

**GOVERNMENT OF INDIA  
NATIONAL COMMISSION FOR MINORITY  
EDUCATIONAL INSTITUTIONS (NCMEI)**

**Appeal / Petition No. 27 of 2019**

**In the matter of :-**

- 1) Maharashtra Medical Education and Research Centre, 2390-B, K.B. Hidayatullah Road, New Modikhana, Azam Campus, Camp, Pune-411001**
- 2) ZVM Unani Medical College & Hospital, 2390-B, K.B. Hidayatullah Road, New Modikhana, Azam Campus, Camp, Pune-411001**

**..... Appellants/Petitioners  
V/s**

- 1) Secretary, Department of Medical Education, Mantralaya, Mumbai, Maharashtra**
- 2) Maharashtra University of Health Science, Nashik, Through its Registrar, Dindori Road, Mahasrul, Nashik-422004**

**..... Respondents**

- Present:**
- 1. Mr. P.A. Inamdar alongwith Mr. Ambar Qamruddin, Advocate for the appellants / petitioner no. 1 & 2**
  - 2. None for the respondent No. 1**
  - 3. Mr. Saket Jain, Advocate for the respondent no. 2**

**PETITION UNDER SECTION 12D OF  
NCMEI ACT, 2004  
IN THE MATTER RELATING TO  
DEPRIVATION OF PETITIONERS RIGHTS**

**ORDER**

**DATED 22.09.2022**

**Justice Narendra Kumar Jain, Chairman, NCMEI**

- 1. This petition / appeal has been filed challenging the impugned order dated 22.05.2019 of the respondent no. 2 University and also to quash and set aside respondent no. 2 University circular of dated 25.04.2013 being violative of fundamental rights under Article 15(5) and 30(1) of the Constitution of India and respondent no. 2 be ordered to grant the approval of the five (5) teaching staff appointed by the petitioners.**

2. We have heard Learned Counsel for the petitioners as well as Mr. P.A. Inamdar for the petitioners and Learned Counsel for the respondent no. 2.
3. Learned Counsel for the petitioners and Mr. P.A. Inamdar submitted that petitioners institution is minority educational institution. Petitioner No. 1 is a public charitable registered trust, petitioner No. 2 is a Unani Medical College and Hospital which is established with the permission of the Govt. of India on the recommendation of the State Govt. and affiliated to respondent no. 2 University. Petitioner no. 2 College admittedly run Under Graduate BUMS Courses with 60 seats intake as well as MD/MS Post Graduate Unani Courses with 17 seats, intake allowed by the Govt. of India. Petitioners wanted to recruit teaching staff sanctioned by the respondent no. 1 Associate / Assistant Professor category. Accordingly, they constituted Selection Committee. After giving advertisement, applications were invited from qualified staff as per the rules for interview. After selecting five (5) Associate / Assistant Professor, the petitioners submitted the details in the prescribed format to respondent no. 2 for granting approval to such selected teaching staff. Selected staff was fully qualified as per the norms of respondents. This action was taken as per respondent no. 1 circular dated 04.05.2009 and also as per the directives issued by the respondent no. 2. Thereafter respondent no. 2 by its letter dated 20.03.2019 give reply that the proposal of approval has been rejected on the ground that petitioner no. 2 did not obtain prior approval of the public notice published in the 2 newspapers, hence approval could not be granted. Thereafter petitioner college informed to respondent no. 2 that being minority educational institution, it is not necessary to get approved the advertisement and also brought to the notice of respondent no. 2 that Government Resolution dated 05.04.2009 and also Directive of the Respondent No. 2 University bearing No. 02/2014 getting approval is not required for the petitioner college. And again requested to approve proposal dated 02.01.2019 for grant of approval for five (5) teaching staff.

4. Thereafter, respondent no. 2 directed to the petitioner college to follow the circular dated 25.04.2013 and submitted fresh proposal. Then petitioner college resubmitted its original proposal and explain as to why prior approval of draft of the advertisement, because there is no necessity to the petitioner college prior approval of the respondent no. 2. Thereafter, petitioner college also submitted two reminders to the respondent no. 2 on dated 20.04.2019 and 23.05.2019, but by the impugned order dated 22.05.2019 respondent no. 2 rejected the petitioners proposal and insisting that provisions of circular dated 25.04.2013 have not been followed and hence the proposal for grant of approval is rejected.
5. Learned Counsel for the petitioner and also Mr. P.A. Inamdar submitted that decision of the respondent no. 2 dated 22.05.2019 is violative of the fundamental rights of the petitioners under Article 30(1) and also Article 15(5) of the Constitution of India. The impugned decision is against the law laid down by the Hon'ble Supreme Court in case of T.M.A. Pai Foundation and others V/s State of Karnataka and others and P.A. Inamdar & Others V/s State of Maharashtra & Others. The impugned decision is also not in accordance with the respondent no. 1 circular dated 04.05.2009 and Directive No. 2/2014 of respondent no. 2. Respondent No. 2 instead of following its own above directive rejected the proposal of petitioner college. Petitioners also submitted that they have appointed several employees from 09.01.2014 to 04.09.2018 by following no prior approval to advertisement procedure and appointments were duly approved by the respondent no. 2 without taking such objection till date.
6. In these circumstances petitioners are approaching this Commission for quashing and set aside the impugned decision dated 22.05.2019 of the respondent no. 2.
7. Learned Counsel for the respondent no. 2 submitted that vide letter dated 25.04.2013 they have informed that the minority colleges have to take sanction for advertisement of the vacant post from the University prior to the filling up of the vacancies. University have

prescribed Direction No. 01/2017. As per clause 5(2)(1) of the proposal advertisement should be approved by the University. The aim of the said clause is to know the vacancy position of the particular minority college in view of Minimum Standard Required (MSR) prescribed by the concerned Central Council / Central Commission and not to impose any rules regarding reservation policy of the State Govt. The said reservation policy for filling vacancies have not been applicable to such minority educational institutions.

8. Learned Counsel for the respondent no. 2 also submitted that said letter / direction has not been challenged by the petitioners before any Court. The same are binding as the petitioners University was justified and taking its decision, because said direction does not affect the rights of minority educational institutions in any manner. University has granted approvals in the past to the teachers appointed by the appellant college and college was fully aware of the procedure to be followed for making appointments.
9. We have considered the arguments of both the parties and perused the file. When the matter was taken up for consideration, Learned Counsel for the petitioners and Mr. P.A. Inamdar frankly submitted that by this petition they are not challenging any circular of the respondents. They are challenging the impugned order and action of the respondent no. 2 which is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution of India.
10. It is true that this Commission does have any jurisdiction to quash any statutory provision made in the Act / Rules / Regulations. During the hearing of the case the petitioners had abandoned their prayer for quashing of the regulations and it was submitted that a declaration to be made to the effect that the impugned order and letter / circular dated 25.04.2013 is inapplicable to the minority educational institutions covered under Article 30(1) of the Constitution of India.
11. As per the petitioners, respondent no. 2 has issued Direction No. 02/2014 and 01/2017 dated 13.04.2017, these does not refer to minority institutions and cannot be applied to the minority educational institutions. Direction No. 02/2014 has not repeated by Direction No.

01/2017. Direction No. 02/2014 issued by the respondent no. 2 is not repeated by subsequent direction of the respondent no. 2 bearing no. 01/2017, therefore Direction No. 02/2014 continues to be enforced. Petitioner has also submitted copy of Direction No. 01/2017.

12. It is an admitted fact that minority educational institutions has freedom to select and appoint its teaching and non teaching staff in accordance with the qualifications prescribed, therefore by the statutory authority and the legislature cannot interfere in the composition of the selection committee. It has been held by the Hon'ble Supreme Court in St. Xavier's College, Ahmedabad V/s State of Gujarat, 1974 (1) SCC 717 that autonomy in administration means right to administer effectively and to manage conduct the affairs of the institutions.
13. Hon'ble Supreme Court has consistently upheld the rights of minorities enshrined in Article 30(1) of the Constitution of India and has ensured that the ambit and scope of the rights of the minorities is not narrowed down. The broad approach has been to see that nothing is done to impair the rights of the minorities in the manner of their educational institutions and that the width and scope of the provisions of the constitution dealing with those rights are not circumscribed.
14. Article 30(1) of the Constitution of India gives linguistic and religious minorities a fundamental right to establish and administer educational institutions of their choice. These rights are protected by a prohibition against their violation. The prohibition is contained in Article 13 of the Constitution which declares that any law, in breach of the fundamental rights would be void to the extent of such violation. It is well-settled that Article 30(1) cannot be read in a narrow and pedantic sense and being a fundamental right, it should be given its widest amplitude. The width of Article 30(1) cannot be cut down by introducing in it considerations which are destructive to the substance of the right enshrined therein.
15. The National Commission for Minority Educational Institutions (NCMEI) Act has been enacted to safeguard the educational rights of

the minorities enshrined in Article 30(1) of the Constitution. The NCMEI has been constituted under the Act. The Commission is a quasi judicial body and has been endowed with the powers of a Civil Court for the purpose of discharging its functions under the Act.

16. A stream of Hon'ble Supreme Court decisions commencing with the Kerala Education Bill case (AIR 1958 SC 956) and climaxed by the Eleven Judges Bench case in T.M.A. Pai Foundation (2002) 8 SCC 481 has settled the law for the present. The proposition of law enunciated in T.M.A. Pai Foundation is reiterated in the clarificatory judgement rendered by another Constitutional Bench of the Supreme Court in P.A. Inamdar vs. State of Maharashtra [2005 (6) SCC 537]. The general principles relating to establishment and administration of educational institution by minorities are that the right of minorities to establish and administer educational institutions of their choice guaranteed under Article 30(1) is subject to the regulatory power of the State for maintaining and facilitating the excellence of educational standard. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. The essential ingredients of the management, including admission of students, recruitment of staff and the quantum of fee to be charged cannot be regulated. The regulations made by the statutory authorities should not impinge upon the minority character of the institution. The regulations must satisfy a dual test- that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it. Regulations that embraced and reconciled the two objectives could be considered reasonable. The fundamental right guaranteed under Article 30(1) is intended to be effective and should not be whittled down by any administrative exigency. No inconvenience or difficulties, administrative and financial, can justify infringement of the fundamental right.

17. The State or any statutory authority, cannot under the cover or grab of adopting regulatory measures, destroy the administrative autonomy of a minority educational institution or start interfering with the administration of the management of the institution so as to render the right of the administration of the institution concerned nugatory or illusory. In other words, the regulations should not in any way take away the freedom of management of administration of the institution so as to reduce it to a satellite of a University or the State. The right to select its teaching or non-teaching staff perhaps the most important facet of the right to administer an educational institution and that imposition of any trammel thereon except to the extent of prescribing the requisite qualifications and experience, would be treated as invalid and would constitute as a interference with the right of administration of the minority educational institution.
18. It is pertinent to mention here that it is a well settled that once a teacher possessing the requisite qualification prescribed therefore was selected by the management through selection committee of a minority educational institution, the State or the University have no right to veto the selection of such a teaching staff. The selection of appointment of teachers of a minority educational institutions has been recorded as one of the essential ingredients under Article 30(1) of the Constitution.
19. In the present case respondent has raised only objection that college have to take sanction for advertisement of the vacant post prior to the filling up the vacancies. In our considered opinion there is nothing on record to show or suggest that the selection process of the teaching staff of petitioner institution by the management / selection committee of the institution was not fair, transparent or non exploitative of that the teachers selected by the selection committee of the management does not fulfill the minimum qualification of eligibility prescribed therefore by the respondent University.
20. The role of the respondent no. 2 University limited to the extent of ensuring that the person so selected fulfills the minimum qualifications of eligibility laid down by the University. It is an admitted

fact that the selected teachers are working in the petitioners college since their selection.

21. Consequently, the action of the respondent University in declining to grant approval of the selection and appointment of the teaching staff of the petitioner institution is violative of the constitutions provisions. So in our considered opinion the impugned order dated 22.05.2019 is in violation of the fundamental rights of the minorities enshrined in Article 30(1) of the Constitution of India and also relating to deprivation of fundamental rights of petitioner minority institution.
22. Consequently, for the foregoing reasons, we direct the respondent no. 2 University to implement the findings of the Commission by granting approval to the appointment of teachers selected and appointed by the selection committee constituted by the petitioner college / management.
23. As per above view of this Commission the petition / appeal is partly allowed.
24. In view of the above, the present petition is disposed of in accordance with this order.

Signed, pronounced and published on **Thursday, 22<sup>nd</sup> Day of September, 2022.**

**JUSTICE NARENDRA KUMAR JAIN  
CHAIRMAN**

**DR. JASPAL SINGH  
MEMBER**

**DR. SHAHID AKHTER  
MEMBER**

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