



ANNUAL REPORT 2014-15

**NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS
Gate No. 4, 1st Floor, Jeevan Tara Building
5 Sansad Marg, Patel Chowk, New Delhi - 110 001**

CONTENTS

Chapter No.	Subject	Page Nos.
1.	Introduction	1-4
2.	Composition and Functions of the Commission	5-7
3.	Sittings of the Commission	8-14
4.	Right to Information (RTI)	15
5.	Highlights of the Year	16-17
6.	Tours and Visits	18-25
7.	Analysis of Petitions and Complaints Received During the Year	26-31
8.	Cases Regarding Deprivation of Rights of Minority Educational Institutions and Affiliation to Universities	32-36
9.	Recommendations for the Integrated Development of Education of the Minorities	37-48
10.	Instances of Violation or Deprivation of Educational Rights of the Minorities	49-56
11.	Conclusion	57-58
	Annexures	59-63

CHAPTER 1 – INTRODUCTION

Section 16 of the National Commission for Minority Educational Institutions (NCMEI) Act, 2004 obligates the Commission to lay its Annual Report giving the full account of its activities during the previous financial year and forward a copy of the same to the Central Government. This is the 10th Annual Report of the Commission for the financial year 2014-15. The report gives a complete account of all its activities during the previous financial year.

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

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

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

- (h) do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission.

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

The amendment under the National Commission for Minority Educational Institutions Amendment Act, 2006 brought all affiliating universities within the ambit of the Act to afford a wider choice to the minority educational institutions with regard to affiliation. New Sections were incorporated to maintain the sanctity of the proceedings of the Commission and to amplify the powers of the Commission to enquire into matters relating to deprivation of educational rights of the minorities by acquiring the services of any officer of the Central or State Governments. The Commission was empowered to decide on questions relating to Minority Status of educational institutions and to cancel the Minority Status of those institutions which had failed to adhere to the approved norms. A deeming provision with reference to obtaining 'No Objection Certificate (NOC)' by the minority educational institutions from the State Governments was also incorporated, where under, a Minority Educational Institution could proceed with the establishment of the same if the State Government did not communicate its decision on granting NOC within 90 days. The Commission was also granted appellate jurisdiction in matters of refusal by the State Governments to grant NOC for establishing a minority educational institution.

The said amendment inserted, among others, Section 12F under which the jurisdiction of all courts, except the Supreme Court and High Courts exercising writ jurisdiction, was barred to entertain any direct applications or other proceeding in respect of any order of the Commission. Section 12F of NCMEI Act, 2004 reads as under:

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

NCMEI Amendment Act 2010

Subsequently, various suggestions were received about the provision in Section 12B (4) of the NCMEI Act suggesting deletion of the provision of consultation with the State Government. Many suggestions were received about the need to make amendment in Section 2(g)

regarding the definition of minority educational institutions where universities were excluded. Suggestions were also made relating to the need to remove the ambiguity in the provision of Section 10 concerning grant of 'No Objection Certificate' for establishment of a minority educational institution. The suggestions were examined in the Commission. It was felt that the requirement of consultation with the State Government for deciding an appeal by the Commission as per Section 12B of the Act is against the principles of natural justice. It was viewed that the consultation with the State Government took away the substantive right of appeal created in favour of an aggrieved party. Mere reading of the provision in Section 10(1) of the Act gave an impression that 'No Objection Certificate' was required for establishment of a minority educational institution in all cases. However, as per the provisions of various laws regulating the establishment of such institutions especially relating to technical and professional colleges, it was not mandatory to get the 'No Objection Certificate' from the competent authority under the State Government. Therefore, necessary amendment of Section 10(1) was felt necessary. Considering the steady increase in the workload of the Commission and to make the Commission more representative a provision for an additional Member over and above existing two Members was also felt necessary. Accordingly, on the recommendations of the Commission, the NCMEI Act, 2004 was amended to provide for the same. To make the Commission more representative, the Government amended National Commission for Minority Educational Institutions Act by Act 20 of 2010 w.e.f. 1.9.2010 increasing the number of members in the Commission from two to three.

About the Commission

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

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

S. No.	Name of Post	Number
1.	Secretary	1
2.	Deputy Secretary	1
3.	Sr. PPS	1

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

The posts of Secretary, Deputy Secretary and Under Secretary have been filled up by the Commission on transfer on deputation basis from the Central Government. Some staff have been appointed through direct recruitment. Services of some officials have been engaged on contract basis pending finalization of recruitment rules for various posts in the Commission which are under consideration of the Government. At present, staff through Ed.CIL are being recruited on contract basis.

CHAPTER 2 – COMPOSITION AND FUNCTIONS OF THE COMMISSION

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

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

During the year of the Report, Justice M.S.A. Siddiqui, the Chairman retired on 17.12.2014 after completing 5 years tenure. Dr. Mohinder Singh submitted his resignation on 30.9.2015 on personal and domestic grounds. The same was accepted by the Central Government. In his place for the remaining part of the tenure, Dr. Naheed Abidi, (Padma Shri) was appointed as a Member upto 7.4.2015 till the tenure came to end. 5 year tenure of Dr. Cyriac Thomas came to an end on 11.4.2015. Thereafter, the post of Chairman and two posts of Members are vacant. The process of filling up of post is on.

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

- (a) advise the Central Government or any State Government on any question relating to the education of minorities that may be referred to it;
- (b) enquire, *suomotu*, or on a petition presented to it by any Minority Educational Institution, or any person on its behalf into complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating to affiliation to a University and report its finding to the appropriate Government for its implementation;
- (c) intervene in any proceeding involving any deprivation or violation of the educational rights of the minorities before a court with the leave of such court;
- (d) review the safeguards provided by or under the Constitution, or any law for the time being in force, for the protection of educational rights of the minorities and recommend measures for their effective implementation;
- (e) specify measures to promote and preserve the minority status and character of institutions of their choice established by minorities;

- (f) decide all questions relating to the status of any institution as a Minority Educational Institution and declare its status as such;
- (g) make recommendations to the appropriate Government for the effective, implementation of programmes and schemes relating to the Minority Educational Institutions; and
- (h) do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission.

The powers of the Commission as per Section 12 of the Act are as follows:-

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

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).



Justice M.S.A. Siddiqui, former Chairman (in the middle) with Dr. Cyriac Thomas and Sh. Zafa Agha (standing) Hon'ble Members

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

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

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

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

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

CHAPTER 3 – SITTINGS OF THE COMMISSION

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

During the year 2014-15 the Commission conducted a total number of 176 sittings as a court and heard 5602 cases as per details given below:

Details of Court Sitting from 01.04.2014 to 31.03.2015

S. No.	Date of Sittings	Number of Cases
1	1.4.2014	63
2	2.4.2014	39
3	3.4.2014	31
4	7.4.2014	19
5	9.4.2014	26
6	15.4.2014	31
7	16.4.2014	28
8	17.4.2014	34
9	21.4.2014	31
10	22.4.2014	36
11	23.4.2014	20
12	24.4.2014	35
13	28.4.2014	44
14	29.4.2014	35
15	30.4.2014	34
16	1.5.2014	33
17	5.5.2014	29
18	6.5.2014	19
19	7.5.2014	28
20	8.5.2014	28
21	12.5.2014	30
22	13.5.2014	21
23	15.5.2014	33
24	19.5.2014	34

S. No.	Date of Sittings	Number of Cases
25	20.5.2014	32
26	21.5.2014	32
27	22.5.2014	28
28	26.5.2014	33
29	27.5.2014	30
30	28.5.2014	26
31	29.5.2014	28
32	2.6.2014	36
33	3.6.2014	19
34	4.6.2014	34
35	5.6.2014	25
36	9.6.2014	30
37	10.6.2014	22
38	11.6.2014	32
39	12.6.2014	9
40	7.7.2014	65
41	8.7.2014	42
42	9.7.2014	38
43	10.7.2014	24
44	14.7.2014	37
45	15.7.2014	79
46	16.7.2014	3
47	17.7.2014	34
48	21.7.2014	33
49	22.7.2014	28
50	23.7.2014	32
51	24.7.2014	30
52	28.7.2014	35
53	30.7.2014	30
54	31.7.2014	29
55	4.8.2014	34
56	5.8.2014	17
57	6.8.2014	37
58	7.8.2014	26
59	11.8.2014	51

S. No.	Date of Sittings	Number of Cases
60	12.8.2014	41
61	13.8.2014	31
62	14.8.2014	24
63	19.8.2014	20
64	20.8.2014	28
65	21.8.2014	27
66	25.8.2014	29
67	26.8.2014	22
68	27.8.2014	31
69	28.8.2014	23
70	1.9.2014	38
71	2.9.2014	26
72	3.9.2014	34
73	4.9.2014	24
74	8.9.2014	25
75	9.9.2014	26
76	10.9.2014	33
77	11.9.2014	29
78	15.9.2014	31
79	16.9.2014	28
80	17.9.2014	34
81	18.9.2014	23
82	22.9.2014	41
83	23.9.2014	24
84	24.9.2014	36
85	25.9.2014	25
86	29.9.2014	47
87	30.9.2014	26
88	13.10.2014	32
89	14.10.2014	27
90	15.10.2014	32
91	16.10.2014	29
92	20.10.2014	49
93	21.10.2014	40
94	22.10.2014	42

S. No.	Date of Sittings	Number of Cases
95	27.10.2014	34
96	28.10.2014	39
97	29.10.2014	43
98	30.10.2014	56
99	3.11.2014	89
100	5.11.2014	47
101	10.11.2014	34
102	11.11.2014	28
103	12.11.2014	26
104	13.11.2014	23
105	17.11.2014	51
106	18.11.2014	35
107	19.11.2014	35
108	20.11.2014	30
109	24.11.2014	33
110	25.11.2014	34
111	26.11.2014	30
112	27.11.2014	32
113	1.12.2014	42
114	2.12.2014	49
115	3.12.2014	53
116	4.12.2014	30
117	5.12.2014	37
118	8.12.2014	41
119	9.12.2014	50
120	10.12.2014	39
121	11.12.2014	39
122	12.12.2014	27
123	15.12.2014	57
124	16.12.2014	46
125	17.12.2014	55
126	18.12.2014	34
127	05.01.2015	32
128	06.01.2015	27
129	07.01.2015	23

S. No.	Date of Sittings	Number of Cases
130	08.01.2015	23
131	12.01.2015	40
132	13.01.2015	39
133	14.01.2015	26
134	15.01.2015	23
135	19.01.2015	23
136	20.01.2015	22
137	21.01.2015	24
138	22.01.2015	24
139	27.01.2015	21
140	28.01.2015	23
141	29.01.2015	26
142	02.02.2015	61
143	03.02.2015	60
144	04.02.2015	65
145	05.02.2015	21
146	09.02.2015	21
147	10.02.2015	21
148	11.02.2015	22
149	11.02.2015	22
150	12.02.2015	22
151	16.02.2015	23
152	17.02.2015	21
153	18.02.2015	24
154	19.02.2015	22
155	23.02.2015	24
156	24.02.2015	23
157	25.02.2015	23
158	26.02.2015	20
159	02.03.2015	20
160	03.03.2015	30
161	04.03.2015	24
162	05.03.2015	27
163	09.03.2015	21
164	10.03.2015	22

S. No.	Date of Sittings	Number of Cases
165	11.03.2015	27
166	12.03.2015	21
167	16.03.2015	22
168	17.03.2015	21
169	18.03.2015	18
170	19.03.2015	23
171	23.03.2015	27
172	24.03.2015	32
173	25.03.2015	26
174	26.03.2015	25
175	30.03.2015	29
176	31.03.2015	40
	Total	5602

The Commission conducted more sittings as compared to the previous year 2013-14 and also heard more cases than the previous year which were 5042.

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

Year	Sitting	Cases
2005-06	45	1404
2006-07	80	3932
2007-08	73	2916
2008-09	93	3506
2009-10	121	4377
2010-11	130	4774
2011-12	162	5022
2012-13	171	4269
2013-14	178	5042
2014-15	176	5602

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

disposal rate of cases during the year has been on higher side as compared to the previous years.

Maximum number of 17 sittings were held in the month of September, 2014 and March, 2015. Every endeavor has been made to conduct as many number of sittings on as many number of days as possible and also to list maximum number of cases in each of its sittings.

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

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

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

CHAPTER 4 – RIGHT TO INFORMATION (RTI)

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

With a view to promote transparency and accountability in the functioning of the Commission by securing to the citizens the right to access, the information under the control of public authority, the Commission has placed all obligatory information under Section 4 (i) of the RTI Act, 2005 on the Website of NCMEI viz www.ncmei.gov.in under the Right to Information Act, 2005.

During 2014-15, Shri D.R. Bhalla, Consultant (designated as DS) (w.e.f. 01.04.2014 to 01.07.2014), Shri Navin Kumar, Under Secretary (w.e.f. 02.07.2014 to 20.08.2014) and Shri Sandeep Jain, Deputy Secretary (w.e.f. 21.08.2014 to 31.03.2015) functioned as Public Information Officer. Justice MSA Siddiqui, Former Chairman (w.e.f. 01.04.2014 to 17.12.2014) and Dr. Cyriac Thomas, Former Member (w.e.f. 07.01.2015 to 31.03.2015) functioned as the First Appellate Authority.

During the year under report, the Commission received 293 RTI application and 184 appeals. All the applications/appeals were disposed of within the prescribed time limit.

CHAPTER 5 – HIGHLIGHTS OF THE YEAR

The Commission was constituted by Ministry of Human Resource Development on 16th November, 2004 with its Headquarter in New Delhi. The Commission completed 10 years of its existence in November, 2014. During the 10 years, 10812 Minority Status Certificates (MSCs) were issued till 31.03.2015. The details of State-wise Minority Status Certificate issued for the last 10 years is at **Annexure-I**.

A Committee on Girls Education was constituted by the Commission in 2007. The Committee had submitted its first report in December 2012. The Committee submitted its final report and recommendation on Minority Girls Education Part-II on 16th December, 2014. A copy of the same was sent to the Minister of Human Resource Development on 17th December, 2014 **Annexure-II**.

As per news reported in Amar Ujala Daily Hindu Newspaper dated 10.08.2014, the High Court of Allahabad, Bench at Lucknow ordered that no Minority Educational Institution can be established in the State of Uttar Pradesh without NOC from the State Government. The then Hon'ble Chairman organized a meeting with the Secretary of the concerned Department to discuss the legal aspects of the order passed by the High Court. The Chief Secretary, Uttar Pradesh also attended the meeting on 12th August, 2014. Government of UP took necessary action as per the advice of the then Chairman, NCMEI. Subsequently, Government of UP informed that the State Government issued a Gazette Notification on 5.1.2015 appointing four Principal Secretary in Departments of Higher Education, Secondary Education, Management Education and Technical Education as the Competent Authorities to grant No Objection Certificates to the Minority Institutions in the State.

At the request of West Bengal Association of Minority Institutions, Secretary NCMEI accompanied with Deputy Secretary, NCMEI visited Jalpaiguri, Siliguri and Alipurduar districts of West Bengal visited several Christian unaided minority schools between 24th to 27th September, 2014. During the visit various problems faced by the Christian unaided minority schools as highlighted by school authorities were heard. On 27th September 2014 West Bengal Association of Minority Educational Institutions presented a memorandum in a Seminar held at Siliguri in which they highlighted common problems being faced by them like denial of recognition/ N.O.C. to minorities-run schools and madrasas by present criteria and complicated procedure followed in the State Government. They also presented a demand for giving Mid Day Meal and free text books to the children of these schools. Tour report was submitted to the then Hon'ble Chairman to the Commission. He subsequently wrote a letter to Ms. Mamta Bannerjee, Hon'ble Chief Minister of West Bengal highlighting the above problems for redressal. **Annexure-III**.

Mission Swach Bharat

All officers/staff attended a pledge taking ceremony on 2nd October, 2014 which was presided by Secretary, NCMEI. The same was followed by cleanliness drive by all officers/staff. The Coordinators of the Commission spread all over the country were requested to initiate Swach Bharat Campaign in all Minority Schools.



CHAPTER 6 – TOURS AND VISITS

The basic purpose of undertaking visits by Hon'ble Chairman/Members is to interact with the stakeholders and members of the minority community with a view to understand problems/difficulties faced by the various stakeholders and to provide them with a forum for discussion of their problems. This also affords an opportunity to the Commission to apprise the members of the minority community about their Constitutional rights as well as the role and responsibilities of the Commission. This opportunity is also made use of for interacting with some of the political functionaries and the bureaucracies in various State Governments. The tours and visits of the Hon'ble Chairman and Members of the Commission have helped in sensitizing the officials of the State Governments about the rights of minorities enshrined in Article 30(1) of the Constitution of India.

Details of the tours undertaken by the Hon'ble Chairman to various places during the year 2014-15 are as under:-

S. No.	Dates of Tour	Places visited	Invited by
1.	10th to 14th June, 2014	Mumbai, Maharashtra	Secretary, Association of Minorities Institutions.
2.	12th & 13th August, 2014	Lucknow & Barabanki, Uttar Pradesh	Meeting with Chief Secretary, Uttar Pradesh.
3.	13th to 15th September, 2014	Kolkata, West Bengal	Invitation of Managing Trustee, Open Arms Educational & Charitable Trust, VidyaMandir, Moira Street, Kolkata.
4.	26th to 28th September, 2014	Chennai, Tamil Nadu	Invitation of Mr. U. SudhirLodha, Member, State Minorities Commission, Chennai.
5.	15th and 16th October, 2014	Bareilly and Pilibhit, Uttar Pradesh	Invitation of Chairman, Shafi Group of Colleges, Bisalpur, Pilibhit, UP
6.	12th & 13th November, 2014	Belgaum, Karnataka (Via Mumbai	Secretary, Bharatesh Education Trust, Belgaum.

As per news reported in Amar Ujala Daily Hindu Newspaper dated 10.08.2014, the High Court of Allahabad, Bench at Lucknow ordered that no Minority Education Institution can be established in the State of Uttar Pradesh without NOC from the Government.

The Hon'ble Chairman had a telephonic talk with the Chief Secretary, State of Uttar Pradesh

requesting him to convene a meeting of the Secretary concerned to discuss the legal aspects of the order passed by the High Court. Hon'ble the Chairman directed the Chief Secretary to convene a meeting of the concerned Secretaries on 12th August, 2014 afternoon at V.V.I.P. Guest House at Lucknow. The Chief Secretary also attended the meeting. Thereafter, corrective action was taken by the Government of Uttar Pradesh.

During the year, 2014 Hon'ble Chairman inaugurated some Seminars and Conferences organized by the managers of the Minority Education Institutions. During his speeches, he appraised the managers of these Minority Institutions about their educational rights enshrined in Art 30 (1) of the Constitutions of India and how NCMEI is protecting their rights. He also addressed them on management education. Management education is one of the most sought after career options and mushrooming institutions stand testimony to its popularity. Infrastructure and qualified faculty are prerequisite of sound Management. Competent faculty with liking for teaching and insight into the subject is a key to management education. Management education needs teachers who have adequate industry experience and passion for teaching.

He had also informed managers of these minority institutions about various beneficial schemes launched by the Central Government for the minorities.

Details of the tours undertaken by the Hon'ble Members to various places during the year 2014-15 are as under:-

Dr. Mohinder Singh, Hon'ble Member

S. No.	Dates of Tour	Place visited
1.	28.6.2014 to 29.8.2014	Punjab

Dr. Mohinder Singh, Hon'ble Member of the Commission was invited by the Punjab University, Patiala, to be Guest of Honour at a function organized to mark the centenary of BhaiKahan Singh Nabha, who prepared the first Encyclopedia of Sikkim in Punjabi. During the function Dr. J.S. Neki, eminent Sikh Scholar, delivered the lecture while Dr. Mohinder Singh talked about BhaiKahan Singh Nabha's contribution to Punjabi Literature.

Dr. Mohinder Singh was invited by the Vice-Chancellor of Sri Guru Granth Sahib World University at Fateh Garh Sahib, to address the faculty and student on Guru Granth Sahib Sthapana Diwas (Installation Day of Guru Granth Sahib). While addressing the faculty and students Dr. Mohinder Singh highlighted essential unifying message of Guru Granth Sahib. He also gave another lecture on educational concerns of the Sikhs and also made a power point presentation on rare Guru Granth Sahib Manuscripts.

Dr. Cyriac Thomas, Hon'ble Member

S. No.	Dates of Tour	Stations visited
1.	19.07.2014 to 24.07.2014	Kerala , Kochi, Trichur, Kozhikode, Puthencruz, Palai
2.	01.11.2014 to 08.11.2014	Kerala , Kochi, Adoor, Palai, Trichur, Calicut, Ernakulam, Trivandrum

S. No.	Dates of Tour	Stations visited
3.	30.09.2014 to 11.10.2014	Kerala/Karnataka Kochi, Palai, Thodupuzha, Kottayam, Ernakulam, Peermadu, Nedumkandam, Bangalore, Dharmaram
4.	26.11.2014 to 01.12.2014	Kerala Kochi, Trivandrum, Kottayam, Mannanam, Palai, Ernakulam, Palai
5.	13.02.2015 to 18.02.2015	Kerala Kochi, Palai, Kottayam, Ernakulam, Trivandrum, Kollam
6.	25.03.2015 to 29.03.2015	Kerala Kochi, Pathanamthitta, Palai, Kottayam, Trivandrum

During 19th to 24th July, 2014, Hon'ble Member Dr. Cyriac Thomas was invited to attend following programmes in Kerala :-

- (i) Participated in a Seminar at Calicut in the St. Thomas Academy of Training & Research.
- (ii) Discussion with Rt. Rev. Bishop Dr. Varghese Chakkalackal, Secretary General, Conference of Catholic Bishops of India on minority Issues.
- (iii) Participated in the Shathabishekam Celebrations of His Beatitude Most Rev. Metropolitan Baselios Thomas I Catholicos, Head of the Jacobite Church at Puthencruz.
- (iv) Discussion with his Grace Archbishop Most Rev. Mar Andrews Thazhath, Archbishop of Trichur and Senior Vice-President of the Catholic Bishops Conference of India at Trichur.
- (v) Meeting with his Grace Archbishop Mar Josep Powathil, Chairman, Inter-Church Council for Education at Changanacherry.

From 01st to 08th November, 2014, Dr. Thomas attended following important programmes:

- (i) Presenting of Veda Ratna Puraskar to the celebrity scholar Rev. Dr. T.J. Joshua at Adoor and delivering of keynote address along with Hon'ble Shri P.J.Kurien, Deputy Chairman, Rajya Sabha at the Pilgrims Meet at the sacred tomb of the Celebrity Saint Metropolitan Gee Varghese Mar Gregorios at Parumala (Thiruvalla) 2nd November, 2014.
- (ii) On 3rd November, 2014, he had a meeting and discussion with His Eminence Cardinal Cleemis, President, Catholic Bishops Conference of India at Palai.

- (iii) On 4th November, 2014, he addressed the Golden Jubilee meeting of the Priestly Ordination of Rev. Fr Thomas Thythottom along with Hon'ble Chief Minister Shri Oommen Chandy and Hon'le Minister for Cultural Affairs, Kerala, Shri K.C. Joseph at Thalassery (Kannur).
- (iv) On 5th November, 2014, he delivered a national integration message at Devagiri Public School, Calicut and a keynote address at a Seminar at the St. Thomas Academy of Research and Training, Calicut.
- (v) On 6th November, 2014, he inaugurated a UGC National Seminar on Minority Rights and Educational Excellence in the New Man College, Thodupuzha (Idukki).
- (vi) On 7th November, 2014, he visited Trivandrum for a discussion with the Executive Vice-Chairman of Kerala State Higher Education Council.

From 30th September, 2014 to 11th October, 2014, Hon'ble Member was invited to attend meeting with His Eminence Cardinal Cleemis, President, Catholic Bishops Conference of India, book release function at Thodupuzha and Ernakulam, Vijaya Dashmi Akshara Pooja celebrations By Malayala Manorama (Kottayam) and a Conference in Bangalore related to the proposed canonization of Fr. Cyriac Elias Chavara as a Saint of the Church at Dharmaram Vidya Kshetra, Bangalore.

From 26th November, 2014 to 01st December, 2014 , Dr. Cyriac Thomas attended the canonization celebration of St. Cyriac Chavara (founder of the Carmelites of Mary Immaculate) and also released a book on the Saint authored by him and by His Eminence Cardinal Cleemis President, Catholic Bishops Conference of India..

From 13th to 18th February, 2015, he made the following visits:-

- (i) On 14.02.2014, he has visited to BVM College & Holy Cross Forane Church, Cherpunkal, Palai
- (ii) on 15.02.2014, he attended a meeting of the Prof. K.M. Chandy Foundation in honour of prominent freedom fighter & former Governor of Madhya Pradesh
- (iii) on 16.02.2014, he attended the Platinum Jubilee Celebrations of Infant Jesus School, Thankassery, Kollam and also a meeting at the Major Archbishop's House of His India Eminence Cardinal Basalios Cleemis, President, Catholic Bishops Conference of India & Chairman, Kerala Catholic Bishops Council, Trivandrum
- (iv) on 17.02.2015, he had a meeting with Archbishop Dr Soosai Pakiyam, Metropolitan Archbishop of Trivandrum Latin Archbishops House, Vellayambalam, Trivandrum, meeting with Hon'ble Shri G. Karthikeyan, Speaker, Kerala Legislative Assembly at Speaker's Residence, Legislative Assembly Complex, Trivandrum and meeting and discussion with Dr. T.P. Sreenivasan IFS (Retd.) Executive Vice-Chairman, Kerala State Higher Education Council, Trivandrum.

From 25th to 29th March, 2015, Hon'ble Member attended the function at Mount Zion

Engineering College & Institute of Management. He also attended the meeting with His Eminence Cardinal Cleemis, President, Catholic Bishops Conference of India & Chairman, United Forum of Christians, Meeting & discussion with Dr. T.P. Sreenivasan, Chairman, Kerala State Higher Education Council and Meeting with His Excellency Justice Shri P Sathasivam, Governor of Kerala, Raj Bhavan, Trivandrum . He had a Meeting with His Holiness Basalios Paulose II, Head of the Orthodox Church, Devalokam Palace, Kottayam.

Shri Zafar Agha, Hon'ble Member

S. No.	Dates of Tour	Stations visited
1.	29 th May to 1 st June, 2014.	Thrissur-Ernakulum, Kerala
2.	26 th December to 28 th December,2014	Palakkad-Kozhikode, Kerala.
3.	16 th March to 18 th March, 2015.	Hyderabad, Telangana.

On 30th May, 2014, Shri Zafar Agha, Hon'ble Member attended a Seminar on "The relevance of NCMEI in solving the issues of minority educational institutions in Kerala" at Deva Matha International School, Thrissur. The seminar was organized by the Career Solutions Society, Shornoor Road, Thrissur. The meeting was attended by stakeholders of various educational institutions, academics and social activists.

On 31st May, 2014, Shri Zafar Agha, Hon'ble Member attended a seminar on "The Rights of Minorities" at Ernakulum, the seminar was organized by the Career Solutions Society, Shornoor Road, Thrissur.

The Hon'ble Member delivered the following during his lecture to highlight the role of the NCMEI in minority education:-

- (i) Relevance of Article 30(1) of the constitution of India in protecting minorities' educational rights.
- (ii) Importance of Minority Status Certificate for minorities
- (iii) Guidelines to get Minority Status Certificate

From 26th December to 28th December, the Hon'ble Member was on a visit to Kerala and addressed a seminar on "The Rights of Minority Educational Institutions" at Palakkad, organized by the Indian Education Trust, Palakkad. On the 27th December, 2014 the Hon'ble Member visited Kozhikode and addressed a programme "Declaration of an Educational Village" organized by the Religious Education Trust, Kuttiadi, Kozhikode. Eminent personalities academicians, educational activists and honorable personalities in social and political field from different parts of Kerala, attend the programme. In his address, The Hon'ble Member highlighted the role of NCMEI in protecting Minorities Educational Rights.

On 17th March, 2014, Shri Zafar Agha, Hon'ble Member attended, as Chief Guest , an International Conference on the theme "Education , Democracy and the Media: Challenges and Prospects" at Maulana Azad National Urdu University. It was organized by the Maulana Azad National Urdu University, Gachibowli, Hyderabad.



Hon'ble Member, Zafar Agha attending a seminar held in Trivandrum on 26th December, 2014 on problems of Minority Educational Institutions. Chief Minister of Kerala, Shri Oommen Chandy is addressing the gathering



Hon'ble Member Zafar Agha addressing educators at Palakkad, Kerala

Visit by Secretary, NCMEI

At the request of West Bengal Association of Minority Institutions, Secretary NCMEI accompanied with Deputy Secretary, NCMEI visited Jalpaiguri, Siliguri and Alipurduar districts of West Bengal. Several Christian unaided minority schools were visited during the tour.

2. They requested Secretary, NCMEI to attend as Chief Guest the following functions: -

- (i) 24.9.2014: to celebrate State affiliation obtained for Ursuline Hindi Hindi High School, Mohitnagar, Jalpaiguri.
- (ii) 25.9.2014: to celebrate Founder Congregation Day of Ursuline English Medium High School, Kartick, Turturi, Samuktola, Distt. Alipurduar.
- (iii) 26.9.2014: Annual Day celebration of Loyola High School, Uttor Shalboni, P.O. Mogultola, Distt. Jalpaiguri.

3. Secretary along with Deputy Secretary NCMEI visited the above three schools and also covered 4 more schools viz. Anshu Academy, Pushpika Girls School, Holy Child School and Immanuel International Academy in the Districts of Jalpaiguri and Alipurduar. In the process, team collected some information about these schools, about students and functioning of the schools as such. These schools are unaided educational institutions, which are being run by Christian missionaries. Apart from attending the functions as mentioned above, the team collected information on number of children category wise and the number of teachers teaching there. The plight of these schools were found to be pitiable. Children mostly belong to tea garden workers who are mostly tribals. The schools are mostly cash strapped. Ursuline English Medium High school at Turturi had received only temporary affiliation. There was all-round uncertainty about their future whether government will grant them affiliation.

4. On 27th September 2014 West Bengal Association of Minority Educational Institutions presented a memorandum in a Seminar held at Siliguri in which they highlighted common problems being faced by them for due redressal like denial of recognition/No Objection Certificate (N.O.C.) to minorities-run schools and madrasas by present criteria and complicated procedure. Further, Hundreds of schools/ madrasas are being denied minority status certificates by too delayed and complicated process. Thousands of school children, who study in minority-run unrecognized schools and madrasas holding no minority status certificates, are deprived of midday meals and free Govt. text books.

They made an ardent appeal to take up the issues with State Government to ensure:

- (i) That a separate, hassle free and one window desk be set up by the West Bengal Government for granting recognition and issuance of N.O.C. for minority-run schools and madrasas;
- (ii) That the minority-run schools and madrasas are granted relaxation from general

criteria and rules for granting recognition and issuance of N.O.C. by the State Government.

- (iii) That the procedure to obtain N.O.C., recognition and minority status certificate are simplified and hassle free for minorities run institutions.
- (iv) That the schools/ madrasas which are granted recognition without financial aid are given freedom to create required fund flow through fees collection to meet recurring and non-recurring expenses to run institution.
- (v) That appropriate measures along with circulation of Government Order/ Memo by State Government to relevant offices at district/ sub-division and block levels are adopted to ensure midday meals and free text books to unrecognized and unaffiliated schools and madrasas.

Former Chairman, NCMEI wrote a letter to Ms. Mamta Bannerjee, Hon'ble Chief Minister of West Bengal highlighting the above problems. A copy of the letter is at **ANNEXURE III**.

CHAPTER 7 – PETITIONS AND COMPLAINTS RECEIVED DURING THE YEAR

Right from its inception the Commission has been registering cases calendar year wise. During the year under report, the Commission registered 2606 petitions and disposed of 1673 cases. The Commission from 1st April, 2014 to 31st March, 2015 issued 1412 Minority Status Certificate to Minority Educational Institutions.

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

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

Case No. 799 of 2014

Subject: **Converting temporary Minority Status Certificate to Permanent One**

Petitioner: Holy Cross Women's College, Ambikapur, Surguja District Chhattisgarh

Respondent: The Commissioner, Schedule Tribal and Schedule Caste, Development, Government of Chhattisgarh, Daukalyan Singh Bhavan, Raipur Chattisgarh.

The petitioner institution has been established and is being administered by Pavitra Crus Sisters Association, which is a registered society, constituted by members of the Christian Community.

It transpires from the record that by the order dated 12.6.2008, the competent authority of the State Government had granted temporary minority status certificate to the petitioner institution. In our considered opinion the said temporary minority status granted to the petitioner institution deserves to be converted into a permanent one.

In N. Ammad vs. Emjay High School (1988) 6 SCC 674 the Supreme Court has held that a minority educational institution continues to be so whether the Government declares it as such or not. When the Government declares an educational institution as a minority institution, it merely recognizes a factual position that the institution was established and is being administered by a minority community. The declaration is merely an open acceptance of the legal character of the institution which must necessarily have existed antecedent to such declaration.

The issue as to whether the minority status granted to institutions was bound to be renewed periodically had already been considered by the Madras High Court in T.K.V.T.S.S. Medical Educational & Charitable Trust vs. State of Tamil Nadu AIR 2002 Madras 42 that a minority status can not be conferred on a minority educational institution for particular period to be renewed periodically like a driving license. It is not open for the State Government to review its earlier order conferring minority status on a minority educational institution unless it is shown that the institution concerned has suppressed any material fact while passing the order of conferral of minority status or there is fundamental change of circumstances warranting cancellation of the earlier order. Reference may, in this connection, be made to the following observations of their lordships: -

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

(emphasis supplied)

Thus, the minority status once granted need not be renewed periodically. Once the Government is satisfied and has granted the declaration, the same would hold good permanently.

Relying on the aforecited judgment of the Madras High Court, we find and hold that the petitioner institution is a minority educational institution under Section 2 (g) of the National Commission for Minority Educational Institutions Act. A certificate be issued accordingly.

Case No. 800 of 2014

Subject: Converting temporary Minority Status Certificate to Permanent One

Petitioner: Azaan College of Education, Yedpally, YedpallyMandal Distt.Nizamabad, Andhra Pradesh

Respondent: The Principal Secretary, Minorities Welfare Department, Government of Andhra Pradesh, Secretariat Complex, Hyderabad , Andhra Pradesh

The petitioner institution has been established and is being administered by Azaan Educational Society, which is a registered society, constituted by members of the Muslim Community.

The petitioner institution has claimed minority status certificate on the ground that vide memo 2106/SDMA/A1/2013-2 dated 10.7.2013 of the Government of A.P. has granted temporary minority status certificate to the petitioner institution for the academic year 2013-14. The petitioner submitted that the said temporary minority status be converted into permanent one. In our opinion, the aforesaid submission of the petitioner merits acceptance.

In N. Ammad vs. Emjay High School (1988) 6 SCC 674 the Supreme Court has held that a minority educational institution continues to be so whether the Government declares it as such or not. When the Government declares an educational institution as a minority institution, it merely recognizes a factual position that the institution was established and is being administered by a minority community. The declaration is merely an open acceptance of the legal character of the institution which must necessarily have existed antecedent to such declaration.

The issue as to whether the minority status granted to institutions was bound to be renewed periodically had already been considered by the Madras High Court in T.K.V.T.S.S. Medical Educational & Charitable Trust vs. State of Tamil Nadu AIR 2002 Madras 42 that a minority status can not be conferred on a minority educational institution for particular period to be renewed periodically like a driving license. It is not open for the State Government to review its earlier order conferring minority status on a minority educational institution unless it is shown that the institution concerned has suppressed any material fact while passing the order of conferral of minority status or there is fundamental change of circumstances warranting cancellation of the earlier order. Reference may, in this connection, be made to the following observations of their lordships: -

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

(emphasis supplied)

Thus, the minority status once granted need not be renewed periodically. Once the Government is satisfied and has granted the declaration, the same would hold good permanently.

Relying on the aforesaid judgment of the Madras High Court, we find and hold that the petitioner institution is a minority educational institution under Section 2 (g) of the National Commission for Minority Educational Institutions Act. A certificate be issued accordingly.

Case No. 863 of 2014

Subject: Converting temporary Minority Status Certificate to Permanent One

Petitioner: Carmel Girls' Hr. Sec. School, Raigarh, Chhattisgarh- 496 001

Respondent: The Commissioner, Schedule Tribal & Schedule Caste Development, Government of Chhattisgarh, DauKalyan Singh Bhavan, Raipur, Chhattisgarh

The petitioner institution has been established and is being administered by M.P. Sisters' Society of the Third Order Apostolic of Our Lady of Mount Carmel, which is a registered society, constituted by members of the Christian Community.

The petitioner institution has claimed minority status certificate on the ground that vide memo No. A.S./151/108/8534 dated 23.10.2008 of the Government of Chhattisgarh has granted temporary minority status certificate to the petitioner institution. The petitioner submitted that the said temporary minority status be converted into permanent one. In our opinion, the aforesaid submission of the petitioner merits acceptance.

In N. Ammad vs. Emjay High School (1988) 6 SCC 674 the Supreme Court has held that a minority educational institution continues to be so whether the Government declares it as such or not. When the Government declares an educational institution as a minority institution, it merely recognizes a factual position that the institution was established and is being administered by a minority community. The declaration is merely an open acceptance of the legal character of the institution which must necessarily have existed antecedent to such declaration.

The issue as to whether the minority status granted to institutions was bound to be renewed periodically had already been considered by the Madras High Court in T.K.V.T.S.S. Medical Educational & Charitable Trust vs. State of Tamil Nadu AIR 2002 Madras 42 that a minority status can not be conferred on a minority educational institution for particular period to be renewed periodically like a driving license. It is not open for the State Government to review its earlier order conferring minority status on a minority educational institution unless it is shown that the institution concerned has suppressed any material fact while passing the order of conferral of minority status or there is fundamental change of circumstances warranting cancellation of the earlier order. Reference may, in this connection, be made to the following observations of their lordships: -

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

(emphasis supplied)

Thus, the minority status once granted need not be renewed periodically. Once the Government is satisfied and has granted the declaration, the same would hold good permanently.

Relying on the aforesaid judgment of the Madras High Court, we find and hold that the petitioner institution is a minority educational institution under Section 2 (g) of the National Commission for Minority Educational Institutions Act. A certificate be issued accordingly.

Case No. 974 of 2014

Subject: Converting temporary Minority Status Certificate to Permanent One

Petitioner: Nimra College of Engineering & Technology, Nimra Nagar Jupudi, Ibrahimpatnam, Vijayawada, Krishan District, Andhra Pradesh

Respondent: The Principal Secretary, Minorities Welfare Department Government of Andhra Pradesh, Secretariat Complex, Hyderabad, Andhra Pradesh

The petitioner institution has been established and is being administered by Nimra Educational Society, which is a registered society, constituted by members of the Muslim Community.

The petitioner institution has claimed minority status certificate on the ground that vide memo 091/3686/M&R/99(M) dated 29.7.1999 of the Government of A.P. has granted temporary minority status certificate to the petitioner institution. The petitioner submitted that the said temporary minority status be converted into permanent one. In our opinion, the aforesaid submission of the petitioner merits acceptance.

In N. Ammad vs. Emjay High School (1988) 6 SCC 674 the Supreme Court has held that a minority educational institution continues to be so whether the Government declares it as such or not. When the Government declares an educational institution as a minority institution, it merely recognizes a factual position that the institution was established and is being administered by a minority community. The declaration is merely an open acceptance of the legal character of the institution which must necessarily have existed antecedent to such declaration.

The issue as to whether the minority status granted to institutions was bound to be renewed periodically had already been considered by the Madras High Court in T.K.V.T.S.S. Medical Educational & Charitable Trust vs. State of Tamil Nadu AIR 2002 Madras 42 that a minority status can not be conferred on a minority educational institution for particular period to be renewed periodically like a driving license. It is not open for the State Government to review its earlier order conferring minority status on a minority educational institution unless it is shown that the institution concerned has suppressed any material fact while passing the order of conferral of minority status or there is fundamental change of circumstances warranting cancellation of the earlier order. Reference may, in this connection, be made to the following observations of their lordships: -

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

(emphasis supplied)

Thus, the minority status once granted need not be renewed periodically. Once the Government is satisfied and has granted the declaration, the same would hold good permanently.

Relying on the aforesaid judgment of the Madras High Court, we find and hold that the petitioner institution is a minority educational institution under Section 2 (g) of the National Commission for Minority Educational Institutions Act. A certificate be issued accordingly.

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

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

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

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

Case No. 2377 of 2013

Subject: Approval of appointment of teachers

Petitioner: Ushagram Girls High School, P O Ushagram, Asansol, District Burdwan, West Bengal- 713 303.

Respondent: The Chief Secretary, Govt. of West Bengal, Writers Building, Kolkata, W. Bengal & Others.

This is a case filed by the petitioner school seeking directions against the respondents for post facto approval of appointment of five (5) teachers against sanctioned posts which the respondents have refused to accord approval.

The teachers selected and appointed by the petitioner school on 10-3-2012 joined service on 15-3-2012 on the sanctioned vacant posts, which fell vacant owing to the death, retirement and resignation of incumbent teachers. The petitioner Ushagram Girls High School submits that it is being run and managed by the Methodist Church in India (MCI), Bengal Regional Conference. The petitioner school happens to be one of the institutions governed by the Special Rules notified vide no. 641-Edn. (S) 8B-3-69 Pt. VII 23-5-1974, issued by Govt. of WB.

to which the special rules for Christian educational institutions well applies as serial no. 30 of the said notification. Thereafter the Govt. of WB (School Edn. Dept. – Law Branch) issued an order dated 6-6-2012 by which it further ratified the special minority status for the petitioner school (No. 641- Edn. (S)/ 8B-3/69 Pt. 7-23rd May 1974).

The petitioner further submits that the Edn. Dept. has sanctioned twelve (12) posts for teaching for the petitioner school from 1967 to 1988. But due to death, retirement and resignation five (5) posts of teachers were lying vacant and out of the five (5) vacant posts the management of the petitioner school filled up them on 15-3-2012, maintaining all govt. rules and norms. The petitioner school further submits that from 10-6-2010 the said school was seeking prior permission before the District Inspector of Schools, Burdwan with repeated reminders which did not evoke any response from the respondent. The petitioner school affirms that it published advertisement in Bengali newspaper Ajjal on 19th Nov. 2011, inviting applications to fill up the five (5) vacant posts of assistant teachers aged between 18 to 40 with qualifications stipulated by the govt. (Madhyamik Pass or equivalent, preferably trained for primary teaching).

The management of the school conducted a written examination in which 62 out of 75 candidates appeared on 21-1-2012 and on the basis of the result of the written test a viva voce was conducted for 25 candidates from the rank list and prepared a list of five (5) selected candidates for giving appointment for the said sanctioned vacant posts who joined service as assistant teachers in the petitioner school on 15-3-2012. The names of the appointed teachers as seen from the records submitted by the petitioner school are:

1. Sumana Das (Retirement Vacany of SubrataPandit)
2. PewpaSen Gupta (Retirement Vacany of NanditaChakraborty)
3. Epsita Das (Retirement Vacancy of Ruby Gomesh)
4. NupurPatra (Retirement Vacancy of GeethanjaliHemroe)
5. Avipsita Das (Retirement Vacancy of bibhaBiswas)

The petitioner submits that the school made several representations to the respondents praying to accord approval post facto for the above mentioned five (5) teachers selected and appointed by the management as per rules and qualifications prescribed by the competent authority. The petitioner school contend that it is a minority educational institution and happens to be a listed school under Special Rules and it is the prerogative of the petitioner school as such to appoint teachers of its choice, provided it satisfies the stipulated norms and qualifications prescribed by the govt. for the said teaching posts and this right of the petitioner school falls within the purview of Article 30 of the Constitution of India. The contention of the petitioner is that by declining the approval to the teachers selected and appointed by the Managing Committee of the school (which is a minority educational institution), the respondents have made a clear interference with the school's right to administer it which contravenes to the principle enshrined in Article 30. The petitioner also refers to the Hon'ble Supreme Court's observation in T M APai Foundation and Ors. Vs State of Karnataka and Ors (2002 (8) 5 CC

481) that the right to appoint teaching and non teaching staff is the most important facet of minority's right to administer under Article 30 (1) of the Constitution. It further held that 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 and appointment of teachers for an educational institution as this right has been regarded as one of the essential ingredients under Article 30 (1).

The petitioner school submits that in this case the respondents are making unjustifiably inordinate delay in the matter of approval of the selected teachers in spite of repeated representations and reminders. It is nothing but an infringement on their minority rights guaranteed by the Constitution.

The contention of the petitioner school is that nothing can infringe their sacred minority rights guaranteed by Article 30 and since they fall under the Special Rules they are not bound by other rules and norms formulated by the govt. in the matter of recruitment of teachers from time to time. The petitioner concedes that their only compulsion is to appoint persons with requisite minimum qualifications, stipulated by the govt. for appointment of teachers and on teaching staff, against sanctioned posts. Hence the petitioner pleads that it is the bounden duty of the competent authority of the State Govt. to accord approval of the lawfully appointed teachers with prescribed qualifications as per rules.

In view of the facts and circumstances of the case, it becomes evident that the respondents had been acting arbitrarily by declining approval to the said appointed teachers by withholding their approval orders which is prima face an act of denying the minority rights conferred on the petitioner institution by Article 30 of the Constitution.

From the facts before this Commission, it has come to our notice that the competent authority of the State Govt. of W.B seems to have acted with purposeful malafide in the matter of refusing necessary approval of the said appointments in question.

Relying on the said unrebutted records of evidence and in view of the said facts of the case and also considering that the said teachers were serving in the school without break of service from 15-3-2012 and not yet receiving their entitled salary and emoluments till date since their date of joining, owing to the refusal of approval by the respondents in the matter of the said appointments made by the petitioner school, this Commission hereby directs the Director/ Secretary of School Education Dept, W.B, as also the District Inspector of Schools, Primary Education, District Burdwan, W.B- 713 303 to accord approval to the said appointments of assistant teachers made by the petitioner, Ushagram Girls School with payment of arrears of salary and all other eligible benefits due to the said teachers from their date of joining service.

This case is disposed of accordingly. The decision be intimated to the petitioners as also to the respondents.

Case No. 321 of 2015

Subject: Grant of No Object Certification.

Petitioner: Bhagwan Mahaveer, School of Architecture, Jagdishpur Near O P Jindal University, Sonapat, through its registrar O.P.Sharma

Respondent: The Financial Commissioner & Principal Secretary, Dept. of Technical Education, Govt. of Haryana, Room No. 503/5, Sec. – 17, New Secretariat, Chandigarh.

By this petition, the petitioner, a minority educational institution covered under Article 30 (1) of the Constitution seeks a declaration in terms of Sub-Section (3) of Section 10 of the National Commission for Minority Educational Institutions Act (for short the 'Act') that the competent authority has deemed to have granted NOC to the petitioner institution for its affiliation with the Guru Gobind Singh Indraprastha University, Delhi. Indisputably, the petitioner institution is a minority educational institution covered under Article 30 (1) of the Constitution. It is pleaded that on 4.10.2013, the petitioner had applied to the respondent for grant of NOC for its affiliation to the Guru Gobind Singh Indraprastha University, Delhi and even after expiry of the statutory period of 90 days the competent authority did not pass any order thereon. That being so, the petitioner is entitled to invoke the deeming provisions of Sub-Section (3) of Section 10 of the Act, which reads as under: -

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

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

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

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

“**4. Jurisdiction

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

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

(emphasis supplied)

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

Having regard to the fact and circumstances of the case, we find and hold that since the respondent has not passed any order on the petitioner’s application dated 4.10.2013 for grant of NOC for its affiliation with the Guru Gobind Singh Indraprastha University, Delhi even after expiry of the statutory period of 90 days, we have no option but to declare that the competent authority has deemed to have granted the NOC as sought by the petitioner institution for its affiliation with the Guru Gobind Singh Indraprastha University, Delhi. A No Objection Certificate is hereby granted to the petitioner institute for its affiliation to the Guru Gobind Singh Indraprastha University, Delhi. The University is directed to act upon the N.O.C. granted to the petitioner institution by this Commission. No Objection Certificate be given *dasti*.

CHAPTER 9 – RECOMMENDATIONS FOR THE INTEGRATED DEVELOPMENT OF EDUCATION OF THE MINORITIES

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

- (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.

One order passed by the Commission is as below: -

Case No.766 of 2012

Subject: Setting up of a new school

Petitioner: Sushant Shikshan Sanskar Sanstha, Bhilewada, Shri Bhaiyalal Assaramji Goswami, Post kardha, Tehsil and District Bhandara, Maharashtra, Through its President.

- Respondents:**
- (i) The Secretary, Department School Education & Sports, Government of Maharashtra, Mantralaya, Mumbai, Maharashtra.
 - (ii) The Director of Education, (Secondary & Higher Secondary), Maharashtra State, Pune -1.
 - (iii) The Deputy Director of Education, Nagpur Division, Nagpur
 - (iv) The Education Officer (Secondary), Zila Parishad Bhandara, Maharashtra

The petitioner society has been declared as a minority institution by the State Government vide orders dated 1.12.2008. The Mahatma Jyotiba Phule High School at Mauza Masal was being run by Navyuvak Samaj Education Society which was de-recognized by the State Government in the year 1997 on the ground of maladministration and also for non-removal of some deficiencies. Since the Navyuvak Samaj Education Society was not interested in running the said school, the petitioner society submitted a proposal on 2.1.2009 for establishment of High School at Mauza Masai as a substitute/alternate school in place of the said derecognized

school. On evaluation of the said proposal the respondent No. 4 recommended it on the ground of local needs and the sound financial position of the petitioner Society. Acting on the recommendation of the respondent No. 4, the respondent No. 2 forwarded the proposal to the respondent No. 1. The respondent No. 1 rejected it on 26.2.2010 on the ground that there was a high school and junior college at Mauza Masal and proposal for establishment of school as a substitute/alternate school in place of derecognized school namely, Mahatma Jyotiba Phule High School amounts to establishment of a new school. Hence this petition.

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

The point which arises for consideration is that the impugned action of the respondent No. 1 in rejecting the petitioner's proposal for establishment of the proposed school is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

It is relevant to mention that the petitioner society has been declared as a minority institution by government vide orders dated 1.12.2008.

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

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

Thus, the twin objects sought to be achieved by Article 30(1) in the interest of minorities are:

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

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

not their only aim. They also desire that their students are well-equipped for useful career in life.”

It needs to be highlighted that pursuant to the memo No. Misc- 2009/(422-09)/S.E.]. Dated 2.4.2009 of the Under Secretary, Government of Maharashtra, the Distt. Education Officer (Sec), Z.P. Bhandara strongly recommended the petitioner’s proposal for establishment of the proposed school vide memo No. BZP/E.D./Sec/De—3/1206109 dated 11.5.2009. By the memo No. O.No. Sec. Edu/D/10346/09 dated 11.5.2009, Deputy Director endorsed the (Education) Nagpur recommendation of District Education Officer (Sec) and requested the Director of Education to expedite action thereon. Thereupon, the Director of Education, agreeing with the recommendations of the District Education Officer (Sec) requested the Government for appropriate action on the petitioner’s proposal.

It is significant to mention that despite recommendations of the aforesaid officers, the petitioner’s proposal was rejected by the Government vide memo No. SSE 2010 /C18/10/ S.E.I. School Education and Sports Department dated 26.2.2010 on the sole ground that the petitioner’s proposal amounts to setting up a new school.

It needs to be highlighted that the State Government had granted permission for establishment of the following substitute,/alternate schools:

1. Charandas Primary School , Old Mangalwari, Nagpur vide memo No. KNPS/1009/ (No/2009) Training — 3 dated 13.8.2009, School Education and Sports Department, Government of Maharashtra.
2. Bhusanrao Patil High School, Tilli of Madhuri Shikshan Sanshtha, Tilli (Mohgaon) Distt., Gondia vide memo No. Alternate — 2009 (53-09)/Sec. Education- School Education and Sports Department Government of Maharashtra dated 31.8.2009.
3. Gagan High School, Ganeshpur, Distt. Bhandara vide memo No. Alternate 2009 (198/09/Mashi-1, School Education and Sports Department, Government of Maharashtra dated 31.8.2009.

The aforesaid orders of the Government directly stares into the face of the impugned order dated 26.2.2010 and clearly proves that. The petitioner’s society has been discriminated against in the matter of grant of permission for establishment of the proposed school. The impugned order dated 26.2.2010 clearly attracts the vice of arbitrariness. Consequently, we find and hold that the impugned action of the State Government in rejecting the petitioner’s proposal for establishment the school is virtual negation of the fundamental right enshrined in Article 30(1) of the Constitution.

For the reasons discussed above, we strongly recommend to the Secretary, School Education Department, Government of Maharashtra, Mantralaya, Government of Maharashtra to reconsider the petitioner’s proposal for establishment of a High School at Mauza Masai, Taluka Lakhandur, Distt. Bhandara as a substitute/alternate school in place of the derecognized school, i.e. Mahatma ‘Jyotiba Phule High School in the light of the recommendations made by the Educational Authorities mentioned above.

Case No.2741 of 2013

Subject: Starting Primary English School

Petitioner: Tiranga Bahuudheshiya Sanstha, Plot No. 2. Hamid Colony, Near Railway Station, Distt. Aurangabad, Maharashtra, Through its Secretary

Case No.2742 of 2013

Petitioner: Tiranga Bahuudheshiya Sanstha, Plot No. 2. Hamid Colony, Near Railway Station, Distt. Aurangabad, Maharashtra, through its Secretary

Respondent: (i) The Additional Director (Education), Government of Maharashtra, Mantralaya Annex, Mumbai, Maharashtra

(ii) The District Education Officer, District Aurangabad, Maharashtra

Two separate cases have been filed on behalf of the Tiranga Bahudesiya Sanstha, seeking a direction to the State Government to grant permission for starting primary English schools under the name of Mother Mary English School, Satara Parisar, Aurangabad and Mother Mary English School, Tidi Tq. Vaijapur Dist. Aurangabad.

Since a common law and facts are involved in both the cases they are being disposed of by this common order. Record of Case No. 2742/2013 be tagged with the record of this case, which is treated as the lead case.

It is alleged that the Tiranga Bahudesiya Sanstha, Aurangabad has been declared as minority institution by the Government of Maharashtra vide order No. Ashaisan-2009/1046/Pr. Kra. 39/2009/Ka.1 dated 3.10.2009. The petitioner society has submitted two proposals for establishment of two primary English Schools at Satara Parisaar, Aurangabad and Tidi Tq. Vaijapur Dist. Aurangabad, Maharashtra. It is alleged that the petitioner society has been running three primary schools and there is no other primary school within a radius of 10 kms. It is alleged that these schools were inspected by the competent authority of the State Government and both the proposals were duly recommended to the State Government. According to the petitioner despite recommendations of the respondent No. 2 in support of the petitioners 'proposals, the State Government did not grant permission as sought by the petitioner society. It is further alleged that impugned action of the State Government in not granting permission to the petitioner society to establish aforesaid schools is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

Despite service of notice none entered appearance on behalf of the respondent No. 1. Respondent No. 2 has filed reply supporting the proposals submitted by the petitioner society. It is stated in the reply that on inspection of the pre primary schools run by the petitioner society, the District Level Committee had recommended the proposals to the State Government for granting the requisite permission, but its recommendations were not accepted by the State Government.

The question which arises for consideration is as whether the impugned action of the

State Government in not granting permission to the petitioner society for establishment of primary schools at Satara parisar, Aurangabad and Tidi Tq. Vaijapur Dist. Aurangabad, Maharashtra is violative of the educational rights of the minorities enshrined under Article 30(1) of the Constitution.

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

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

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

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

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

At this juncture, it would be useful to excerpt the following observations of their Lordships

of the Supreme Court in the case of P.A Inamdar & Ors. Vs. State of Maharashtra & Ors. (supra) :

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

Thus, the twin objects sought to be achieved by Article 30(1) in the interest of minorities are:

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

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

It needs to be highlighted that the respondent No. 2 has stated in its reply that on evaluation of the proposals submitted by the petitioner society, the District Level Committee recommended to the State Government for grant of requisite permission for establishment of the proposed primary schools. It is beyond any pale of controversy that by the order dated 3.10.2009, the petitioner society has been declared a minority institution by the State Government. It needs to be highlighted that the District level Committee had recommended the petitioner’s proposals to the State Government but the same was turned down by the State Government for no rhyme or reasons. It is alleged that the petitioner society has all the infrastructural and instructional facilities for establishment of the proposed primary schools and in view of the local needs of the Muslim community, there appears to be no justification for refusal of the permission for establishment of the said primary schools. Since the proposals were recommended by the District Level Committee, the State Government ought not to have rejected the petitioners’ proposals for no rhyme and reasons. For being so, the impugned action of the State Government in not granting permission to the petitioner society for establishment of the

said primary schools in accordance with the recommendations of the District Level Committee is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

For the foregoing reasons, we strongly recommend to the State Government to grant permission to the petitioner society for establishment of the proposed primary schools at Satara Parisar, District Aurangabad, Maharashtra and Tidi Tq. Vaijapur Dist. Aurangabad, Maharashtra.

Copy of the order be placed on the record of Case No. 2742/2013.

Case No. 2910 of 2013

Subject: Selection and appointment of 3 teachers

Petitioner: Bengali Girls' Day School, G.T. Road, Asansol, District Burdwan, West Bengal

Respondent: (i) The Secretary, School Education Department, Government of West Bengal, Bikash Bhavan (6th Floor), Salt Lake City, Kolkata, West Bengal.
(ii) The Director, School Education Department, Government of West Bengal, Bikash Bhavan (7th Floor), Salt Lake City, Kolkata, West Bengal.
(ii) The District Inspector of School, (Primary Education), Burdwan, Post Office Burdwan, District Brdwan, West Bengal.

By this petition, the petitioner seeks direction to the State Government to accord ex -post facto approval to the selection and appointment of 3 teachers namely, Mr. Subhendu Hazra, Mr. Bijoy Das and Ms. Shampa Biswas and also to release their salaries. It is alleged that the petitioner institution has been noticed as a minority educational institution vide the notification No. 641-Edn(S)18B-3/69 pt. VII— 23rd May 1974 issued by the Government of West Bengal. On 21.3.2012, Mr. Subhendu Hazra, Mr. Bijoy Das and Ms. Shampa Biswas were duly selected and appointed as teachers by petitioner institution against the sanctioned posts and they joined their duties on 28.3.2012. Thereafter all the relevant documents relating to selection and appointment of these teachers were sent to the Director of School Education, Government of West Bengal, Bikash Bhavan, Salt Lake city, Kolkata vide letter dated 6.8.2013 for according approval to appointment of the said teachers. It is alleged that despite repeated reminders the competent authority of the State Government has neither accorded approval of the appointment of these teachers nor released their salaries. It is further alleged that impugned action of the State Government in not releasing the salaries of these teachers duly appointed by the petitioner institution is violative of the educational rights of the minorities enshrined under Article 30(1) of the Constitution.

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

The issue which arises for consideration is as to whether the impugned action of the State Government in not granting approval to the appointment of the aforesaid teachers and also not

releasing their salaries is violative of the educational rights of the minorities under Article 30(1) of the Constitution.

It is well settled that autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institution. The State or any University Statutory authority cannot under the cover or garb of adopting regulatory measures destroy the administrative autonomy of a minority educational institution or start interfering with the administration of the management of the institution so as to render the right of the administration of the institution concerned nugatory or illusory. The State Government or a University cannot regulate the method or procedure for appointment of Teachers/ Lecturers/ Headmasters /Principals of a minority educational institution. Once a Teacher/ Lecturer/ Headmaster/ Principal possessing the requisite qualifications prescribed by the State or the University has been selected by the management of the minority educational institution by adopting any rational procedure of selection, the State Government or the University would have no right to veto the selection of those teachers etc.

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

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

It has been held by the Supreme Court in State of Himachal Pradesh vs. Parasram AIR SCW 373, that declaration of law made by the Supreme Court cannot be forsaken, under any pretext by any authority. In Brahmo Samai Education Society vs. State of West Bengal (2004) 6 SCC 224, the Supreme Court has held that "the State Government shall take note of the declarations of law made by this Court in this regard and make suitable amendments to their laws, rules and regulations to bring them in conformity with the principles set out therein."

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

"It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline

and its efficiency in teaching. The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management. That is part of the fundamental right of the minorities to administer the educational institution established by them.”

(Emphasis supplied)

The aforesaid proposition of law enunciated in St. Xavier (Supra) has been approved by the Supreme Court in T.M.A. Pai Foundation (Supra). The State has the power to regulate the affairs of the minority educational institution also in the interest of discipline and academic excellence. But in that process the aforesaid right of the management cannot be taken away even if the Government is giving hundred percent grant. The fact that the post of the Teacher/ Headmaster/Principal is also covered by the State aid, will make no difference. It has been held by the Supreme Court in Secretary, Malankara Syrian Catholic College vs. T. Jose 2007 AIR SCW 132 that even if the institution is aided, there can be no interference with the said right. Subject to the eligibility conditions/qualifications prescribed by the State or Regulating Authority being met, the minority educational institution will have the freedom to appoint Teachers/ Lecturers/ Headmasters/ Principals by adopting any rational procedure of selection. The imposing of any trammel thereon except to the extent of prescribing the requisite qualifications and experience or otherwise fostering the interests of the institution itself cannot but be considered as a violation of the right guaranteed under Article 30(1) of the Constitution. Independence for selection of teachers among the qualified candidates is fundamental to the maintenance of the academic and administrative autonomy of an aided institution.

The petitioner institution is a minority educational institution covered under Article 30(1) of the Constitution vide notification dated 23.5.1974. As a minority educational institution the petitioner institution has a unfettered right to select and appoint its teaching and non teaching staff against the sanctioned posts in accordance with the qualification and eligibility prescribed by the statutory authorities.

Despite service of notice, the respondents did not contest the proceedings. This clearly indicates that the respondents have no case against the petitioner. The affidavit of Smt. Binodini Soren, Secretary of Bengali Girls Day School read along with the petition filed u/s 11 of the NCMEI Act clearly proves that the these teachers were duly selected and appointed by the petitioner institution against sanctioned posts. That being so, the selection and appointment of these teachers cannot be faulted on any legal ground.

For the foregoing reasons, the petition is allowed and we recommend to the respondents to release salaries of the teachers from the date of their appointment i.e. 21.3.2012.

Case No. 49 of 2012

Subject: For establishment of Primary Schools

Petitioner: Khaja Banda Nawaz Educational & Social Welfare Society, Plot No. 6, N-12, F Sector, Near Himayat Bagh, CIDCO Aurangabad. Maharashtra , through its Chairman, Mr. Qazi Taufeeque Ahmed

Respondent: (i) The Secretary, School Education & Sports Department, Government of Maharashtra, Mantralaya Annex, Mumbai. Maharashtra.
(ii) The Education Officer (Primary), Ziia Parishad, Aurangabad, Maharashtra.

Pursuant to the advertisement published in the Dainik Lokmat dated 1.5.2008. the petitioner society submitted a proposal to the State Government for establishment of the following three schools:-

1. Abdul Azeem English Primary School, Near Paithan Gate. Subzi Mandi. Aurangabad
2. Auxin English School. Near Takalkar Society, Roshan Gate, Aurangabad.
3. Groovie English School. Plot No. 13, N42. D Sector CIDCO, Aurangabad

It is alleged that the respondent did not take any action on the said proposals. The petitioner did not want any grant from the State Government for establishment of these schools which are required to be established to cater to the local needs of the backward Muslim community. It is further alleged that the impugned action of the State Government in not according permission for establishment of the said primary schools is violative of the educational rights of the minorities enshrined in Article 30 of the Constitution.

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

The question which arises for consideration is as whether the impugned action of the State Government in not granting permission to the petitioner society for establishment of primary schools namely, Abdul Azeem English Primary School, Near Paithan Gate. Subzi Mandi, Aurangabad. Auxin English School. Near Takalkar Society. Roshan Gate. Aurangabad and Groovie English School. Plot No. 13. N-12, D Sector CIDCO, Aurangabad, Maharashtra is violative of the educational rights of the minorities enshrined under Article 30(1) of the Constitution.

A stream of Supreme Court rulings commencing with the Kerala Education Bill, 1957 (AIR 1958 SC 359) and climaxed by P.A. Inamdar & Ors Vs. State of Maharashtra & Ors 2005 6 SCC 537 has settled the law for the present. The whole edifice of case law on Article 30(1) of the Constitution has been bedrocked in Kerala Educational Bill's case (supra). Article 30(1) of the Constitution gives the minorities a fundamental right to establish and administer educational institutions of "their choice". The rationale behind Article 30(1) of the Constitution is to give protection to minorities to run educational institutions of their choice. These rights are

protected by a prohibition against their violation and are backed by a promise of enforcement. The prohibition is contained in Article 13, which bars the State from making any law or rule or regulation abridging or limiting any of these provisions under Chapter III of the Constitution and threatens to veto any law, rule or regulation found inconsistent with.

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

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

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

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

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

“..... ..The object underlying article 30(1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services.

Educational institutions imparting higher instructions including general secular education. Thus the twin objects sought to be achieved by Article 30(1) in the interest of minorities are:

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

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

It is also relevant to mention that imparting education is a state function, The state, however, having regard to its financial constraints is not always in a position to perform its duties. The function of imparting education has been to a large extent taken over by the citizens themselves. The State Government is the custodian of fundamental rights of the citizens. Keeping in view the mandate of Article 30 (1) of the Constitution, the State Government is under clear constitutional obligation to consider the choice and needs of a minority community for imparting higher/professional education to its children.

In the instant case. the petitioner society submitted the proposals to the State Government for establishment of three schools on non-grant basis. but the State Government did not take any action on the said proposals. Mr. Qazi Toufeeque Ahmed has filed his affidavits stating that the petitioner institutions have all the infrastructural and instructional facilities for establishment of the proposed schools. It needs to be highlighted that the managers of the proposed primary school are not demanding any financial aid from the Government. In this view of the matter the State. Government ought not to have rejected the petitioner’s proposals for establishment of the proposed schools. It is a matter of great concern today that educational rights of the minorities enshrined under Article 30(1) of the Constitution have come under impressing strain contrary to the spirit enshrined in the Constitution. Article 30(1) of the Constitution which should be construed according to the liberal , general and sympathetic approach. This approach should be reflected in the action taken by the State and its instrumentality and open to legitimate demand or grievance made by a minority community.

For the foregoing reasons, we recommend to the State Government to grant permission to the petitioner society for establishment of the proposed schools, namely Abdul Azeem English Primary School. Near Paithan Gate, Subzi Mandi. Aurangabad. Auxin English School, Near Takaikar Society. Roshan Gate, Aurangabad and Groovie English School. Plot No. 13, N-12. D Sector CIDCO, Aurangabad

CHAPTER 10- INSTANCES OF VIOLATION OR DEPRIVATION OF EDUCATIONAL RIGHTS OF THE MINORITIES

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

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

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

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

A meaningful exercise of the rights guaranteed under Article 30(1) of the Constitution must, therefore, mean the right to establish effective educational institutions which may subserve the real needs of the minorities and the scholars who resort to them. It is permissible for the State or the regulatory authority to prescribe regulations, which must be complied with, before any minority institution could seek or retain affiliation and recognition but such regulations should not impinge upon the minority character of the institution. Therefore, a balance has to be kept between the two objectives – that of ensuring the standard of excellence of the institution, and that of preserving the right of the minorities to establish and administer their educational institutions. Regulations that embraced and reconciled the two objectives could be considered to be reasonable. (See T.M.A. Pai Foundation Vs. State of Karnataka 2002 (8) SCC

481). In T.M.A. Pai Foundation's case, it has been held by the Supreme Court that affiliation and recognition has to be available to every institution that fulfills the conditions for grant of such affiliation and recognition. Moreover, the right conferred by Art. 30 on minorities imposes a duty on the legislature and the executive to abstain from making any law or taking any executive action which would take away or abridge that right.

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

Case No. 2475 of 2012

Subject: Exemption from the scope of the RTE Act, 2009

Petitioner: Karnataka Regional Commission for Education, Regional Pastoral Centre, 2nd Cross Da Costa Layout, St. ThomasTown Post, Bangalore – 560 084.

Respondent: (i) The Chief Secretary, Government of Karnataka, 3rd Floor, R.No. 320, Vidhan Soudha, Secretariat, Bangalore, Karnataka – 560 001.

(ii) The Principal Secretary, Education Department, (Primary & Secondary Education), Government of Karnataka, M.S.Building, Bangalore, Karnataka – 560 001

(iii) The Principal Secretary, Education Department, (Higher Education), Government of Karnataka, M.S.Building, Bangalore, Karnataka – 560 001.

By the letter dated 01.11.2012, Dr. H.T. Sangliana, Vice Chairperson of the National Commission for Minorities, seeks a direction to the Government of Karnataka to obey the judgment of the Supreme Court holding that unaided minority institutions are exempted from the scope of the RTE Act. It is alleged that the officials concerned of the Government of Karnataka are harassing managers of the Christian school for not implementing the provisions of the said Act.

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

The issue raised by Dr. H.T. Sangliana is squarely covered by a recent judgment rendered by the Constitutional Bench of the Supreme Court in Paramati Educational and Cultural Trust vs. Union of India 2014 AIR SCW 2859. It has been held by the Supreme Court that the Right of Children to free and compulsory Education Act (for short the Act) cannot be made applicable to a minority educational institution covered under Article 30(1) of the Constitution. Their lordships of the Supreme Court have held that the Act in so far it is made applicable to minority schools referred in clause (1) of Article 30 of the Constitution is ultra vires the Constitution. They have further held that the judgment rendered by the Supreme Court in Unaided Private Schools of Rajasthan vs. Union of India AIR 2012 SC 3445 in so far as it holds that the Act is applicable to aided minority schools is not correct.

Consequently, we direct the Chief Secretary of the State of Karnataka to issue appropriate directions to the authorities of the Education Department of the Government of Karnataka restraining them from applying the Act to minority schools covered under Article 30(1) of the

Constitution and to obey the law declared by the Constitutional Bench of the Supreme Court in Paramati Educational and Cultural Trust (Supra).

Case No. 3199 of 2012

Subject: Reservation of 10% seats for SC and ST students

Petitioner: Fatima Convent School Eng. Medium, Mariam Nagar, Ghaziabad, U.P.

- Respondent:**
- (i) The Chief Secretary, Government of U.P, 2nd Floor Room No, 2nd Floor, Room No. 11-12, U.P. Secretariat, AdhikariBhawan, Lucknow, U.P.
 - (ii) The Secretary, School Education Department, Government of UP, Lucknow UP.
 - (iii) The City Education Officer, Ghaziabad, U.P
 - (iv) The Deputy Secretary, School Education Department, Government of U.P, Secretariat, Lucknow, U.P.
 - (v) Mr. Kumarpal, Gautam Budh Gali, Gali No. 9, Ghookna, Ghaziabad, U.P.
 - (vi) Mr. Manoj Kumar, C – 532, Nandgram, Ghaziabad, U.P.

Challenge in this petition is to the condition no. 3 of the order dated 04.06.2001 issued by the Government of U.P. imposing reservation of 10% seats for SC and ST students. It is alleged that the petitioner institution has been declared as a minority educational institution by this Commission vide orders dated 03.08.2006 passed in Case No. 872 of 2006. The impugned condition was imposed by the State Government for granting NOC to the petitioner institution for its affiliation with ICSE, New Delhi. It is also alleged that the imposition of the impugned condition is violative of the educational rights of the minorities enshrined in Article 30.

The petition has been resisted by the respondent on the ground that the impugned condition is not violative of the fundamental right guaranteed under Article 30(1) of the Constitution.

The point for determination is as to whether the impugned condition no. 3 of the order dated 04.06.2001 of the State Government is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. It is relevant to mention that Article 30(1) of the Constitution is intended to instill confidence in minorities against any executive and legislative encroachment on their right to establish and administer educational institution of their choice. Article 30(1) though styled as a right, is more in the nature of protection of the minorities. Article 30(1) was engrafted in the Constitution as a guarantee to the minorities. It is also significant to mention that Article 13 declares that any law, rule or regulation in breach of the fundamental rights would be void to the extent of such violation.

It needs to be highlighted that the restriction which prescribed with a certain percentage of students belonging to ST and SC had to be admitted by a minority educational institution is not

a reasonable restriction. Needless to add here that the concept of administration includes the choice in admitting the students. It has been held by the Supreme Court in P.A. Inamdar vs. State of Maharashtra [2005 (6) SCC 537] that neither the policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority educational institution. It has been held by the Supreme Court in State of Karnataka vs. Associated Management of P&SS Schools &Ors 2014 AIR SCW 2908 that if there is an element of compulsion in the Government policy, which infringes the fundamental rights guaranteed to the citizens of this country under the Indian Constitution, such policy is void and the fundamental rights have to prevail over such Governmental policy. Recently, a Constitutional Bench of the Supreme Court in the case of Paramati Educational and Cultural Trust vs. Union of India 2014 AIR SCW 2859 stated that the minority character of the minority educational institutions referred to in clause (1) of Article 30 of the Constitution, whether aided or unaided, may be affected by admissions socially and educationally backward classes of citizens or the Scheduled Castes and Scheduled Tribes and it is for this reason that minority institutions, aided or unaided, are kept outside the enabling powers of the said under clause (5) of Article 15 of the Constitution with a view to protect the minority institutions from a law made by the majority. As tested on the touchstone of the law declared by the Supreme Court in P.A. Inamdar (Supra) and Paramati Educational and Cultural Trust (Supra), the impugned condition no. 3 of the order dated 04.01.2001 virtually involves an abject surrender of the substantial right of management and the same is inconsistent that the constitutional right guaranteed in Article 30(1) as it directly impinges upon the important facet of administration. See para no. 4 of the T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481.

In other words imposition of reservation policy of the State Government on available seats in a minority educational institution constitutes serious encroachment on the rights of the minorities guaranteed under Article 30(1) of the Constitution.

For the forgoing reasons, we find and hold that the impugned condition no. 3 of the State Government's order dated 04.06.2001 imposing reservation of 10% seats for the children belonging to SC and ST constitutes serious encroachment on the right of the minorities guaranteed under Article 30(1) of the Constitution and as such it is void ab initio in terms of the Article 13 of the Constitution.

Case No. 2807 of 2013

Subject: Appointment of teachers

Petitioner: St Joseph's High School, GT Road (W), Asansol, Burdwan, West Bengal-713 301

Respondent: The Chief Secretary, Govt. Of W. Bengal, Writers Building, Kolkata, W. Bengal & Ors.

This is a case filed by the petitioner school seeking directions against the respondents for post facto approval of appointment of two (2) teachers against sanctioned posts which the respondents have refused to accord approval. The teachers elected and appointed by the

petitioner school on 18-6-2012, — Ms Dawinder Kaur Jassal joined service as an assistant teacher in Mathematics on 21-6-2012 and Ms Hally Saini joined as an assistant teacher in Chemistry on 22-6-2012. Both appointments were on sanctioned posts.

The petitioner St Joseph's High School is a Christian Missionary School under the supervision and guidance by the Roman Catholic Archbishop of Calcutta and happens to be one of the institutions governed by the specified Special Rules notified vide no. :— 641 —Edn (S) dated 23-5-1974 and has its name at serial no— 43 in the list appended to the said Special Rules. The School Edn. Dept. of the Govt. of WB (Law Branch) issued an order dated 6-6-2012 by which it further ratified the special minority status of the petitioner institution.

In the present case the petitioner institution submits that it was suffering from acute shortage of teachers and the vacancies for the post of assistant teacher (Chemistry) and assistant teacher (Mathematics) were long pending. Efforts made by the petitioner to secure prior permission for the appointments to the vacant teaching and non-teaching posts in the said institution from the Addl. District Inspector of Schools (SE), Asansol did not evoke any response. While four (4) vacancies were in existence only one (4) was permitted by respondent no. 4 for the post in Chemistry which was reserved for ST , an advertisement was made on 19-1-2011 in the daily newspaper 'Prabht Khabar' but there was no applicant in response to the advertisement. The petitioner contends that the early experiences for them too was that advertisements for reserved vacancies not fetching applications from qualified candidates. In spite of repeated requests prior permission was not given by the said respondents. The appeal of the petitioner institution was for securing prior permission for all the four (4) vacancies including the said one (1) for reserved for ST. The petitioner school further contended that as a minority institution it was not bound by the rules of reservation yet were ready to follow govt. guidelines vide memo no. 1314 (50) SE (S) dated 17-9-2001 without the principle of reservation. Following all the procedures stipulated by the Govt. of WB Edn Dept. regarding norms and qualifications, the petitioner school's managing committee held on 16-2-2012 by resolution no. 1 resolved and approved unanimously a panel for the appointment of assistant teacher in Chemistry as per merit prepared by a selection committee on 10-2-2012 and the candidates were :-

1. Halley Saini
2. Ajay Kumar Pandey
3. Bajrangi Kumar Sharma

And by resolution No. 2 a panel for the appointment of assistant teacher as per norms and qualifications on the basis of merit by a selection committee on 9-2- 2012 with

1. Dawinder Kaurlassal
2. Mamata Singh
3. AnilPrasad

The Secretary of the Managing Committee of the School as per authorization by the Managing Committee held on 16-2-2012 issued necessary appointment orders to Ms. Halley Saini as assistant teacher, Chemistry and to Ms Dawinder Kaur Jassal as assistant teacher in Mathematics, the former joining duty on 22-6- 2012 and the latter on 21-6-2012.

The petitioner school made repeated representations to the respondents praying for accord of approval post facto for the above mentioned two (2) posts of teachers but the respondents concerned had not paid any heed to such requests, keeping the approval for the said appointments pending, causing much financial compulsions for the functioning of the said school. The contention of the petitioner school is that the withholding of approval to the said appointments is a mala fide act on the part of the respondents and becomes an arbitrarily act infringing their minority rights guaranteed by Article 30 since they fall under the Special Rules as a minority institution and are not bound by other rules and norms formulated by the Dept. in the matter of recruitment of teachers from time to time. They submits that the appointments were made as per procedure and in tune with the prescribed qualifications stipulated for the said posts. The pleading of the petitioner is that this Commission given a direction to the competent authority of the State Govt. to accord approval to the lawfully appointed teachers with prescribed qualifications as per rules.

In view of the facts and circumstances of the case, it becomes evident that the respondents had been acting arbitrarily by declining approval to the said appointed teachers by withholding their approval orders which is prima face an act of denying the minority rights conferred on the petitioner institution by Article 30 of the Constitution.

From the facts before this Commission, it has come to our notice that the competent authority of State Govt. of WB seems to have acted with purposeful mala fide in the matter of refusing approval of the said appointments in question.

Relying on the said unrebutted records of evidence and in the view of the said facts of the case and also considering that the said teachers were in service since 21-6-2012 and 22-6-2012 without break of service and not yet receiving their entitled salary and emoluments till date since their dates of joining, owing to the refusal of approval by the respondents in the matter of the said appointments made by the petitioner school, this Commission hereby issue directions to respondents no. 2, 3 and 4 (Secretary, School Edn. Dept., Govt. of WB ; Director, School Edn. Dept. Govt. of WB ; and Addl. District Inspector of Schools (SE), Asansol Sub Division, District Burdwan, WB respectively) to accord approval to the said appointments of assistant teachers made by the petitioner St. Joseph's School, GT Road (W), Asansol, W.B with payments of arrears of salary and all Other eligible benefits due to the said appointed teachers from their dates of joining the service.

The case is disposed of accordingly. The decision be intimated to the petitioners as also to the respondents.

Case No. 2463 of 2014

Subject: Selecting and appointing its teaching and non-teaching staff

- Petitioner:**
- (i) Shri A.P.D. Jain Pathashala, Ashok Chowk, Seth Walchand Hirachand Marg, Solapur, 413 006, through its Secretary - Dr. Ranjeet Hiralal Gandhi.
 - (ii) Welchand Insitute of Technology, Seth Walchand Hirachand Marg, Ashok Chowk, Solapur – 413 006, through its Principal – Dr. S.A. Halkude

- Respondent:** (i) The State of Maharashtra, through the Department of Higher & Technical Education, Mantralaya, Mumbai – 4000 001
- (ii) Solapur University, Solapur, Solapur – Pune Highway, Kegaon, Solapur – 413 255, through its registrar.

Mr. P.A. Inamdar filed his affidavit to prove service of notices on the respondents. Despite service of notice, none entered appearance on behalf of the respondent. Hence the case is proceeded ex-parte.

Challenge in this petition is the impugned order dated 01.11.2014 of the respondent university restraining the petition institution for selecting and appointing its teaching and non-teaching staff as was approved by the Shivaji University vide Order No. SU/Affi/8444 dated 06.11.1996. The petition no. 2 institution is a minority educational institution covered under Article 30(1) of the Constitution vide Notification dated 03.11.2008 issued by the Government of Maharashtra. The petition no. 1 selected and appointed 29 teachers against the sanctioned posts. The candidates were selected by the selection committee approved by the Shivaji University, Kolhapur, as the petitioner college was earlier affiliated to the said university. It is alleged that the report of the selection committee relating selection of the candidates was submitted to the respondent university vide Memo No. WIT/SCM/2013-14/3024 dated 24.02.2014, which was ultimately rejected by the respondent university on the basis of the Notification dated 30.06.2010 issued by the UGC and the GR No. Sankirna-2011(25/11) Vishi-1 dated 15.02.2011 issued by the Government of Maharashtra. It is alleged that the Notification dated 30.06.2010 of the UGC and the GR No. Sankirna-2011(25/11) Vishi-1 dated 15.02.2011 of the Government of Maharashtra can not be made applicable to a minority educational institution as they clearly impinge upon the educational rights of the minorities enshrined in Article 30 (1) of the Constitution. It needs to be highlighted that the constitutionality of clauses 5.1.4, 5.1.5 and 5.1.6 of the Notification dated 30.06.2010 of the UGC and the Government order dated 15.02.2011 have been challenged before the Bombay High Court in Writ Petition No. 1515 of 2013 and by the orders dated 24.04.2013 passed by the High Court, operation of the impugned Notification dated 30.06.2010 of the UGC and the GR No. Sankirna-2011(25/110) Vishi-1 dated 15.02.2011 of the Government of Maharashtra has been stayed by the High Court. We may usefully excerpt the following orders of the High Court particularly clause (a) and (b) of Para 21 i): -

- “(a) that pending the hearing and final disposal of the Petition, this Hon’ble Court be pleased to restrain Respondent Nos. 1 and 4 from acting upon para 5.1.4., 5.1.5 and 5.1.6 of the UGC Regulations dated 30th June 2010 relating to “Selection Committees and Selection Procedures” and Government Resolutions dated 15.02.2011 and 30.01.2012 (Exhibits ‘D’ and ‘E’ respectively) and University Circulars dated 22.02.2012 and 07.06.2012 accepting the same, whilst considering appointments made by Minority educational institutions;

- (b) that pending the hearing and final disposal of the Petition, this Hon'ble Court be pleased to Direct the Respondent Nos. 4 to consider the applications for approval of staff submitted by minority educational institutions which have been disapproved only on the ground of non compliance with the selection procedure stipulated in the UGC regulation dated 30.06.2010 and the Government Resolution dated 15.2.2011 Government Resolution dated 30.01.2012 and/ or Univeristy Circulars dated 22.02.2012 and 07.06.2012 accepting the same.

(emphasis supplied)"

It is apt to note here that the impugned provisions contained in the Notification dated 30.06.2010 issued by the UGC impinge upon the rights of the minority educational institutions to select the principals and teachers of their choice. The impugned provisions clearly do not permit the minority educational institution a free hand in selecting the persons of their choice. Needless to add here that the Supreme Court has held in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 that a law which interferes with the minority institutions' choice of qualified teachers is void. So long as the teachers have the prescribed qualifications, they must be allowed to select and appoint persons of their choice. The impugned order of the respondent university dated 01.11.2014 directed stares into the face of the said orders dated 24.04.2013 passed by the High Court of Bombay in Writ Petition No. 1515 of 2013 and it clearly falls within the domain of the disobedience of the said orders. The orders passed by the Division Bench of the High Court of Bombay in Writ Petition No. 1515 of 2013 are binding upon the respondent university. That being so, the impugned Memo dated 01.11.2014 of the respondent university is void ab initio. Relying upon the orders dated 24.04.2013 of the Bombay High court passed in Writ Peititon No. 1515 of 2013, we direct the respondent university to reconsider the petitioner's application for approval of the staff submitted by it, which have been disapproved only on the ground of non-compliance with the selection procedure stipulated in the UGC Regulation dated 30.6.2010 and the Government Resolution dated 15.02.2011. CC be given to the parties.

CHAPTER 11 – CONCLUSION

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

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

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

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

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

6. The primary responsibility for recognizing educational institutions and granting minority status certificate lies with the State Government. It was, however, found that many State Governments had not set up any mechanism to consider the request for grant of minority status certificate. In many States, the approach had been lethargic. Commission also found that the officials concerned had not been sensitized about the rights guaranteed to minorities under Article 30(1) of the Constitution. The result had been that the Commission received large number of applications from the educational institutions for grant of minority status certificate.

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

8. Some State Government authorities grant minority status certificate only for a temporary period. Commission has unambiguously held that minority status certificate cannot be granted for a short duration. As has been held by the Madras High Court in T.K.V.T.S.S. Medi-

cal Educational & Charitable Trust vs. State of Tamil Nadu, AIR 2002 Madras 42, minority status can not be conferred on a minority educational institution for particular period to be renewed periodically like a driving license. It is not open for the State Government to review its earlier order conferring minority status on a minority educational institution unless it is shown that the institution concerned has suppressed any material fact while seeking minority status or there is fundamental change of circumstances warranting cancellation of the earlier order. Reference may, in this connection, be made to the following observations of their lordships: -

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

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

During the year, the Commission came across several instances of encroachment on the educational rights of the Minority Institutions by the Education Departments of the State Governments. In Karnataka, a large number of minority institutions mostly belonging to linguistic minorities moved the High Court of Karnataka at Bangalore on the grounds that the State Education Department was enforcing the provisions of Right to Education Act, 2009 on these institutions. NCMEI also made a party by the High Court. It has been held by the Supreme Court that the Right of Children to free and compulsory Education Act, 2009 cannot be made applicable to a minority educational institution covered under Article 30(1) of the Constitution. Their lordships of the Supreme Court have held that the Act in so far it is made applicable to minority schools referred in clause (1) of Article 30 of the Constitution is ultra vires the Constitution. Finally, High Court of Karnataka at Bangalore admitted in their judgment dated 30th April, 2014 on cases filed by 5 institutions on that the petitioner institution cannot be compelled to admit children under the Right of Children to Free and Compulsory Education Act, 2009.

**ANNEXURES
TO THE REPORT**

ANNEXURE-I

**STATISTICAL DETAILS OF MINORITY STATUS CERTIFICATES
(MSCS) ISSUED**

AS ON 31.03.2015													
	State	YEAR WISE BREAK UP											Total No. of MSC issued
		2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	
1	Andaman	-	3	2	-	-		1		1		1	8
2	A.P.	4	9	24	6	30	2	17	35	71	113	44	355
3	Arunachal Pradesh	-	-	2	-	6	-	-	12	1	-	-	21
4	Assam	-	2	-	17	2	13	111	32	16	9	-	202
5	Bihar	1	2	20	17	3	3	27	6	15	10	2	106
6	Chandigarh	-	2	3	1	1	1	3	1	4	2		18
7	Chhattisgarh	-	1	4	5	7	55	91	3	24	28	3	221
8	D&N Haveli	-	2	2	-	-	-	-	-	-	-	-	4
9	Daman	-	1	-	-	-	-	-	-	-	-	-	1
10	Delhi	2	36	8	15	10	14	33	37	28	27	2	212
11	Goa	-	9	31	28	81	4	3	3	-	2	-	161
12	Gujarat	-	3	3	5	8	5	5	-	2	4	-	35
13	Haryana	-	20	12	3	4	-	24	23	27	13	3	129
14	H.P.	-	9	3	4	-	1	3	3	-	-	-	23
15	Jharkhand	-	2	15	15	3	1	4	15	21	11	-	87
16	Karnataka	-	4	26	15	11	9	12	43	105	186	56	467
17	Kerala	-	9	78	97	524	822	852	844	492	453	128	4299
18	Madhya Pradesh	-	15	19	12	23	23	58	73	64	62	4	353
19	Maharashtra	11	22	28	21	7	3	2	17	37	21	-	169
20	Manipur	-	1	-	1	-	-	32		1	-	-	35
21	Meghalaya	-	1	4	-	-	1	-	-	-	-	-	6
22	Orissa	-	14	16	23	6	12	6	2	4	4		87
23	Pondicherry	-	2	13	-	3	-	-	1	1	-	-	20
24	Punjab	-	11	39	4	-	9	5	7	13	14	9	111
25	Rajasthan	-	2	22	37	20	4	2		4	8	-	99
26	Sikkim	-	3	13	-	1	-	-	-	1	-	-	18
27	Tamil Nadu	1	9	19	13	14	16	12	23	66	88	29	290
28	Telangana	-	-	-	-	-	-	-	-	-	8	11	19
29	Tripura	-	-	-	1	6	-	-	4	-	2	-	13
30	U.P.	1	107	99	48	59	114	253	693	592	435	55	2456
31	Uttarakhand	-	36	17	6	4	3	11	4	6	8	1	96
32	West Bengal	1	85	215	113	15	7	89	85	74	7	-	691
	Total	21	422	737	507	848	1122	1656	1966	1670	1515	348	10812

जस्टिस एम. एस. ए. सिद्दीकी
अध्यक्ष
JUSTICE M.S.A. SIDDIQUI
Chairman



भारत सरकार
राष्ट्रीय अल्पसंख्यक शैक्षणिक संस्था आयोग
GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR MINORITY
EDUCATIONAL INSTITUTIONS

367

D.O. No. 7-1/2010 - NCMEI - 20941

17th December, 2014

Respected Smt. Smriti Z Irani ji

National Commission for Minority Educational Institutions had set up a Committee on Girls' Education to look into the pros and cons of the issue, to evolve the modalities for providing education of the girl child more effectively and also to look into the ways for improving the educational standard of girls child which continues to suffer neglect particularly in the case of Muslim girls. The Committee was mandated to recommend ways and means to ameliorate the bleak situations of the general education of girl child. The Committee was directed to consider the provisions of the Right of Children to Free and compulsory Education Act 2009 for appropriate implementation of the provisions to ensure universalisation of education of girl child. The Committee was directed to submit appropriate recommendations on the matters mentioned above and incidental thereto.

The Committee had submitted its first report in December, 2012 which was sent to the then Minister of Human Resource Development, vide my letter dated 13.02.2013. The Committee has now submitted its Report and Recommendation on Minority Girls Education (Pt.II).

I am enclosing a copy of the Report and Recommendations submitted by the Committee on Girls' Education for your perusal and appropriate implementation.

With profound regards

Yours sincerely,

(M.S.A. Siddiqui)

Smt. Smriti Z. Irani
Hon'ble Minister for HRD,
Government of India
Shastri Bhawan, New Delhi

Office : Gate No. 4, 1st Floor, Jeevan Tara Building, 5, Sansad Marg, Patel Chowk, New Delhi - 110 001
Tel.: (O) 011-23367760, (R) 011-23385904 Website : www.ncmei.gov.in
Residence : A-B/81, Shahjahan Road, New Delhi - 110 001

3/1/2014
18/12/2013
CS
18/12/2013

जस्टिस एम. एस. ए. सिद्दीकी
अध्यक्ष

JUSTICE M.S.A. SIDDIQUI
Chairman



सत्यमेव जयते

भारत सरकार
राष्ट्रीय अल्पसंख्यक शैक्षणिक संस्था आयोग
GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR MINORITY
EDUCATIONAL INSTITUTIONS

D.O. No. 1-1/ 2014-NCMEI

17.12.2014

Respected Ms Mamata Banerjee

As you are aware that the National Commission for Minority Educational Institutions was set up by Government of India for protecting the educational rights of the religious minorities.

2. A team of officers of the Commission visited Jalpaiguri and Alipurduar of West Bengal to see the functioning of the Christian minority institutions. During their visit, West Bengal Association of Minorities Educational Institutions presented a Memorandum in a seminar held on 27th September 2014 at Siliguri in which they highlighted common problems being faced by them for due redressal like denial of recognition/ N.O.C. to minorities-run schools and madrasas by present criteria and complicated procedure.

3. I enclose a copy of the Memorandum presented by the Association for your intervention for attending promptly to the needs of Minority Institutions by the State Government. The issues which need urgent intervention are as follows:

- (i) That a separate, hassle free and one window desk be set up by the West Bengal Government for granting recognition and issuance of N.O.C. for minority-run schools and madrasas;
- (ii) That the minority-run schools and madrasas are granted relaxation from general criteria and rules for granting recognition and issuance of N.O.C. by the State Government.
- (iii) That the procedure to obtain N.O.C., recognition and minority status certificate are simplified and hassle free for minorities run institutions.
- (iv) That the schools/ madrasas which are granted recognition without financial aid are given freedom to create required fund flow through fees collection to meet recurring and non-recurring expenses to run institution.

With respectful regards

Yours sincerely,

(M.S.A. SIDDIQUI)

Encl.: As above.

MS. MAMATA BANERJEE,
Hon'ble Chief Minister,
Government of West Bengal,
Writer's Building, Kolkata,
West Bengal.

