

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

Misc. 08 of 2021

In the matter of :-

1. Maharashtra Medical Education and Research Centre, A registered Public Trust through its Treasurer, Dr. Mushtaque U. Mukadam, 2390-B, K.B. Hidayatullah Road, New Modikhana, Azam Campus, Camp, Pune- 411 001.

..... Petitioner No. 1

2. ZVM Unani Medical College and Hospital, Pune, through its Principal Dr. Jalis Ahmed, 2390-B, K.B. Hidayatullah Road, New Modikhana, Azam Campus Camp, Pune- 411 001.

..... Petitioner No. 2

V/s

1. The Secretary, Government of Maharashtra, Medical Education & Drug Department, Mantralaya, Mumbai- 400 032.

..... Respondent No. 1

2. Registrar, Maharashtra University Health Science, Nashik, Mhasrul, Dindori Road, Nashik- 422 004.

..... Respondent No. 2

3. Director, Directorate of AYUSH, Maharashtra State, Mumbai, St. George Hospital Compound, P.D. Mello Road, Fort, Mumbai- 400 001.

..... Respondent No. 3

Present: Mr. P.A. Inamdar alongwith Mr. Tejasvi Kumar, Advocate for the petitioner.
Mr. Sarthak kumar Meena, Advocate for Respondent No. 2.
None for Respondent No. 1 & 3.

ORDER

DATED: 12th October, 2023

DR. SHAHID AKHTER, MEMBER, NCMEI

1. This petition has been filed challenging the impugned order dated 11.3.2020 of the Respondent No. 3. By the said impugned order the Respondent No. 3 has rejected the proposal of the Petitioners for grant of approval for the 5 teaching staff appointed by the petitioners.

2. Heard learned counsel for the petitioners as well as Mr. P.A. Inamdar and learned counsel for the Respondent No. 2.

3. Learned counsel for the petitioners submitted that petitioner No. 2 is a Minority Educational Institutions and recognized as such by the Respondent No. 1 State Government on 28.6.1994. Petitioner No. 1 is a Public Charitable registered Trust. Petitioner No. 2 is a Unani Medical College & Hospital which is established with the permission of the Government of India on the recommendation of the State Government and affiliated to Respondent No. 2 University. Petitioner No. 2 College admittedly runs Under Graduate B.U.M.S. Course with 60 seats intake as well as M.D./M.S. Post Graduate Unani Course with 17 seats, intake allowed by the Government of India. Petitioners wanted to recruit five (5) teaching staff sanction by Respondent No. 3 i.e. 2 Associate Professor and 3 Assistant Professor. Accordingly, they constituted Selection Committee. After giving advertisement on 19.1.2020 as per CCIM (Central Council of Indian Medicine) Regulations, applications were invited from the qualified staff as per the rules for interview. After selecting five candidates Associate/ Assistant Professor, the petitioners submitted the details of such selected staff/ candidates in the prescribed format to Respondent No. 3 for granting approval to such selected staff. Selected staff was fully qualified as per the norms of respondents. This proposal of approval was submitted to Respondent No. 3 on 18.3.2020. Thereafter, Respondent No. 3 vide its letter dated 11.3.2020 gave reply to the Petitioner No. 02 that the advertisement published by Petitioner No. 2 has been rejected on the ground that Petitioner No. 2 did not publish the said Advertisement for the post of 2 Associate Professors and 3 Assistant Professor as per The Maharashtra Government Service Rules 2013, hence approval to the appointed staff/ candidate could not be given.

4. Thereafter, Petitioner No. 02 vide its letter dated 20.5.2020 informed Respondent No. 03 that the Petitioner No. 02 is a Minority Educational Institution and the advertisement for the post of 2 Associate Professors and 3 Assistant Professor is published as per Central Council of Indian Medicine Regulations and on that basis the approval cannot be granted to the selected candidates.

5. Respondent No. 03 vide its letter dated 16.6.2020 replied Petitioner No. 02 that the Petitioner No. 02 has published the said advertisement as per CCIM (Central Council of Indian Medicine) Regulations and on that basis the approval cannot be granted to the selected candidates.

6. Petitioner No. 02 on 24.6.2020 replied to the Respondent No. 03 that the above-said Maharashtra Government Service Rules 2013 are applicable only to the Ayurvedic College Teachers Appointment/ Services and not applicable to Unani Medical College and for which the Unani College Association has forwarded a letter dated 8.7.2014 to the Respondent No. 3. Moreover, in the letter dated 8.7.2014, the issue regarding the applicability of the Maharashtra Government Service Rule 2013 is only applicable to the Ayurvedic College and not to Unani Medical College.

7. As per letter dated 7.11.2016 of CCIM (Central Council of Indian Medicine) Regulations, New Delhi for Unani Medical College Professor and other post, and also the Fundamental Right under Article 30 (1) of the Constitution of India, the petitioner No. 02 has filled the post of the candidates and requested the Respondent No. 3 on 24.6.2020 to grant approval to the selected candidates.

8. On 29.7.2020 the Respondent No. 3 through its letter replied to the Petitioner No. 02 that the said posts are filled as per CCIM (Central Council of Indian Medicine) Regulations whereas it should be filled as per Maharashtra Government Service Rules 2013 and Petitioner No. 02 was requested to again publish the Advertisement as per Maharashtra Government Service Rules 2013 but till today the Petitioner No. 02 has not followed the said instructions therefore again the Petitioner No. 02 was requested to follow the said Rules of 2013.

9. Petitioner No. 02 has published the Advertisement on 19.1.2020 for the post of 2 Associate Professor and 3 Assistant Professor as per CCIM (Central Council of Indian Medicine) Regulations and sent the letter for approval of the selected candidates on 18.3.2020 to the Respondent No. 3 (Directorate of Ayush, Maharashtra) but the Respondent No. 3 through its letter stated that the said Advertisement

is not as per Maharashtra Government Service Rules 2013, whereas the said Rules of 2013 is only applicable to the Ayurvedic College and not to Unani College therefore Petitioner No. 02 vide their letter dated 1.10.2020 requested Hon'ble Minister (Medical Education, Maharashtra) to inquire into the above-said matter.

10. In these circumstances, petitioners have approached this Commission to quash and set aside the impugned order dated 11.3.2020 of the Respondent No. 03.

11. It has been stated in the reply filed on behalf of Respondent No. 1 & 3 that letter dated 11.3.2020 issued by Director of Ayush, Maharashtra clearly mentioned that for Government Aided approved posts, Maharashtra Government Recruitment Rules, 2013 should be used for recruitment in the Petitioner No. 2 college. It was also communicated to the Petitioner No. 2 College that the college must follow Maharashtra Government Recruitment Rules 2013 for filling up Government Aided posts and the institute has to re-advertise said teaching posts as per State Government Rules and not as per Central Council of Indian Medicine Rules for State Government Aided posts.

12. We have considered the arguments of both the parties and perused the file. Learned Counsel for the petitioners and Mr. P.A. Inamdar submitted that by this petition they are challenging the impugned order dated 11.3.2020 of the Respondent No. 3 which is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution of India.

13. It is true that this Commission does not 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 dated 11.3.2020 is not applicable to the minority educational institutions covered under Article 30(1) of the Constitution of India.

14. It is an admitted fact that the petitioners are Minority Educational Institutions and recognized as such by the Respondent No. 1 State

Government on 28.6.1994. A Minority Educational 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.

15. 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.

16. 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.

17. 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.

18. 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].

19. The apex court in the same judgment had further observed with regard to those minority institutions which are receiving grant-in-aid from the State. The apex Court observed in paragraph 141 of the judgment that for granting aid there cannot be abject surrender of right of management. The receipt of aid cannot be reason for altering the nature or character of recipient of the education institution. Choosing teachers who will carry on the educational institution toward excellence has been held to be right of management of minority institutions.

20. Following observations were made by the Supreme Court in T.M.A. Pai Foundation and Ors. vs. State of Karnataka (2002) 8 SCC 481 in paragraphs 136, 137 and 139:-

“136. Decisions of this Court have held that the right to administer does not include the right to maladminister. It has also been held that the right to administer is not absolute, but must be subject to reasonable regulations for the benefit of the institutions as the vehicle of education, consistent with national interest. General laws of the land applicable to all persons have been held to be applicable to the minority institutions also for example, laws relating to taxation, sanitation, social welfare, economic regulation, public order and morality.

137. It follows from the aforesaid decisions that even though the words of Article 30 (1) are unqualified, this Court has held that at least certain other laws of the land pertaining to health, morality and standards of education apply. The right under Article 30(1) has, therefore, not been held to be absolute or above other provisions of law, and we reiterate the same. By the same analogy, there is no reason why regulations or conditions concerning, generally, the welfare of students and teachers should not be made applicable in order to provide a proper academic atmosphere, as such provisions do not in any way interfere with the right of administration or management under Article 30 (1).

139. Like any other private unaided institutions, similar unaided educational institutions administered by linguistic or religious minorities are assured maximum autonomy in relation thereto; e.g. method of recruitment of teachers, charging of fees and admission of students. They will have to comply with the conditions of recognition, which cannot be such as to whittle down the right under Article 30.”

21. 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.

22. 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.

23. 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 institution has been recorded as one of the essential ingredients under Article 30(1) of the Constitution.

24. In the present case respondent has rejected the proposal of the petitioner No. 2 on the ground that they did not publish the said Advertisement for the post of 2 Associate Professors and 3 Assistant Professor as per The Maharashtra Government Service Rules 2013. .

25. The role of the respondent no. 3 is limited to the extent of ensuring that the person so selected fulfills the minimum qualifications of eligibility laid down by the State/ University.

26. Consequently, the action of the respondent No. 3 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 my opinion the impugned order dated 11.3.2020 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.

27. Consequently, for the foregoing reasons, we direct the respondent No. 3 to implement the findings of the Commission by granting approval to the appointment of teachers selected and appointed by Petitioner No. 2.

28. It is pertinent to mention here that the Commission has passed similar judgment in Appeal/ Petition No. 27 of 2019.

29. In view of the above, the present petition is disposed of in accordance with this order.

Signed, pronounced and published on **Thursday, 12th Day of October, 2023.**

**DR. SHAHID AKHTER
MEMBER**

MD