORGANISATIONS)
Name of Entity : National Commission for Minority Educational Institutions
SCHEDULES FORMING PART OF BALANCE SHEET AS AT _____

(Amount - Rs.)

SCHEDULE 4 - SECURED LOANS AND BORROWINGS:	Current Year	Previous Year
1. Central Government		
2. State Government (Specify)		
3. Financial Institutions		
a) Term Loans		
b) Interest accrued and due		
4. Banks:		
a) Term Loans		
- Interest accrued and due		
b) Other Loans (specify)		
- Interest accrued and due		
5. Other Institutions and Agencies		
6. Debentures and Bonds		
7. Others (Specify)		
TOTAL		
Note : Amounts due within one year		

FORM OF FINANCIAL STATEMENTS (NON-PROFIT ORGANISATIONS)
Name of Entity : National Commission for Minority Educational Institutions
SCHEDULES FORMING PART OF BALANCE SHEET AS AT _____

(Amount - Rs.)

SCHEDULE 5 - UNSECURED LOANS AND BORROWINGS:	Current Year	Previous Year
1. Central Government		
2. State Government (Specify)		
3. Financial Institutions		
4. Banks:		
a) Term Loans		
b) Other Loans (Specify)		
5. Other Institutions and Agencies		
6. Debentures and Bonds		
7. Fixed Deposits		
8. Others (Specify)		
TOTAL		
Note: Amounts due within one year		

SCHEDULE 6 - DEFERRED CREDIT LIABILITIES:	Current Year	Previous Year
a) Acceptances secured by hypothecation of capital equipment and other assets		
b) Others		
TOTAL		
Note: Amounts due within one year		

FORM OF FINANCIAL STATEMENT (NON-PROFIT ORGANISATIONS)
Name of Entity : National Commission for Minority Educational Institutions
SCHEDULES FORMING PART OF BALANCE SHEET AS AT _____

(Amount - Rs.)

SCHEDULE 7 - CURRENT LIABILITIES AND PROVISIONS	Current Year	Previous Year
A. CURRENT LIABILITIES		
1. Acceptances		
2. Sundry Creditors:		
a) For Goods		
b) Others		
3. Advances Received		
4. Interest accrued but not due on:		
a) Secured Loans / borrowings		
b) Unsecured Loans / borrowings		
5. Statutory Liabilities:		
a) Overdue		
b) Others(specify)		
6. Other current Liabilities		
Income-Tax		
CGHS		
Licence Fee		
CGEIS		
GPF		
PCA		
Sc. Adv.		
Society Dues		
Sales tax		
Postal Life Insurance		
Recoveries of Loans and advances		
Ministry of Railways for HOR forms		
Indian Airlines for Air exchange Order forms		
Security deposit		
Earnest money Deposit		
Others(specify)		
TOTAL (A)		

FORM OF FINANCIAL STATEMENT (NON-PROFIT ORGANISATIONS)
Name of Entity : National Commission for Minority Educational Institutions
INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD/ YEAR ENDED _____

(Amount - Rs.)

SCHEDULE 7 - CURRENT LIABILITIES AND PROVISIONS	Current Year	Previous Year
B. PROVISIONS		
1. For Taxation		
2. Pension, Gratuity and other retirement benefits		
NCMEI Provident Fund		
1. Opening Balance		
2. Subscription		
3. Recovery of Advance		
4. Interest		
Total		
(Less) Payment/Investments		
NCMEI Employees Group Insurance Scheme Fund Saving Fund		
1. Opening Balance		
2. Subscription		
3. Recovery of Advance		
4. Interest		
Total		
(Less) Payment/Investments		
Insurance		
1. Opening Balance		
2. Subscription		
3. Recovery of Advance		
4. Interest		
Total		
(Less) Payment/Investments		
NCMEI Pension & Other Retirement Benefits Fund		
1. Opening Balance		
2. Subscription		
3. Recovery of Advance		
4. Interest		
Total		
(Less) Payment/Investments		
Grand Total		
3. Accumulated Leave Encashment		
4. Trade Warranties / Claims		
5. Others (Specify)		
Security Deposit		
Earnest Money Deposit		
Others		
TOTAL (B)		
TOTAL (A+B)		

FORM OF FINANCIAL STATEMENTS (NON- PROFIT ORGANISATIONS)
Name of Entity : National Commission for Minority Educational Institutions
SCHEDULES FORMING PART OF BALANCE SHEET AS AT _____

SCHEDULE 8 - FIXED ASSETS										(Amount - Rs.)	
DESCRIPTION	GROSS BLOCK			DEPRECIATION			NET BLOCK				
	Cost/ valuation As at beginning of the year	Additions during the year	Deductions during the year	Cost/ valuation at the year end	As at the beginning of the year	On Additions during the year	On Deductions during the year	Total up to the year end	As at the Current year end	As at the Previous year end	
A. FIXED ASSETS :											
1. LAND:											
a) Freehold											
b) Leasehold											
2. BUILDINGS:											
a) On Freehold Land											
b) On Leasehold Land											
c) Ownership flats/ Premises											
d) Superstructure on land not belonging to the entity											
e) Renovation of rented premises											
f) Others											
3. PLANT MACHINERY & EQUIPMENT											
4. VEHICLES											

FORM OF FINANCIAL STATEMENTS (NON- PROFIT ORGANISATIONS)
Name of Entity:-National Commission for Minority Educational Institutions
SCHEDULES FORMING PART OF BALANCE SHEET AS AT _____

5. FURNITURE, FIXTURES																	
6. OFFICE EQUIPMENT																	
7. COMPUTER/PERIPHERALS																	
8. ELECTRIC INSTALLATIONS																	
9. LIBRARY BOOKS																	
10.TUBEWELLS & W. SUPPLY																	
11. OTHER FIXED ASSETS																	
12. GIFTED/ DONATED ASSETS																	
TOTAL OF CURRENT YEAR																	
PREVIOUS YEAR																	

B. CAPITAL WORK-IN-PROGRESS

TOTAL																	
--------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(Note to be given as to cost of assets on hire purchase basis included above)

FORM OF FINANCIAL STATEMENTS (NON-PROFIT ORGANISATIONS)
Name of Entity : National Commission for Minority Educational Institutions
SCHEDULES FORMING PART OF BALANCE SHEET AS AT _____

(Amount - Rs.)

SCHEDULE 9 - INVESTMENTS FROM EARMARKED/ ENDOWMENT FUNDS	Current Year	Previous Year
1. In Government Securities		
2. Other approved Securities		
3. Shares		
4. Debentures and Bonds		
5. Subsidiaries and Joint Ventures		
6. Others (to be specified)		
TOTAL		

(Amount - Rs.)

SCHEDULE 10 - INVESTMENTS - OTHERS	Current Year	Previous Year
1. In Government Securities		
2. Other approved Securities		
3. Shares		
4. Debentures and Bonds		
5. Subsidiaries and Joint Ventures		
6. Others (to be specified)		
TOTAL		

FORM OF FINANCIAL STATEMENTS (NON-PROFIT ORGANISATIONS)
Name of Entity : National Commission for Minority Educational Institutions
SCHEDULES FORMING PART OF BALANCE SHEET AS AT _____

(Amount - Rs.)

SCHEDULE 11- CURRENT ASSETS, LOANS, ADVANCES ETC.	Current Year	Previous Year
A. CURRENT ASSETS:		
1. Inventories:		
a) Stores and Spares		
b) Loose Tools		
c) Stock-in-trade		
Finished Goods		
Work-in-progress		
Raw Materials		
2. Sundry Debtors:		
a) Debts Outstanding for a period exceeding six months		
b) Others		
3. Cash balances in hand (including cheques / drafts and imprest)		
4. Bank Balances:		
a) With Scheduled Banks:		
- On Current Accounts		
- On Deposit Accounts (includes margin money)		
- Savings Accounts		
b) With non-Scheduled Banks:		
- On Current Accounts		
- On Deposit Accounts		
- On Savings Accounts		
5. Post Office-Savings Accounts		
TOTAL (A)		

(Amount - Rs.)

B. LOANS, ADVANCES AND OTHER ASSETS		
1. Loans :		
a) Officers & Staff :		
1. Housing Building Advance		
2. Motor Car/ P.C. Advance		
3. Scooter/ M.C. Advance		
4. Other Advances		
i. Cycle/ Fan Advance		
ii. Medical Advance		
iii. GPF to deputationists		
b) Other Entities engaged in activities/ objectives similar to that of the Entity		
c) Other (Specify)		
2. Advances and other amounts recoverable in cash or in kind or for value of		
a) On Capital Account :		
1 Advance to CPWD		
2. Advance to DAVP		
3. Advance to Suppliers		
4. Other Advances		
i. NIC/NICSI		
ii. Officers		
iii. Dte. Of Estates		
5. Others		
b) Prepayments :		
1. Advance to CPWD		
2. Advance to DAVP		
3. Advance to Suppliers, or periodicals etc.		
4. Other Advances		
i. NIC/NICSI		
ii. Officers		
iii. Dte. Of Estates		
5. Others		
c) Others :		
i) Security deposit		
ii) Earned Money		
iii) Others		
3. Income Accrued:		
a) On Investments from Earmarked/ Endowment Funds		
(a) Face Value of Investments encashed		
(b) Interest on investments		
(c) Others (including Security Deposit/Earnest Money)		

(Amount - Rs.)

b) On Investments- Others(specify)		
c) On Loans and Advances		
1. House Building Advance		
2. Motor Car/P.C. Advance		
3. Scooter/M.C. Advance		
4. Other Advances		
i. Cycle/Fan Advance		
ii. Medical Advance		
iii. GPF to deputationists		
d) Others (includes income due unrealised)		
(i) Interest receipts on cash at Bank		
(ii) Interest receipt on advances to employees		
(iii) Sale of Publications		
(iv) Fees charged by the Commission		
(v) Contribution of Medical & Health care beneficiaries		
(e) Miscellaneous Receipts		
1) Court Award		
2) Sale of Newspaper		
3) Recovery of overpaid salaries		
4) Value of unencashed cheques written back		
5) Recovery of Telephone Charges		
6) Sale of old Cars		
7) Value of un-returned books		
8) Refund of Assistance		
9) Refund of leave encashment paid		
10) Forfeiting of Security deposit/Earnest money deposit		
11) Recoveries from Officers/Staff of NCMEI		
12) Receipts on account of sale/auction of condemned items		
13) Others		
f) Others		
4. Claims Receivable		
Total (B)		
Total (A + B)		

FORM OF FINANCIAL STATEMENT (NON-PROFIT ORGANISATIONS)
Name of Entity : National Commission for Minority Educational Institutions
SCHEDULES FORMING PART OF BALANCE SHEET AS AT _____

(Amount - Rs.)

SCHEDULE 12 - INCOME FROM SALES/ SERVICES	Current Year	Previous Year
1. Income from Sales		
a) Sale of Finished Goods		
b) Sale of Raw Material		
c) Sale of Scraps		
2. Income from Services		
a) Labour and Processing Charges		
b) Professional/ Consultancy Services		
c) Agency Commission and Brokerage		
d) Maintenance Services (Equipment/ Property)		
e) Others (Specify)		
Total		

SCHEDULE 13 - GRANTS/ SUBSIDIES (irrevocable Grants & Subsidies Received)	Current Year	Previous Year
1. Central Government		
2. State Government (s)		
3. Government Agencies		
4. Institutions/ Welfare Bodies		
5. International Organisations		
6. Others (Specify)		
Total		

FORM OF FINANCIAL STATEMENT (NON-PROFIT ORGANISATIONS)
Name of Entity : National Commission for Minority Educational Institutions
SCHEDULES FORMING PART OF BALANCE SHEET AS AT _____

(Amount - Rs.)

SCHEDULE 14 - FEES/ SUBSCRIPTIONS	Current Year	Previous Year
1. Entrance Fees		
2. Annual Fees/ Subscriptions		
3. Seminar/ Program Fees		
4. Consultancy Fees		
5. Others (Specify)		
6. Fees under the Right to Information Act		
Total		
Note: Accounting Policies towards each item are to be disclosed.		

(Amount - Rs.)

SCHEDULE 15 - INCOME FROM INVESTMENTS (Income on Invest. From Earmarked/ Endowment Funds transferred to Funds)	Investment from Earmarked Fund		Investment- Others	
	Current Year	Previous Year	Current Year	Previous Year
1. Interest				
a) On Govt. Securities				
b) Other bonds/ Debentures				
2. Dividends				
a) On Shares				
b) On Mutual Fund Securities				
3. Rents				
4. Others (Specify)				
Total				
Transferred to earmarked/ endowment funds				

FORM OF FINANCIAL STATEMENT (NON-PROFIT ORGANISATIONS)
Name of Entity : National Commission for Minority Educational Institutions
SCHEDULES FORMING PART OF BALANCE SHEET AS AT _____

(Amount - Rs.)

SCHEDULE 16 - INCOME FROM ROYALTY, PUBLICATION ETC.	Current Year	Previous Year
1. Income from Royalty		
2. Income from Publications		
3. Others (specify)		
Total		

(Amount - Rs.)

SCHEDULE 17 - INTEREST EARNED	Current Year	Previous Year
1. On Term Deposits:		
a) With Scheduled Banks		
b) With Non-Scheduled Banks		
c) With Institutions		
d) Others		
2. On Savings Accounts:		
a) With Scheduled Banks		
b) With Non-Scheduled Banks		
c) With Post Office Savings Accounts		
d) Others		
3. On Loans:		
a) Employees/ Staff		
b) Others		
4. Interest on Debtors and Other Receivables		
Total		
Note : Tax deducted at source to be indicated.		

FORM OF FINANCIAL STATEMENT (NON-PROFIT ORGANISATIONS)
Name of Entity : National Commission for Minority Educational Institutions
SCHEDULES FORMING PART OF INCOME & EXPENDITURE ACCOUNT FOR
THE PERIOD/ YEAR ENDED _____

(Amount - Rs.)

SCHEDULE 18 - OTHER INCOME	Current Year	Previous Year
1. Profit on Sale/ disposal of Assets:		
a) Owned assets		
b) Assets acquired out of grants, or received free of cost		
2. Export Incentives realized		
3. Fees for Miscellaneous Services		
4. Miscellaneous Income		
i) Court Award		
ii) Sale of Newspaper/Waste paper		
iii) Recovery of overpaid salaries		
iv) Value of unencashed cheques written back		
v) Recovery of Telephone Charges		
vi) Sale of old Cars		
vii) Value of un-returned books		
viii) Refund of Assistance		
ix) Refund of leave encashment paid		
x) Forfeiting of Security deposit/ Earnest money deposit		
xi) Recoveries from Officers/Staff of NCMEI		
xii) Receipts on account of sale/ auction of condemned items		
xiii) Others		
Total		

FORM OF FINANCIAL STATEMENT (NON-PROFIT ORGANISATIONS)
Name of Entity : National Commission for Minority Educational Institutions
SCHEDULES FORMING PART OF INCOME & EXPENDITURE ACCOUNT FOR
THE PERIOD/ YEAR ENDED _____

(Amount - Rs.)

SCHEDULE 19 - INCREASE/ (DECREASE) IN STOCK OF FINISHED GOODS & WORK IN PROGRESS	Current Year	Previous Year
1. Closing stock		
a) Finished Goods		
b) Work-in-progress		
2. Less: Opening Stock		
a) Finished Goods		
b) Work-in-progress		
Net Increase/ (Decrease) (1-2)		

FORM OF FINANCIAL STATEMENT (NON-PROFIT ORGANISATIONS)
Name of Entity : National Commission for Minority Educational Institutions
SCHEDULES FORMING PART OF INCOME & EXPENDITURE ACCOUNT FOR
THE PERIOD/ YEAR ENDED _____

(Amount - Rs.)

SCHEDULE 20 - ESTABLISHMENT EXPENSES	Current Year	Previous Year
1. Salaries		
a) Salaries (Chairperson & Members)		
b) Salaries (Officers & Establishment)		
2. Wages		
3. Payment for Professional & Other Services		
4. Travel Expenses		
(i) Foreign Travel		
(ii) Domestic Travel		
5. Overtime allowance & Bonus		
6. Medical and Health care facilities		
7. Other Establishment charges		
(i) Leave Travel Concession		
(ii) Tution Fee		
8. Expenses on Employees' Retirement and Terminal Benefits		
(i) Commutation of pension		
(ii) Leave Encashment		
(iii) Gratuity		
(iv) Insurance		
(v) Other Retirement Benefits		
9. a) Leave Salary & Pension contribution of Deputationists		
b) Leave salary & Pension contribution of NCMEI employees		
10. Provident Fund contribution		
11. Other contributions		
12. Staff Welfare Expenses		
13. Others (specify)		
Total		

FORM OF FINANCIAL STATEMENT (NON-PROFIT ORGANISATIONS)
Name of Entity : National Commission for Minority Educational Institutions
SCHEDULES FORMING PART OF INCOME & EXPENDITURE ACCOUNT FOR
THE PERIOD/ YEAR ENDED _____

(Amount - Rs.)

SCHEDULE 21 - OTHER ADMINISTRATIVE EXPENSES ETC.	Current Year	Previous Year
1. Seminar/Conference Charges		
2. Assistance to other Organisations		
3. Telephone & Fax Expenses		
4. Rent Rates & Taxes		
5. Newspaper/Periodicals/Subscriptions		
6. Advertisement and Publicity		
7. Postage & Telegram		
8. Liveries		
9. Stationery & Printing		
i. Stationery		
ii. Printing		
10. Publication		
11. Purchases & Other Misc. Expenses		
a) Office Expenses		
b) Other Misc. Expenses		
c) Expenses for Promotion of Official Language (Hindi) (EPOL)		
12. Water & Electricity Charges		
13. Repair & Maintenance		
a) Building		
b) Machinery & Equipment-Computers, Servers & other IT resources		
c) Furniture & Fixtures		
d) Vehicles & maintenance		
e) Others (specify)		
14. Petrol & Lubricants		
15. Hospitality Expenses		
16. Audit Fees		
17. Legal and other professional expenses		
18. Insurance		
19. Research on Minority Education		
20. Training expenses		
21. Fees		
22. Provision for Bad and Doubtful Debts/ Advances		
23. Irrecoverable Balances Written-off		
24. Packing Charges		
25. Freight and Forwarding Expenses		
26. Others (specify)		

FORM OF FINANCIAL STATEMENT (NON-PROFIT ORGANISATIONS)
Name of Entity : National Commission for Minority Educational Institutions
SCHEDULES FORMING PART OF INCOME & EXPENDITURE ACCOUNT FOR
THE PERIOD/ YEAR ENDED _____

(Amount - Rs.)

(II) CAPTIAL EXPENDITURE NON-RECURRING	Current Year	Previous Year
1) Land		
2) Building (Renovation)		
3) Furniture & Fixtures		
4) Machinery & Equipment		
5) Motor Vehicles		
6) Books & Publications		
7) Computer, Server & Other IT resources		
8) Renovation		
a) Civil		
b) Electrical		
9) Others (specify)		
Total		

(Amount - Rs.)

SCHEDULE 22 - EXPENDITURE ON GRANTS, SUBSIDIES ETC.	Current Year	Previous Year
a) Grants given to Institutions/ Organisations		
b) Subsidies given to Institutions/ Organisations		
Total		
Note: Name of the Entities, their Activities along with the amount of Grants/ Subsidies are to be disclosed		

SCHEDULE 23 - INTEREST	Current Year	Previous Year
a) On Fixed Loans		
b) On other Loans (including Bank Charges)		
c) Others (specify)		
Total		

FORM OF FINANCIAL STATEMENT (NON-PROFIT ORGANISATION)
Name of Entity : National Commission for Minority Educational Institutions
SCHEDULES FORMING PART OF INCOME & EXPENDITURE FOR THE PERIOD/
YEAR ENDED _____

SCHEDULE 24 - SIGNIFICANT ACCOUNTING POLICIES (Illustrative)	
1.	ACCOUNTING CONVENTION
	The financial statements are prepared on the basis of historical cost convention, unless otherwise stated and on the accrual method of account.
2.	INVENTORY VALUATION
	2.1 Stores and Spares (including machinery spares) are valued at cost.
	2.2 Raw materials, semi-finished goods and finished goods are valued at lower of cost and net realizable value. The costs are based on weighted average cost. Cost of finished goods and semi-finished goods is determined by considering material, labour and related overheads.
3.	INVESTMENTS
	3.1 Investments classified as “long term investments” are carried at cost. Provision for decline, other than temporary, is made in carrying cost of such investments.
	3.2 Investments classified as “Current” are carried at lower of cost and fair value. Provision for shortfall on the value of such investments is made for each investment considered individually and not on a global basis.
	3.3 Cost includes acquisition expenses like brokerage, transfer stamps.
4.	EXCISE DUTY
	Liability for excise duty in respect of goods produced by the entity, other than for exports, is accounted upon completion of manufacture and provision is made for excisable manufactured goods as at the year-end.
5.	FIXED ASSETS
	5.1 Fixed Assets are stated at cost of acquisition inclusive of inward freight, duties and taxes and incidental and direct expenses relates to acquisition. In respect of projects involving construction, relates pre-operational expenses (including interest on loans for specific project prior to its completion), form part of the value of the assets capitalized.
	5.2 Fixed Assets received by way of non-monetary grants, (other than towards the Corpus Fund), are capitalized at values stated, by corresponding credit to Capital Reserve.
6.	DEPRECIATION
	6.1 Depreciation is provided on straight-line method as per rates specified in the Income Tax Act, 1961 except depreciation on cost adjustments arising on account of conversion of foreign currency liabilities for acquisition of fixed assets, which is amortized over the residual life of the respective assets.

	6.2 In respect of additions to/ deductions from fixed assets during the year, depreciation is considered on pro-rata basis.
	6.3 Assets costing Rs. 5,000 or less each are fully provided.
7.	MISCELLANEOUS EXPENDITURE
	Deferred revenue expenditure is written off over a period of 5 years from the year it is incurred.
8.	ACCOUNTING FOR SALES
	Sales include excise duty and are net of sales returns, rebate and trade discount.
9.	GOVERNMENT GRANTS/ SUBSIDIES
	9.1 Government grants of the nature of contribution towards capital cost of setting up projects are treated as Capital Reserve.
	9.2 Grants in respect of specific fixed assets acquired are shown as a deduction from the cost of the related assets.
	9.3 Government grants/ subsidy are accounted on realization basis.
10.	FOREIGN CURRENCY TRANSACTIONS
	10.1 Transactions denominated in foreign currency are accounted at the exchange rate prevailing at the date of the transaction.
	10.2 Current assets, foreign currency and current liabilities are converted at the exchange rate prevailing as at the year end and the resultant gain/ loss is adjusted to cost of fixed assets, if the foreign currency liability relates to fixed assets, and in other cases is considered to revenue.
11.	LEASE
	Lease rentals are expensed with reference to lease terms.
12.	RETIREMENT BENEFITS
	12.1 Liability towards gratuity payable on death/ retirement of employees is accrued based on actuarial valuation.
	12.2 Provision for accumulated leave encashment benefit to the employees is accrued and computed on the assumption that employees are entitled to receive the benefit as at each year end.

FORM OF FINANCIAL STATEMENT (NON-PROFIT ORGANISATION)
Name of Entity : National Commission for Minority Educational Institutions
SCHEDULES FORMING PART OF INCOME & EXPENDITURE ACCOUNT FOR
THE PERIOD/ YEAR ENDED _____

SCHEDULE 25 - CONTINGENT LIABILITIES AND NOTES ON ACCOUNTS (Illustrative)			
		(Amount - Rs.)	
1.	CONTINGENT LIABILITIES	Current Year	Previous Year
	1.1 Claims against the Entity not acknowledged as debts		
	1.2 In respect of		
	- Bank guarantees given by/ on behalf of the Entity		
	- Letters of Credit opened by Bank on behalf of the Entity		
	- Bills discounted with banks		
	1.3 Disputed demands in respect of		
	- Income tax		
	- Sales tax Rs.		
	- Municipal Taxes		
2.	CAPITAL COMMITMENTS		
	Estimated value of contracts remaining to be executed on capital account and not provided for (net of advances)		
3.	LEASE OBLIGATIONS		
	Future obligations for rentals under finance lease arrangements for plant and machinery amount to		
4.	CURRENT ASSETS, LOANS AND ADVANCES		
	In the opinion of the Management, the current assets, loans and advances have a value on realization in the ordinary course of business, equal at least to the aggregate amount shown in the Balance Sheet.		
5.	TAXATION		
	In view of there being no taxable income under Income Tax Act 1961, no provision for income tax has been considered necessary.		

			(Amount - Rs.)
6.	FOREIGN CURRENCY TRANSACTIONS		
	6.1 Value of Imports Calculated on C.I.F. Basis:		
	- Purchase of finished Goods		
	- Raw Materials & Components (including in transit)		
	- Capital Goods		
	- Stores, Spares and Consumables		
	6.2 Expenditure in foreign currency:		
	a) Travel		
	b) Remittances and Interest payment to Financial Institutions/ Banks in Foreign Currency		
	c) Other expenditure:		
	- Commission on Sales		
	- Legal and Professional Expenses		
	- Miscellaneous Expenses		
	6.3 Earnings:		
	Value of Exports on FOB Basis		
	6.4 Remuneration to auditors:		
	As Auditors		
	- Taxation matters		
	- For Management services		
	- For certification		
	- Others		
7.	Corresponding figures for the previous year have been regrouped/ rearranged, wherever necessary.		
8.	Schedules 1 to 25 are annexed to and form an integral part of the Balance Sheet as at 31.3.2005 and the Income and Expenditure Account for the year ended on that date.		

NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS
RECEIPT AND PAYMENTS (I) FOR THE YEAR ENDED _____

RECEIPT	Plan	Non Plan	Current year	Previous year	PAYMENTS	Plan	Non Plan	Current year	Previous year
	(Rupees)	(Rupees)	(Rupees)	(Rupees)		(Rupees)	(Rupees)	(Rupees)	(Rupees)
1. OPENING BALANCE					I. RECURRING				
i) Cash in hand					A. Establishment expenses corresponding to Schedule 20				
ii) Cash at Bank					1. Salaries				
a) in current account					a) Salaries (Chairperson & Members)				
b) in deposit account					b) Salaries (Officers & Establishment)				
c) in saving account					2. Wages				
2. GRANTS – IN – AID from					3. Payment for Professional & Other Services				
i) Ministry of Human Resource Development					4. Travel Expenses				
- Recurring					(i) Foreign Travel				
- Non-recurring					(ii) Domestic Travel				
ii) Other sources					5. Overtime allowance & bonus				
- Recurring					6. Medical and Health care facilities				
- Non-recurring					7. Other Establishment charges				

**NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS
RECEIPT AND PAYMENTS (I) FOR THE YEAR ENDED _____**

RECEIPT	Plan	Non Plan	Current year	Previous year	PAYMENTS	Plan	Non Plan	Current year	Previous year
	(Rupees)	(Rupees)	(Rupees)	(Rupees)		(Rupees)	(Rupees)	(Rupees)	(Rupees)
3. Receipt of the Commission					(i) Leave Travel Concession				
-Recurring					(ii) Tuition Fee				
i) Income on investments from earmarked/ Endowment/ other funds					8. Expenses on employees retirement and terminal benefits				
a) Face value of investment encashed					i) Commutation of pension				
b) interest of investments					ii) Leave encashment				
c) Others					iii) Gratuity				
i) Revenue Receipts					iv) Insurance				
a) Interest Receipt on Cash at Bank					v) Other Retirement benefits				
b) Interest Receipt on Advances to employees					9. a) Leave Salary & pension contb. of deputationists				
c) Sale of Publications					b) Leave salary & pension contb. of NCMEI employees				
d) Fees charged by the Commission					10. Provident Fund contb.				
e) Contribution of medical and health care beneficiaries					11. Other contributions				
					12. Staff Welfare Expenses.				
					13. Others (Specify)				

**NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS
RECEIPT AND PAYMENTS (I) FOR THE YEAR ENDED _____**

RECEIPT	Plan (Rupees)		Non Plan (Rupees)		Current year (Rupees)		Previous year (Rupees)		PAYMENTS	Plan (Rupees)		Non Plan (Rupees)		Current year (Rupees)		Previous year (Rupees)	
(f) Miscellaneous Receipts									B. Administrative & Other Expenses								
i) Court award									1. Seminar/Conference Charges								
ii) Sale of newspaper									2. Assistance to other Organisations								
iii) Recovery of overpaid salaries									3. Telephone & fax expenses								
4) Value of unencashed cheques written back									4. Rent Rates and Taxes								
5) Recovery of telephone charges									5. Newspaper/ Periodicals								
6) Sale of old cars									6. Advertisement and Publicity								
7) Value of unreturned books									7. Postage & Telegram								
8) Refund of assistance									8. Liveries								
9) Refund of leave encashment paid									9. Stationery & Printing								
10) Forfeiting of security deposit/ Earnest money deposit									i) Stationery								
11) Recoveries from officer/ Staff of NCMEI									ii) Printing								
12) Receipts on account of sale/ auction of condemned items									10. Publication								
13 Others									11. Misc. & Other Expenses								
ii) Debt/ Deposit Receipts																	
(a) recovery of advance to staff																	

**NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS
RECEIPT AND PAYMENTS (I) FOR THE YEAR ENDED _____**

RECEIPT	Plan	Non Plan	Current year	Previous year	PAYMENTS	Plan	Non Plan	Current year	Previous year
	(Rupees)	(Rupees)	(Rupees)	(Rupees)		(Rupees)	(Rupees)	(Rupees)	(Rupees)
i. House Building Advance					a) Office Expenses				
2. Motor car/ Personal Computer Advance					b) Other Misc. Expenses				
3. Scooter/ Motor Cycle Advance					c) Expenses for Promotion of Official Language (Hindi) (EPOL)				
4. Other Advances					12. Water & Electricity Charges				
i) Cycle/ Fan Advance					13. Repair & Maintenance				
ii) Medical Advance					a) Building				
iii) Recoupment of GPF Advance paid to deputationists					b) Machinery & Equipment computers, servers & other IT resources				
(b) Recovery of Contingent Advances					c) Furniture & Fixture				
1. Advance to CPWD					d) Vehicles				
2. Advance to DAVP					e) Others (Specify)				
3. Advance to Suppliers					14. Petrol & Lubricants				
4. Other Advances					15. Hospitality Expenses				
i. NIC/NICSI					16. Audit Fees				
ii. Officers					17. Legal Expenses				
(c) Other Deposits					18. Insurance				
1. Security Deposit					19. Research on Minority Education				

**NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS
RECEIPT AND PAYMENTS (I) FOR THE YEAR ENDED _____**

RECEIPT	Plan (Rupees)		Non Plan (Rupees)		Current year (Rupees)		Previous year (Rupees)		PAYMENTS	Plan (Rupees)		Non Plan (Rupees)		Current year (Rupees)		Previous year (Rupees)	
2. Earnest Money Deposit									20. Training Expenses								
3. Any Other Deposit									21. Fees								
(i) Recoupment of security deposit made									22. Provision for Bad and Doubtful Debts/ Advances								
Total									23. Irrecoverable Balance written off								
(iv) Remittance Receipts									24. Packing Charges								
(a) GPF Recoveries from deputationist									25. Freight and Forwarding Expenses								
(b) Licence Fee									26. Others (Specify)								
(c) Income Tax																	
(d) Sales Tax									27. a) Leave Salary & Pension contribution of Deputationists								
(e) Central Government Health Scheme									28. Pension contribution of NCMEI employees								
(f) Postal Life Insurance									29. Other Contribution								
(g) Central Govt. Employees Groups Insurance Scheme									(c) Investments & Deposits made from Earmarked/ Endowment								
(h) Other receipts									Other Funds								
1) GPF of NCMEI Employees									Details to be specified								
2) NCMEI Employees Group Insurance Scheme									(d) Advance to staff								
II. Non - Recurring																	

**NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS
RECEIPT AND PAYMENTS (I) FOR THE YEAR ENDED _____**

RECEIPT	Plan	Non Plan	Current year	Previous year	PAYMENTS	Plan	Non Plan	Current year	Previous year
	(Rupees)	(Rupees)	(Rupees)	(Rupees)		(Rupees)	(Rupees)	(Rupees)	(Rupees)
III. Amount Borrowed					1. House Building Advance				
IV. Any other Receipt from any of the items mentioned in schedules (give details)					2. Motor Car/ P.C. Advance				
					3. Scooter/ M.C. Advance				
					4. Other advances				
					i. Cycle/ Fan advance				
					ii. Medical Advance				
					iii. GPF to deputationists				
					(e) Contingent Advances				
					1. Advance to CPWD				
					2. Advance to DAVP				
					3. Advance to Suppliers				
					4. Other Advances				
					i. NIC/NICSI				
					ii. Officers				
					iii. Dte. of Estates				
					(f) Deposits				
					1. Security Deposit				
					2. Earnest Money Deposit				
					3. Any other Deposit				
					4. Security Deposit				

**NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS
RECEIPT AND PAYMENTS (I) FOR THE YEAR ENDED _____**

RECEIPT	Plan	Non Plan	Current year	Previous year	PAYMENTS	Plan	Non Plan	Current year	Previous year
	(Rupees)	(Rupees)	(Rupees)	(Rupees)		(Rupees)	(Rupees)	(Rupees)	(Rupees)
					(g) Other Adjustments (Remittances)				
					1. GPF/CFP etc. recovered from deputationists				
					2. Licence Fee				
					3. Income Tax				
					4. Sales Tax				
					5. Central Govt. Health Scheme				
					6. Postal Life Insurance				
					7. Central Govt. Employees Group Insurance Scheme.				
					8. House Building Advance				
					9. Motor Car/ P.C. Advance				
					10. Scooter/ M.C. Advance				
					11. Other Recoveries				
					i. GPF of NCMEI employees				
					ii. NCMEI Employees Group insurance Scheme				
					iii. Interest on Loan				
					iv. Miscellaneous				
					(h) Contributions				
					Pension & Gratuities				

**NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS
RECEIPT AND PAYMENTS (I) FOR THE YEAR ENDED _____**

RECEIPT	Plan	Non Plan	Current year	Previous year	PAYMENTS	Plan	Non Plan	Current year	Previous year
	(Rupees)	(Rupees)	(Rupees)	(Rupees)		(Rupees)	(Rupees)	(Rupees)	(Rupees)
					Leave Salary & pension Contribution				
					3. Other Contributions (to be specified)				
					II) CAPITAL EXPENDITURE NON-RECURRING- on Fixed Assets & Capital				
					Works in progress				
					1) land				
					2) Building (Renovation)				
					3) Furniture & Fixtures				
					4) Machinery & Equipment				
					5) Motor Vehicle				
					6) Books & Publications				
					7) Computer, Server & Other IT resources				
					8) Renovation				
					a) Civil				
					b) Electrical				
					c) Others (Specify)				
					III) Refund of surplus money/ Loans				
					Details to be specified				

APPENDICES

NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS

Case No. 48 of 2005

In the matter of :

St. Stephen's College
Delhi – 110 007

Through : ... Petitioner
Mr. Rajsekhar Rao,
Advocate

Versus

1. The Registrar,
University of Delhi
Delhi

Through : ... Respondent No.1
Mr. M. A. Sikandar,
Asstt. Registrar (Legal)

2. The Secretary
University Grants Commission
Bahadur Shah Zafar Marg
New Delhi

Through : ... Respondent No.2
Mr. Amitesh Kumar,
Advocate

Case No.152 of 2005

In the matter of :

Sri Guru Tegh Bahadur Khalsa College,
Delhi – 110 007

Through : ... Petitioner
Mr. H. S. Phoolka,
Sr. Advocate with
Mr. Jasmeet Singh,
Advocate

Versus

1. The Registrar,
University of Delhi
Delhi

Through : ... Respondent No.1
Mr. A. Mariarputtam,
Advocate

2. The Secretary
University Grants Commission
Bahadur Shah Zafar Marg
New Delhi

Through : ... Respondent No.2
Mr. Amitesh Kumar,
Advocate

ORDER

(Delivered on the 10th day of May, 2006)

Justice M. S. A. Siddiqui, Chairman

The St. Stephen's College and Sri Guru Tegh Bahadur Khalsa College, Delhi are the affiliated colleges of the respondent university. The St. Stephen's College and Sri Guru Tegh Bahadur Khalsa College have been established and are being managed and administered by members of the Christian and Sikh community respectively. In St. Stephen's College Vs. Delhi University (1992) 1 SCC 558, the Supreme Court has declared the St. Stephens College as a minority educational institution. The status of Sri Guru Tegh Bahadur Khalsa College is identical to that of St. Stephen's College which is established and administered by the Sikh community, which is a notified minority by the Government. Consequently, both the colleges are minority educational institutions within the meaning of Section 2 (g) of the National Commission for Minority Educational Institutions Act (for short "the Act").

Both the colleges have filed petitions complaining about violation of educational rights of the minorities, guaranteed under Article 30 (1) of the Constitution, by the respondent university. Since features of both these cases are common, they can be disposed of by a common order. In view of the final order that we propose to pass, it is not necessary to state the facts of both these cases. We shall, therefore, quote the facts of only one case, the case No.48 of 2005 (St. Stephen's College Vs. Delhi University & Anr.).

The respondent university which was constituted under the Delhi University Act has framed the rules regulating the selection and appointment of Principal and other staff of its constituent colleges and the statutes governing condition of affiliation to the university. These statutes have been made applicable to all the affiliated colleges of the respondent university including the petitioners. Notwithstanding the constitutional guarantee against interference in respect of administration of the colleges established by the religious or linguistic minorities guaranteed under Article 30 of the Constitution, the respondent university has treated minority educational institutions established by the petitioners just like all other affiliated colleges. The respondent university has no power to frame and apply the statutes, the validity of which has been challenged in the petition in so far as it related to educational institutions established by linguistic or religious minorities.

The respondent university has filed statement of objections resisting the petitions. The stand taken by the respondent university may be summarized as under :-

- (a) The petitions filed by the petitioners are outside the cognizance of this Commission.
- (b) The St. Stephen's College is a constituent college of the Delhi University and is bound by the statutes, ordinances and other rules and regulations made by the university which apply equally to its affiliated and constituent colleges.

- (c) The composition of Selection Committee has a bearing on the standards of selection of its principals and teachers which, in turn, has a direct nexus with the standard of teaching in the college. It is the responsibility of the university to ensure that proper and uniform standards of teaching are maintained by all the affiliated and constituent colleges of the university and as such the statutes, ordinances and regulations framed by the university are binding on the petitioners.
- (d) The ordinance of the Delhi University dealing with the selection of teaching staff of colleges affiliated to Delhi University does not in any manner infringe the rights of the petitioners as minority educational institutions.

The University Grants Commission has supported the case of the respondent university and alleged that the regulations framed by the University Grants Commission (for short "UGC") are binding on the university as well as the colleges affiliated to it, including the petitioners. It is further alleged that appointment to the teaching staff as also the post of principal are required to be made in accordance with the regulations framed by the UGC. It is also alleged that the UGC regulations do not affect the minority character of the petitioners in any manner as the regulations in question are intended to maintain the standard of higher education.

Having regard to the pleas of the petitioners and the respondents, the following issues arise for consideration :-

1. Whether the petitions are outside the cognizance of this Commission?
2. Whether the management of the petitioner colleges is entitled to the protection of Article 30 (1) of the Constitution?
3. Whether all or any of the statutes, the validity of which is challenged in these petitions, are invalid on the ground that they come in conflict with Article 30 (1) of the Constitution?

Issue No.1

Whether the petitions are outside the cognizance of this Commission?

Learned counsel for the respondent has urged that this Commission has no jurisdiction to entertain the petitions filed on behalf of the petitioner colleges. In our opinion, the aforesaid submission of the learned counsel does not hold much water. In this connection, reference may be made to Section 11 (b) of the Act which is as under :-

“(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;”

Both the petitioners have filed complaints regarding violation of rights of the minorities to establish and administer educational institutions guaranteed under Article 30 (1) of the Constitution, and as such this Commission is fully competent to entertain them.

Issue No.2

Whether the management of the petitioner colleges is entitled to the protection of Article 30 (1) of the Constitution?

It is an admitted position that the petitioner colleges are minority educational institutions within the meaning of Section 2 (g) of the Act, and as such they are entitled to the protection of Article 30 (1) of the Constitution.

Issue No.3

Whether all or any of the statutes, the validity of which is challenged in these petitions, are invalid on the ground that they come in conflict with Article 30 (1) of the Constitution?

It is well settled that Article 30 (1) enshrines a fundamental right of the minorities to manage and administer their educational institutions which is completely in consonance with the secular nature of our democracy and directives contained in the Constitution itself. The right guaranteed under Article 30 (1) is subject to the power of the State to regulate educational and allied matters. A benignly regulated liberty, which neither abridges nor exaggerates the autonomy but promotes better performance is the right construction of the said constitutional provisions. ‘To regulate’, be noted, is not ‘to restrict’ but to facilitate the effective exercise of the very right. The constitutional estate of the minorities should not be encroached upon, neither allowed to be neglected nor mal-administered. The State or any university authority cannot under the cover or garb of adopting regulatory measures destroy the administrative autonomy of the institution or start interfering with the administration of the management of the institution concerned so as to render the right of the administration of the management of the institution concerned nugatory or illusory. Such a blatant interference is clearly violative of Article 30 (1) and should be wholly inapplicable to the institution concerned. In this connection, we may usefully excerpt the following observations of their Lordship of the Supreme Court in T.M.A. Pai Foundation Vs. State of Karnataka (2002) 8 SCC 481 :-

“122. The learned Judge then observed that the right of the minorities to administer educational institutions did not prevent the making of reasonable regulations in respect of these institutions. Recognizing that the right to administer educational institutions could not include the right to maladminister,

it was held that regulations could be lawfully imposed, for the receiving of grants and recognition, while permitting the institution to retain its character as a minority institution. The regulation “must satisfy a dual test – the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it”. (SCC p.783, para 92) It was permissible for the authorities to prescribe regulations, which must be complied with, before a minority institution could seek or retain affiliation and recognition. But it was also stated that the regulations made by the authority 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 institution. Regulations that embraced and reconciled the two objectives could be considered to be reasonable. This, in our view, is the correct approach to the problem.

123. After referring to the earlier case in relation to the appointment of teachers, it was noted by Khanna, J., that the conclusion which followed was that a law which interfered with a minority’s choice of qualified teachers, or its disciplinary control over teachers and other members of the staff of the institution, was void, as it was violative of Article 30(1). 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 case 2 this Court has opined that clauses 11 and 12 made it obligatory for all aided schools to select teachers from a panel selected from each district by the Public Service Commission and that no teacher of an aided school could be dismissed, removed or reduced in rank without the Previous sanction of the authorized officer. At SCR P.245, Khanna, J., observed that in cases subsequent to the opinion in Kerala Education Bill, 1957 case 2 this Court had held similar provisions as clause 11 and clause 12 to be violative of Article 30(1) of the minority institution. He then observed as follows: (SCC p.792, para 109)

“The opinion expressed by this Court in Re Kerala Education Bill, 1957 case 2 was of an advisory character and though great weight should be attached to it because of its persuasive value, the said opinion cannot override the opinion subsequently expressed by this Court in contested cases. It is the law declared by this Court in the subsequent contested cases which would have a binding effect. The words ‘as at present advised’ as well as the preceding sentence indicate that the view expressed by this Court in Re Kerala Education Bill, 1957 case 2 in this respect was hesitant and tentative and not a final view in the matter”.

124. In St. Stephen's College case, the right of minorities to administer educational institutions and the applicability of Article 29(2) to an institution to which Article 30(1) was applicable came up for consideration. St. Stephen's College claimed to be a minority institution, which was affiliated to Delhi University; the College had its own provisions with regard to the admission of students. This provision postulated that application would be invited by the College by a particular date. The applications were processed and a cut-off percentage for each subject was determined by the Head of the respective departments and a list of potentially suitable candidates was prepared on the basis of 1:4 and 1:5 ratios for Arts and Science students respectively, and they were then called for an interview (i.e. for every available seat in the Arts Department, four candidates were called for interviews; similarly, for every available seat in the Science Department, five candidates were called for interviews). In respect of Christian students, a relaxation of up to 10% was given in determining the cut-off point. Thereafter, the interviews were conducted and admission was granted. Delhi University, however, had issued a circular, which provided that admission should be granted to the various courses purely on the basis of merit i.e. the percentage of marks secured by the students in the qualifying examination. The said circular did not postulate any interview. Thereafter, the admission policy of St. Stephen's College was challenged by a petition under Article 32. It was contended by the petitioners that the College was bound to follow the university policy, rules and regulations regarding admission, and further argued that it was not a minority institution, and in the alternative, it was not entitled to discriminate against students on the ground of religion, as the College was receiving grant-in-aid from the Government, and that such discrimination was violative of Article 29(2). The College had also filed a writ petition in the Supreme Court taking the stand that it was a religious minority institution, and that the circular of the University regarding admission violated its fundamental right under Article 30. This Court held that St. Stephen's College was a minority institution. With regard to the second question as to whether the College was bound by the university circulars regarding admission, this Court, by a majority of 4:1, upheld the admission procedure used by the College, even though it was different from the one laid down by the University. In this context, the contention of the College was that it had been following its own admission programme for more than a hundred years and that it had built a tradition of excellence in a number of distinctive activities. The College challenged the university circular on the ground that it was not regulatory in nature, and that it violated its right under Article 30. Its submission was that if students were admitted purely on the basis of marks obtained by them in the qualifying examination, it would not be possible for any Christian student to gain admission. The College had also found that unless a concession was afforded, the Christian students would not be brought within the zone of consideration as they generally lacked merit when compared to the other applicants. This Court referred to the earlier decisions, and with regard to Article 30(1), observed at SCC P.596, para 54, as follows:

“54. The minorities whether based on religion or language have the right to establish and administer educational institutions of their choice. The administration of educational institutions of their choice under Article 30(1) means ‘management of the affairs of the institution’. This management must be free from control so that the founder 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. But the standards of education are not a part of the management as such. The standard concerns the body politic and is governed by considerations of the advancement of the country and its people. Such regulations do not bear directly upon management although they may indirectly affect it. The State, therefore, has the right to regulate the standard of education and allied matters. Minority institutions cannot be permitted to fall below the standards of excellence expected of educational institutions. They cannot decline to follow the general pattern of education under the guise of exclusive right of management. While the management must be left to them, they may be compelled to keep in step with others”. (emphasis supplied)

It is also well settled that introduction of an outside authority, however high it may be, either directly or through its nominees in the governing body or the managing committee of the minority educational institution to conduct the affairs of the institution, would be completely destructive of the fundamental right guaranteed by Article 30 (1) of the Constitution and would reduce the management to a helpless entity having no real say in the matter and thus destroy the very personality and individuality of the institution which is fully protected by Article 30 (1) of the Constitution.

We shall now proceed to consider the validity of the Ordinance XVIII Clause 7 (2) of the respondent university in the light of the law laid down by the Supreme Court in St. Stephen’s case (supra) and T. M. A. Pai Foundation’s case (supra). The aforesaid Ordinance reads as under :-

“The appointment of the Principal shall be made by the Governing Body of the College on the recommendation of a Selection Committee* consisting of the Chairman of the Governing Body (Chairman), one member of the Governing Body to be nominated by the Chairman, two nominees of the Vice Chancellor, out of whom one should be an expert, three experts consisting of the Principal of a college, a Professor and an accomplished educationist, not below the rank of Professor (to be nominated by the Governing Body) out of a panel of experts approved by the Vice Chancellor (At least four members, including two experts should constitute the quorum), provided that prior to final selection and appointment (a) the governing body shall submit to the University a list of persons who have applied for the post of Principal, as also names of persons, who may not have applied but whose names the Governing Body may desire to consider for the post, in a form as prescribed by the

university and shall indicate the persons from whom, in their opinion, the final selection may be made; (b) the list thus submitted by the Governing Body shall be considered by a Selection Committee constituted for the purpose and consisting of the following :-

- (i) Vice Chancellor;
- (ii) Pro Vice Chancellor;
- (iii) A nominee of the Visitor;
- (iv) Chairman of the Governing Body of the college concerned; and
- (v) Two members of the Executive Council, nominated by it.

and (c) on recommendation of the Selection Committee, the University shall transmit to Governing Body a list of persons mentioned in the order of preference whom the University would be prepared to recognize as Principal or, if none of the applicants are considered suitable, shall refrain from sending a list, in which case the post shall be re-advertised :

Provided that where in the opinion of the Vice-Chancellor, emergency action is called for or where in his opinion, it would be unnecessary to adopt the procedure prescribed in (b) and (c) above, the Vice-Chancellor may indicate merely which of the candidates included in the list submitted by the Governing Body under sub-Clause 2 (a) of Clause 7 of Ordinance XVIII, will not be acceptable to the University, briefly indicating ground for the decision. In such a case, the Governing Body will be free to appoint any person from any of the candidates against whom no such disapproval has been indicated.

*Modified to bring them in consonance with UGC's Regulation vide its letter No.F.3-1/2000(PS) dated 04.04.2000 as directed by the Hon'ble Visitor vide MHRD letter No.F.4-22/2002-Desk(U) dated 07.01.2004.

The above provision i.e. 7 (2) shall apply mutatis mutandis to Colleges and Institutions maintained by the University under Ordinance XX.”

The aforesaid Ordinance has been framed in accordance with the UGC's regulations vide letter No.F.3-1/2000(PS) dated 4.4.2000. The UGC has supported this ordinance.

It has been held in the case of T. M. A. Pai Foundation (supra) that a right to establish and administer an institution comprises of the right :-

- a. to admit students;
- b. to set up a reasonable fee structure;
- c. to constitute a governing body;

- d. to appoint staff (teaching and non-teaching); and
- e. to take action if there is dereliction of the duty on the part of any of the employees.

In D. A. V. College Vs. State of Punjab (1971) 2 SCC 269, the provisions 2 (1), 17 and 18 of the statutes framed by the university under Section 19 of the University Act were challenged as being violative of Article 30. Clause 2 (1)(a) provided that for seeking affiliation, the college was to have a governing body of not more than 20 persons approved by the Senate and including, amongst others, two representatives of the university and a member of the college. Clause 17 required the approval of the Vice Chancellor for the staff initially appointed by the college. It also provided that all subsequent changes in the staff were to be reported to the Vice Chancellor for his/her approval. Clause 18 provided that non-governmental colleges were to comply with the requirements laid down in the ordinances governing the service and conduct of teachers in non-governmental colleges, as may be framed by the university. Relying upon the judgments rendered by the Supreme Court in Re : Kerala Education Bill AIR 1958 SC 956, Rev. Sidhajbhai Sabhai & Ors. Vs. State of Bombay & Anr. AIR 1963 SC 540 and Rev. Father W. Proost & Ors. Vs. The State of Bihar & Ors. AIR 1969 SC 465, the Supreme Court held that there was no justification for the provisions contained in Clause 2 (1)(a) and Clause 17 of the Statutes as they interfered with the rights of management of the minority educational institutions. The judgment rendered in the case of D. A. V. College Vs. State of Punjab (supra) has been affirmed by the Supreme Court in the case of T. M. A. Pai Foundation's case (supra). In the case of The Ahmedabad St. Xaviers College Society & Anr. Vs. State of Gujarat & Anr. AIR 1974 SC 1389, it was observed by Justice Khanna J. that a law which interfered with the rights of the minorities' choice of qualified teachers, or its disciplinary control over teachers and other members of the staff of the institution, was void as it was violative of Article 30. The aforesaid view of Khanna J. has been quoted with approval in the case of T. M. A. Pai Foundation's case (supra).

According to Ordinance XVIII Clause 7 (2) of the respondent university, the appointment of the principal shall be made by the governing body of the college on the recommendation of a selection committee. The composition of the selection committee for selection of principal is as under :-

- (a) Chairman of the Governing Body of the college;
- (b) One member of the Governing Body to be nominated by the Chairman;
- (c) Two nominees of the Vice Chancellor, out of whom one should be an expert;
- (d) Three experts consisting of the principal of a college, a professor and an accomplished educationist, not below the rank of professor, to be nominated by the Governing Body, out of a panel of experts approved by the Vice Chancellor (at least four members, including two experts should constitute the quorum).

The ordinance further provided that the governing body shall submit to the university a list of persons who have applied for the post of principal, as also names of persons, who may not have applied but whose names the Governing Body may desire to consider for the post, in a form as prescribed by the university and shall indicate the persons from whom, in their opinion, the final selection may be made. It further provided that the list thus submitted by the governing body shall be considered by a selection committee constituted for the purpose and consisting of the following :-

- (i) Vice Chancellor;
- (ii) Pro Vice Chancellor;
- (iii) A nominee of the Visitor;
- (iv) Chairman of the Governing Body of the college concerned; and
- (v) Two members of the Executive Council, nominated by it.

According to the said ordinance, on recommendation of the selection committee, the university shall transmit to governing body a list of persons mentioned in the order of preference whom the university would be prepared to recognize as principal or, if none of the applicants are considered suitable, shall refrain from sending a list, in which case the post shall be re-advertised.

In view of the ratio of the decisions of the Supreme Court, the provisions of the said ordinance which requires a final approval of the selection of principal by the respondent university and the inclusion of majority of the members of the selection committee approved by the university is invalid as it constitutes an interference with the right of administration of the minority educational institutions. Such a constitution of the selection committee completely over-shadows the powers of the managing committee. This is not constitutionally permissible so far as minority educational institutions are concerned because it directly interferes with the administrative autonomy of the institutions. In Lilly Kurian Vs. Sr. Lewina & Ors. (1979) 2 SCC 124, a provision enabling an aggrieved member of the staff of a college to make an appeal to the Vice Chancellor against an order of suspension and other penalties was held to be violative of Article 30 (1). Again in All Saints High School, Hyderabad Vs. State of Andhra Pradesh (1980) 2 SCC 478, a provision contained in Andhra Pradesh Private Educational Institutions Control Act, 1975 requiring prior approval of the competent authority on all orders of dismissal, removal or reduction in rank passed against a teacher by the management of the college was held to be inapplicable to a minority educational institution. It is open to the State or the controlling authority to prescribe the minimum qualifications, experience and other conditions for being appointed as teacher or principal. The right to select and appoint Principal is perhaps the most important facet of the right to administration in educational institutions and the imposition of any trammels thereon except to the extent of prescribing the requisite qualification and experience is constitutionally impermissible. Once the minority institution has selected principal/teachers possessing the requisite minimum qualifications as may be laid down by the university, the university would have no right to control or veto the

selection of teachers. In such cases, the role of the university is limited to the extent of ensuring that a person so selected fulfils the qualifications laid down by the university. In St. Stephen's College case (supra), the rights of minorities to administer educational institutions came up for consideration. The St. Stephen's college claimed to be a minority educational institution which is affiliated to the respondent university and the college has its own provisions with regard to selection and admission of students. It was contended by the respondent university that the college was bound to follow the university policy, rules and regulations regarding selection and admission of students. Rejecting the contentions of the Delhi University, the Supreme Court by a majority view upheld the selection procedure adopted by the college, even though it was difference from the one laid down by the university. The Supreme Court further held that St. Stephen's College was not bound by the impugned circulars of the university. This judgment has been quoted with approval in T. M. A. Pai Foundation's case (supra).

According to the constitution of the St. Stephen's college, appointment of principal was done by the Supreme Council of College in accordance with Clause 4 of the college constitution that empowers the Supreme Council to make appointments after due advertisement and interview. Admittedly, the college has from time to time been informing the respondent university about appointments made by its governing body in accordance with its own constitution and the respondent university has always accepted the same. The composition of the Selection Committee as provided by Ordinance XVIII Clause & (a) of the respondent university clearly takes away the freedom of management or administration of the St. Stephen's college and reduces it to a mere satellite of the respondent university. The Ordinance in question, if applied to the petitioner college, would transfer control over selection of staff from the minority institution to the respondent university, and thus, in effect allow the university to select the staff for the institution, directly interfering with the rights of the minority community to administer the institution. Needless to add here that the right of the minorities to establish and administer institutions of their choice in terms of Article 30 is sacrosanct and cannot be diluted.

Learned counsel for the respondent university has submitted that the composition of the selection committee has a bearing on the standards of selection of teachers which, in turn, has a direct nexus with the standard of teaching in the college. According to the learned counsel, it is the responsibility of the university to ensure that proper and uniform standards of teaching are maintained by all the affiliated and constituent colleges of the respondent university. We are not impressed by the said submissions of the learned counsel. The right to have the teaching conducted by teachers appointed by the Governing Body of the college after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution. The standard of education imparted by an institution is determined in large measure by the quality of teaching it provides. In such matters, undue interference by the respondent university in the selection process for the post of principal is constitutionally impermissible. It needs to be highlighted that the UGC in the letter No.3-1/78/CP dated 12.10.1981 issued instructions to all

universities that while framing their statutes/ordinances/regulations, they should ensure that these do not infringe Article 30 of the Constitution relating to the administrative of justice on minority educational institutions. Surprisingly, the stand taken by the UGC in this case is wholly inconsistent with the aforesaid letter dated 12.10.1981.

In Brahmo Samaj Educational Society & Ors. Vs. State of West Bengal & Ors. (2004) 6 SCC 224, the Supreme Court held that the Government is obliged to take note of the declarations of the law by the Supreme Court and amend their laws, rules and regulations so as to bring them in conformity with the principles set out. After authoritative pronouncements of the Supreme Court quoted above, it was the duty of the UGC and the respondent university to amend their statutes and ordinances regarding selection and appointment of teaching and non-teaching staff of the minority affiliated colleges so as to bring them in conformity with the law declared by the Supreme Court. It is unfortunate that even after the decisions of the Supreme Court in St. Stephen's College and T. M. A. Pai Foundation's case (supra), neither the UGC nor the respondent university attempted to amend their statutes/ordinances relating to appointment of teaching and non-teaching staff of the affiliated colleges of the minority educational institutions.

No doubt that the petitioner colleges have been receiving aid from the Government, the Supreme Court in T. M. A. Pai Foundation's case (supra) has held that notwithstanding the grant of aid, the minority nature of the institution continues. It was further held that any grant that is given by the State to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minorities to establish and administer their institutions. 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 thereof.

In view of the legal position stated above, the Governing Body of the petitioner college has the exclusive right to appoint staff (teaching and non-teaching). Also, no outside authority can be imposed on the Supreme Council or the Governing Body, as the case may be, in the selection of candidates for the post of principals in the respective institutions. The petitioner colleges can select and appoint teachers and principals in accordance with the constitution of the college, subject to fulfillment of the qualifications laid down by the respondent university. Needless to add here that the word "appointment" is of wide amplitude and it embraces within its fold the right to re-appoint or re-employ any member of teaching or non-teaching staff.

For the reasons stated above, we have no hesitation in coming to the conclusion that the Ordinance XVIII Clause 7 (2) is not regulatory in nature and it violates the rights of the minorities to establish and administer educational institutions of their choice guaranteed under Article 30 (1) of the Constitution. The said Ordinance clearly attracts the wrath of Article 13 of the Constitution which bars the State from making any law abridging or limiting any of the fundamental rights guaranteed under the Constitution

and threatens to veto any law found inconsistent therewith. The term 'law' includes within its amplitude any ordinance, order, bye-law, rule, regulation or notification and the prohibition contained in Article 13 binds all instrumentalities within the State. Consequently, the UGC and the respondent university are directed to amend their statutes/ordinances so as to bring them in consonance with the law declared by the Supreme Court in St. Stephen's College Vs. Delhi University and T. M. A. Pai Foundation & Ors. Vs. State of Karnataka (supra) regarding right to administration of the educational institutions of the minorities guaranteed under Article 30 (1) of the Constitution.

A copy of the order be sent to the Secretary (Education), Government of India, Chairman, University Grants Commission and the Registrar of the Delhi University for implementation of the said findings of this Commission in accordance with Section 11 (b) of the Act.

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

**B.S.RAMOOWALIA
MEMBER**

**VALSON THAMPU
MEMBER**

May 10, 2006

NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS

Case No. 881 of 2006

In the matter of :

The Bombay Patel Welfare Society,
Bharuch

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

Versus

The Registrar, University of Delhi
New Delhi

Through : ... Respondent
Ms. Maninder Acharya,
Advocate

ORDER

(Delivered on the 20th day of April, 2006)

Justice M. S. A. Siddiqui, Chairman

The petitioner is a public trust registered under the Bombay Trusts Act, 1950 as also a society registered under the Societies Registration Act, 1860. All the founder trustees of the society are Muslims and all of its present trustees are also Muslims. The petitioner desired to establish a dental college at Bharuch (Gujarat). To meet with the requirements of infrastructure, library, staff, etc. it spent crores of rupees. The petitioner then made an application to the respondent university for its affiliation in accordance with the provisions of Section 10 (1) of the National Commission for Minority Educational Institutions Act, 2004 (for short "the Principal Act") on 17.10.2005. Since the respondent university did not take any decision on the petitioner's request for grant of affiliation, the petitioner filed a petition before this Commission which was numbered as Case No.154/2006. Pursuant to the notice issued by this Commission, the respondent university filed reply on 8.3.2006 stating therein about rejection of the petitioner's prayer for grant of affiliation vide order dated 7.3.2006. Feeling aggrieved, the petitioner has filed the present petition under Section 12 of the Principal Act.

The respondent university filed reply contending that the petitioner's prayer for grant of affiliation was duly considered and rejected mainly on the following grounds :-

- “(i) According to Section 10-A of the National Commission for Minority Education Institutions Act a *Minority Educational Institution* may seek affiliation to any University of its choice subject to such affiliation being permissible within the Act under which the said University is established. Section 5 of the Delhi University Act, 1922 put a bar to grant any affiliation to an Institution which does not lie within the territorial limits of the State of Delhi.
- (ii) In addition to the above, granting affiliation to a far-flung professional institution may affect the quality/academic standards set by the Delhi University. Moreover, there would be problems in conducting examinations in the field of medical/dental educational where continuous evaluation and monitoring are necessary. The University of Delhi is not equipped with adequate facilities and manpower to deal with such a problem.”

Mr. P. A. Inamdar, appearing on behalf of the petitioner, submitted that the respondent University’s action in rejecting the petitioner’s application for grant of affiliation is violative of the fundamental rights of the minorities enshrined under Article 30 of the Constitution. As against this, learned counsel for the respondent University submitted that in view of the prohibition contained in Section 5 of the Delhi University Act, the petitioner’s prayer for grant of affiliation was rightly rejected by the respondent University. Mr. Inamdar submitted that the Principal Act being a special law relating to the right of affiliation of minority educational institutions and also being a subsequent enactment would prevail over the provisions of Section 5 of the Delhi University Act, and as such the petitioner’s prayer for affiliation was wrongly rejected by the respondent University. He has invited our attention to Sections 10 (1), 12 and 22 of the Principal Act in support of the said contentions.

In view of the rival contentions of the parties, the first question which arises for consideration is whether the petitioner’s application for grant of affiliation under Section 10 (1) of the Principal Act was barred under Section 5 of the Delhi University Act.

Before we deal with the contentions of the parties, it would be appropriate to refer to the relevant provisions of the Act. It is beyond the pale of controversy that the respondent university is an affiliating university. Section 5 of the Delhi University Act declares that the powers of the university conferred by or under the Act shall not extend beyond the limits of the State of Delhi. Section 5 *ibid* is as under :-

“5. (1) Save as otherwise provided in this Act, the powers of the University conferred by or under this Act [other than those conferred by sub-clause (d) of Section 4] shall not extend beyond the limits of the State of Delhi and notwithstanding anything in any other law for the time being in force, no educational institution beyond those limits shall be associated with or admitted to any privileges of the University.

Proviso (Omitted)

(1-A) Notwithstanding anything contained in sub-section (1), the Central Government may, if it is of opinion that it is necessary or expedient so to do in the public interest, direct, by order in writing, the University to admit to its privileges any institution situated outside India and the University shall be bound to comply with such direction.

(2) Notwithstanding anything in any other law for the time being in force, no educational institution within the afore-mentioned limits shall be associated in any way with or be admitted to any privileges of any other University incorporated by law in India, and any such privileges granted by any such other University to any educational institution within those limits prior to the commencement of this Act shall be deemed to be withdrawn on the commencement of this Act :

Provided that the Central Government may by order in writing, direct that the provisions of this sub-section shall not apply in the case of any institution specified in the order.”

It is also undisputed that on 17.10.2005, the petitioner had filed an application for grant of affiliation under Section 10 (1) of the Principal Act. It needs to be highlighted that Section 10 (1) falls under Chapter III of the Principal Act which was substituted by the National Commission for Minority Educational Institutions (Amendment) Ordinance 2006 (No.1 of 2006) and now this Ordinance has been replaced by the National Commission for Minority Educational Institutions (Amendment) Act 2006 (hereinafter referred to as “the Amendment Act”). Section 10 (1) of the Principal Act confers a substantive right on a minority educational institution to seek affiliation from a scheduled university of its choice. Admittedly, the respondent university was included in the Schedule to the Principal Act. Section 10 (1) of the Principal Act is as under :-

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

Section 12 of the Principal Act confers jurisdiction on this Commission to adjudicate upon the dispute relating to affiliation between the Scheduled University and a minority college. Section 12 of the Principal Act is as under :-

“12. If any dispute arises between a minority educational institution and a Scheduled University relating to its affiliation to such University, the decision of the Commission thereon shall be final.”

Section 22 of the Principal Act provides that the provisions of the Principal Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 22 of the Principal Act reads as under :-

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

Section 10 (1) of the Principal Act contains a non-obstante clause stating that its provisions will have effect, i.e., “notwithstanding any contained in any other law for the time being in force”. Needless to add here that the non-obstante clause is sometimes appended to a Section or a rule in the beginning with a view to give the enacting part of that Section or rule, in case of conflict, an over-riding effect over the provisions or the act mentioned in that clause, such a clause is usually used in the provision to indicate that the said provision should prevail despite anything to the contrary in the provision mentioned in such non-obstante clause. The influence of a non-obstante clause has to be considered on the basis of the context also in which it is used. It is also well settled that the Court should examine every word of a statute in its context and to use context in its widest sense. Then Section 22 of the Principal Act clearly declares that the “provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act”. Section 5 of the Delhi University Act also provides that “notwithstanding anything in any other law for the time being in force, no educational institution beyond those limits shall be associated with or admitted to any privileges of the University”.

The Principal Act was amended by the National Commission for Minority Educational Institutions (Amendment) Ordinance 2006, which was promulgated on 23.1.2006. This Ordinance has now been replaced by the Amendment Act 2006. By the Amendment Act, Chapter III of the Principal Act has been substituted omitting Sections 10 (1) including the Schedule and Section 12 thereof. Section 10 (1) of the Principal Act has been substituted by Section 10A, which is as under :-

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

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

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

At this juncture, learned counsel for the respondent university contended that the affiliation proceedings would be governed by Section 10A of the Amendment Act,

which provides that affiliation with a University under the Act would be permissible only if the Act under which the said University is established, permits the same. She further contended that Section 5 of the Delhi University Act clearly prohibits affiliation of a college which is situated outside the territorial limits of the University. Consequently, the petitioner college is not entitled for grant of affiliation by the respondent university. Strong reliance has been placed on the decisions rendered by the Supreme Court in South India Corporation (P) Ltd. Vs. Secretary, Board of Revenue, Trivandrum and Anr. AIR 1964 SC 207; Indian Administrative Service (S.C.S.) Association, U.P. & Ors. Vs. Union of India & Ors. 1993 Supp. (1) SCC 730; The Commissioner of Income Tax, Patiala Vs. M/s. Shahzada Nand & Sons & Ors. AIR 1966 SC 1342; M/s. Ram Bharosey Lal Krishan Kumar Vs. State of U. P. & Ors. (1972) 4 SCC 481 in support of the said contentions. In our opinion, ratio decidendi of the aforesaid cases does not govern a case like in hand.

As stated earlier, provisions of Section 10 (1) of the Principal Act have been omitted by the Amendment Act. The legislative practice in our country shows that “omission” of a provision is treated as amendment (See Section 6A of the General Clauses Act), which signifies deletion of that provision and is not different from repeal (Bhagat Ram Sharma Vs. Union of India AIR 1988 SC 740). In Commissioner of Income Tax Vs. Venketeswara Hatcheries (P) Ltd. AIR 1999 SC 1225, it was held that “where a provision of an Act is omitted by an Act and the said Act simultaneously re-enacts a new provision which substantially covers the field occupied by the repealed provision with certain modification, in that event such an enactment is regarded having force continuously and the modification or changes are treated as amendment coming into force with effect from the date of re-enforcement of re-enacted provision”. It is also well settled that substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (State of Rajasthan Vs. Mangilal Pindwal AIR 1996 SC 2181; West Uttar Pradesh Sugar Mills Association Vs. State of Uttar Pradesh AIR 2002 SC 948).

Learned counsel for the respondent submitted that in view of the amended provisions of Section 10-A of the Amendment Act, the right accrued or acquired under the repealed provision of Section 10 (1) of the Principal Act would not continue under the Amendment Act. We are not impressed by the said submission of the learned counsel. There is no express provision in the Amendment Act to exclude the operation of Section 6 of the General Clauses Act. Consequently, the right accrued or acquired under the repealed provision of Section 10 (1) of the Principal Act cannot be annihilated. Section 10 (1) of the Principal Act confers a right on a minority educational institution to seek affiliation to a Scheduled University of its choice. This right was unaffected by operation of Section 6 (c) of the General Clauses Act. Needless to add here that Section 10A of the Amendment Act also confers a right on a minority educational institution to seek affiliation from any university of its choice subject to such affiliation being permissible within the Act under which the said university is established.

Admittedly, the petitioner had applied for affiliation on 17.10.2005 when the provision of Section 10 (1) of the Principal Act was in force. That being so, it would be treated to be an application for enforcement of an accrued right and will be determined according to the un-amended provision of Section 10 (1) read with Section 12 (1) of the Principal Act. It is also pertinent to note here that the Amendment Act, which substituted the provision of Section 10 (1) of the Principal Act did not evince an intention to destroy the right created under Section 10 (1) of the repealed provision and a proceeding pending at the time of repeal or amendment in respect thereof could be continued as if the amending Act had not been passed (the Brihan Maharashtra Sugar Syndicate Ltd. vs. Janardan AIR 1960 SC 794). That apart, there is no apparent conflict between the substantive part of the amended and original sections. The amended provision of Section 10-A had slightly modified the previous provisions. Admittedly, the respondent university is an affiliating university. That being so, the affiliation proceedings would continue to be governed by the un-amended provisions of Section 10 (1) read with Section 12 of the Principal Act.

As regards the second contention of the learned counsel for the respondent university about the bar created by Section 5 of the Delhi University Act, it has to be borne in mind that there are two enactments operating in the same field and each containing a non-obstante clause stating that its provisions will have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. It is well settled that the conflict in such cases is resolved on consideration of purpose and policy underlying the enactments and the language used in them (Sarwan Singh & Anr. Vs. Kasturi Lal AIR 1977 SC 265, Kumaon Motors Owners Union Vs. State of Uttar Pradesh AIR 1966 SC 785; Adarsh Krishi Sewa Sangh Vs. Government of Madhya Pradesh 1980 MPLJ 810; Ashoka Marketing Limited Vs. Punjab National Bank AIR 1991 SC 855). Another test that is applied is that the later enactment normally prevails over the earlier one (Andhra Pradesh State Financial Corporation Vs. Official Liquidator AIR 2000 SC 2642). It is also relevant to consider as to whether any of the two enactments can be described as special one. In that case, the special one may prevail over the more general one, notwithstanding that the general one is later in time (Sangarmal Kajriwal Vs. Vishwa Cooperative Housing Society Limited AIR 1990 SC 1563).

It is relevant to note that Article 30 (1) of the Constitution gives linguistic and religious 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. In Re : Kerala Eduationa Bill, 1957 (AIR 1958 SC 959), Hon'ble the Chief Justice S. R. Das 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.”

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. (Civil Appeal No.5041 of 2005) decided on 12th August 2005 :-

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

The aforesaid observations have been quoted with approval in the case of T.M.A. Pai Foundation Vs. State of Karnataka (2002) 8 SCC 481.

As stated earlier, a meaningful exercise of the rights guaranteed under Article 30 (1) 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. This necessarily involves recognition or affiliation of minority educational institutions, for without this, the institutions cannot play their role effectively and the right conferred on the minorities by Article 30 (1) would be denuded of much of its efficacy (Re : Kerala Education Bill AIR 1958 SC 959). The Principal Act was enacted to facilitate effective exercise of the fundamental rights enshrined in Article 30 (1) of the Constitution. Although Article 30 (1) does not speak of the conditions under which the minority educational institutions can be affiliated to a University, yet the Principal Act by its very nature implies that where affiliation is asked for, the University concerned cannot refuse the same without sufficient reasons.

Section 10 of the Principal Act, prior to its amendment by the Amendment Act, 2006 conferred a right on a minority educational institution to seek affiliation from any Scheduled University of its choice. At the time the Legislature incorporated into the Principal Act Section 10 (1), it must have been aware of the existence of Section 5 of the Delhi University Act, but yet in Sections 10 (1) and 22 of the Principal Act, it declared that conferral of the right is notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Thus the right to seek affiliation conferred by Section 10 (1) of the Principal Act was not controlled by Section 5 of the Delhi University Act and this right could be enforced in such a manner provided in Section 10 (1) of the Principal Act, as Section 5 of the Delhi University Act was over-ridden by the non-obstante clause in Section 10 (1) and Section 22 of the Principal Act. That apart, provisions of the Principal Act were special and later in point of time as against the Delhi University Act and so the Principal Act is to prevail in case of a conflict over the Delhi University Act, although both the Acts contained non-obstante clauses (Jain Ink Manufacturing Company Vs. Life Insurance Corporation AIR 1981 SC 670; Ashoka Marketing Limited Vs. Punjab National Bank AIR 1991 SC 855; Maharashtra Tubes Limited Vs. State Industrial & Investment Corporation of India (1993) 2 SCC 144; Allahabad Bank Vs. Canara Bank AIR 2000 SC 1535; Solitaire India Limited Vs. Fairgrowth Financial Services Limited JT 2001 (2) SC 639; West Bengal Electricity Regulatory Commission Vs. CESE Ltd. AIR 2000 SC 3588).

Section 12 of the Principal Act confers jurisdiction on this Commission to entertain and resolve the dispute relating to the right of a minority educational institution to seek affiliation from a Scheduled University of its choice. The Principal Act being a special law relating to the right of affiliation of a minority educational institution and also being a subsequent enactment, must prevail over the provisions of Section 5 of the Delhi University Act.

Learned counsel for the respondent university has also opposed the petitioner's prayer for grant of affiliation on the ground that granting affiliation to a far-flung educational institution may affect the quality/academic standards set by the Delhi University. According to her, there would be problems in conducting examinations in the field of medical/dental education where continuous affiliation and monitoring are

necessary and the respondent university is not equipped with adequate facilities and man-power to deal with such a problem. We are not impressed by the said submissions of the learned counsel for the respondent university. The reason being that the fundamental right guaranteed under Article 30 (1) of the Constitution is intended to be effective and should not be whittled down by any administrative exigency. No inconvenience or difficulties, administrative and financial, can justify infringement of the fundamental rights.

Lastly, learned counsel for the respondent university submitted that the respondent university already has a large number of institutions and colleges affiliated to it and it may not be in a position to take on the additional burden of new institutions and colleges as well as increasing student population. She has also relied upon the Statement of Objects and Reasons of the Delhi University (Amendment) Bill 2002 which is as under :-

“THE DELHI UNIVERSITY (AMENDMENT) BILL, 2002

A

BILL

further to amend the Delhi University Act, 1922

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

1. Short title. – This Act may be called the Delhi University (Amendment) Act, 2002.
2. Amendment of Section 2 of Act 8 of 1922. – In Section 5 of the Delhi University Act, 1922, in sub-section (2), after the proviso, the following proviso shall be inserted, namely :-

“Provided further that provisions of this sub-section shall not apply in the case of any educational institution affiliation to the Indraprastha Vishwavidyalaya incorporated under the Indraprastha Vishwavidyalaya Act, 1998 (Delhi Act 9 of 1998).”

.....

STATEMENT OF OBJECTS AND REASONS

Sub-section (2) of Section 5 of the Delhi University Act, 1922 (8 of 1922), a central legislation (enacted by the Indian Legislature) prohibits the affiliation of any educational institution or college with any University other than the Delhi University within the limits of the National Capital Territory of Delhi, unless it is specifically permitted by an order of the Central Government. The Delhi University already has a large number of institutions and colleges affiliated with it and may not be in a position to take on the continuous additional burden of new institutions and colleges as well as increasing student population.

2. In order to facilitate the affiliation of institutions and colleges located in the National Capital Territory of Delhi with the Indraprastha Vishwavidyalaya, an amendment is required in sub-section (2) of Section 5 of the Delhi University Act, 1922.
3. The Bill seeks to achieve the aforesaid object.

MURLI MANOHAR JOSHI.

NEW DELHI :

The 26th February, 2002

ANNEXURE

EXTRACT FROM THE DELHI UNIVERSITY ACT, 1922

(8 OF 1922)

5. Territorial exercise of powers.- (1) * * * *

(2) Notwithstanding anything in any other law for the time being in force but subject to the provisions contained in the Jawaharlal Nehru University Act, 1966 (53 of 1966), no educational institution within the afore-mentioned limits shall be associated in any way with or be admitted to any privileges of any other University incorporated by law in the States, and any such privileges granted by any such other University to any educational institution within those limits prior to the commencement of this Act shall be deemed to be withdrawn on the commencement of this Act :

Provided that the Central Government may by order in writing, direct that the provisions of this sub-section shall not apply in the case of any institution specified in the order.”

It has to be borne in mind that every educational institution, irrespective of the community to which it belongs, is a “melting pot in our national life” and that it is essential that there should be a proper mix of educational institutions of different communities in all affiliating university in general and the Delhi University in particular, which is a national university. This means that an affiliating university like the respondent university cannot refuse affiliation to a minority educational institution on whimsical grounds. This would be inconsistent with the central concept of secularism and equality embodied in the Constitution. It is true that every minority educational institution cannot be affiliated to the respondent university. It needs to be highlighted that the petitioner’s contention that it has invested crores of rupees in the proposed dental college as it has land, building, furniture, fixtures, equipment, machinery, books, hostel, staff quarters as prescribed by the Central Government for establishment of a new dental college at Bharuch with 100 seats intake, has not been disputed by the respondent university. Consequently, it may be taken as admitted that the petitioner college has adequate financial resources, accommodation, building, library, qualified staff, etc. for proper functioning of a dental college.

In this view of the matter, the respondent university cannot deny affiliation to the petitioner on the ground that it has already more such institutions than required and it is not in a position to take on the continuous additional burden of new institutions and colleges as well as increasing student population, as it would infringe the substance of the right guaranteed under Article 30 (1) of the Constitution. Moreover, such a fact is

irrelevant so far as a minority educational institution is concerned. It is also relevant to mention that Entry No.63 of the Seventh Schedule to the Constitution contemplated the Delhi University as a national university with a sprinkling of minority educational institutions affiliated to it.

For the foregoing reasons, we are constrained to observe that none of the grounds on which the petitioner's prayer for affiliation has been rejected by the respondent university is legally tenable and the respondent university's action in rejecting the petitioner's prayer for grant of affiliation is violative of the substance of the right enshrined under Article 30 (1) of the Constitution. Accordingly, the petition is allowed and it is ordered that the respondent university shall grant affiliation to the petitioner college.

A copy of the order be sent to the Secretary, Ministry of Human Resource Development, Government of India, New Delhi; Chairman, University Grants Commission, New Delhi and Registrar, Delhi University, for its implementation in accordance with Section 11(b) of the Amendment Act (No.18 of 2006).

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

**B.S. RAMOOWALIA
MEMBER**

**VALSON THAMPU
MEMBER**

April 20, 2006