GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS

Case No. 1320 of 2009

In the matter of:

Buckley Primary School
Mission Road
P.O. Buxibazar,
Distt. Cuttack
Orissa – 743 001

……. Petitioner

Versus

The Principal Secretary to Government
School & Mass Education Department
Government of Orissa
Orissa Secretariat
Bhubaneshwar
Orissa – 751 001

….. Respondent

ORDER
(Delivered on the 6th day of July 2010)

Justice M.S.A. Siddiqui, Chairman

The petitioner school has applied for grant of minority status certificate on the ground that the same has been established and is being

administered by Buckley Primary School which is a registered trust constituted by members of Christian community. It is stated in the petition that on 7.1.2009, the petitioner had applied to the competent authority of the State Government for grant of minority status certificate and the same is still pending. Despite service of notice, the competent authority of the State Government has failed to apprise the Commission about the status of the said application. Pendency of the said application for such a disproportionately long period clearly indicates Government's disinclination to grant minority status certificate to the petitioner. Petitioner's right to get a minority status certificate cannot be kept under suspended animation. In this view of the issue, we find it just and expedient in the interest of justice to intervene in the matter.

Despite grant of repeated adjournments, the State Government did not file its written statement in opposition to the petition filed by the petitioner. However, following issues arise for consideration:-

(i) Whether the petitioner institution has been established by the Christian community which is a notified minority community?
(ii) Whether the petitioner institution has been established for the benefit of the Christian community?
(iii) Whether the petitioner institution is being administered by the Christian community?

Issue No 1 – it is stated in the petition that the petitioner school has been established by the Buckley Primary School, which is a registered trust, constituted by the members of the Christian community. The petitioner has produced original deed of trust of the Buckley Primary

School, Cuttack which clearly proves that the said Trust has been constituted by members of the Christian Community and all the trustees of the Trust are from the Christian Community. It further proves that the petitioner school has also been established by the said Trust. It needs to be highlighted that the respondent has not even controverted the factual matrix of the case. The petitioner has also filed a xerox copy of the Memo No. 5397 dated 31.3.2010 of the Director, Elementary Education, Orissa which clearly indicates that the petitioner school has been recognized by the State Government. It is also mentioned in the said letter that the petitioner school was established in the year 1837 and it was managed by the Diocese, Cuttack. This letter read along with the Trust Deed of the Buckley Primary School clearly proves that the petitioner institution has been established by the Christian community. As stated earlier, the petitioner school has been founded by the Christian Community and it is being managed by the Diocese of Cuttack. In this view of the matter, it may safely be inferred that the objective of founding the institution, inter alia, was to give Catholic youth of the Christian community a full course of moral and liberal education, by imparting through religious instructions and by maintaining a catholic atmosphere in the institution. There is not an iota of evidence on record to rebut the evidence produced by the petitioner. Consequently, we find and hold that the petitioner institution has been established by the Christian Community.

Issue No. 2 – the Trust Deed of the Buckley School clearly reflects that the beneficiaries of the petitioner school are members of the Christian Community. This fact also finds ample corroboration from the uncontroverted affidavit of Mrs. Smruti Rekha Panda, Head Mistress of the petitioner school. There is not even a shred of evidence on record to rebut the said evidence produced on behalf of the petitioner school.

Consequently, we find and hold that beneficiaries of the petitioner institution are members of the Christian community.

Issue No. 3 – the Trust Deed of the Buckley Primary School, Cuttack clearly proves that the petitioner institution is being administered by the Christian Community. The aforesaid fact also find ample corroboration from the affidavit of Mrs. Smruti Rekha Panda and the Memo No. 5397 dated 31.3.2010 issued by the Director, Elementary Education, Government of Orissa. The Memo dated 31.3.2010 clearly contains an admission of the State Government that the petitioner institution is being managed by the Diocese, Cuttack. Consequently, we find and hold that the petitioner institution is being managed by the Christian community.

It is stated in the affidavit of Mrs. Smruti Rekha Panda, Head Mistress of the petitioner institution that out of 297 students admitted in the institution, only 95 students are from the Christian community. Thus, the percentage of students from Christian community admitted in the petitioner school is 31.98% only. Here an interesting question which arises for consideration is : whether percentage of admission of students from a notified minority community in a minority educational institution can be included in the indicia for determining the minority status of such an institution? Learned counsel for the petitioner has strenuously urged that the indentifying criteria of a minority educational institution based on bulk or majority of admission of a minority community or on the basis of ratio of admission of students belonging to minority community fixed by the State Government would be unreasonable, impractical and unworkable. According to the learned counsel, this identifying test of a minority educational institution would annihilate the rights of the minorities enshrined in Article 30(1) of the Constitution. He has further contended

that the rights of the minorities under Article 30(1) are absolute and subject only to the regulations made by the State for ensuring excellence in education of the institution and no other restrictions can be imposed upon minorities under Article 30(1). Learned counsel has invited our attention to the decisions rendered by the Supreme Court in T.M.A. Pai Foundation Case vs. State of Karnataka (2002) 8 SCC 481, Islamic Academy of Education vs. State of Karnataka (2003) 6 SCC 697 and P.A. Inamdar vs. State of Maharashtra 2005 6 SCC 537 in support of the said contentions.

It is necessary to first take into consideration the background in which the said cases came to be instituted, the basic points involved therein and the results thereof. In T.M.A. Pai, the scheme as formulated in Unnikrishnan vs. State of Andhra Pradesh (1993) 1 SCC 645 was challenged. In the context of all pervasive and all embracing attack on the scheme formulated in Unnikrishnan's case, the Supreme Court in T.M.A. Pai case framed under the five heads, eleven questions. The five headings under which discussion on the eleven questions were classified read as follows : -

> "(i) Is there a fundamental right to set up educational institutions and if so, under which provision?
>
> (ii) Does Unnikrishnan case requires a re-consideration?

(iii) In case of private institutions, can there be Government regulation and , if so, to what extent?

(iv) In order to determine the existence of religious or linguistic minority in relation of Article 30 what is to be the unit – the state or the country as a whole?

(v) To what extent can the rights of the aided private minority institutions be regulated?

It has been held by the Supreme Court in T.P.A. Pai case (supra) that "a minority institution does not cease to be so, the moment the grant-in-aid is received by the institution. Aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and at the same time, would be required to admit a reasonable extent of non-minority students, so that the rights under Article 30(1) are not substantially impaired and further the citizens' rights in Article 29 (2) are not infringed. What would be the reasonable extent would vary from types of institution, the course of education for which admission is sought and other factors like educational needs. The State Government concerned has to notify the percentage of

the non minority students to be admitted in the in the light of the above observations……."

In St. Stephen's College vs. University of Delhi (1992) 1 SCC 558, the Supreme Court has held that "in view of the importance which the Constitution attaches to protective measures to minorities under Article 30(1), the minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions subject, of course, to conformity with the university standard. The State may regulate the intake in this category with due regard to the need of the community in the area which the institution is intended to serve. But in no case such intake shall exceed 50 per cent of the annual admission. The minority institutions shall make available at least 50 percent of the annual admission to members of communities other than the minority community. The admission of other community candidates shall be done purely on the basis of merit."

In T.M.A. Pai case (supra) the Supreme Court while interpreting Articles 29(2) and 30(1) of the Constitution held that a balance has to be struck. While holding that no distinction could be made between citizens on the ground of religion, race, caste or language in view of Article 29(2), it was further held that the said Article would not mean that it was intended to nullify the special rights guaranteed to the minorities under Article 30(1). It was also observed that St. Stephen's case (supra)

endeavoured to strike a balance between Articles 29(2) and 30(1) and even though the ratio in St. Stephen's case holds the field for over a decade, there were compelling reservations in not accepting the rigid percentage of 50 per cent stipulated therein.

According to the dictum laid down in T.M.A. Pai's case (supra), as Articles 29(2) and 30(1) applied not only to institutions of higher learning, but also to schools, a ceiling of 50% was held to be not proper and it would be more appropriate, depending upon the level of the institution, whether it be a primary or secondary or high school or a college, professional or otherwise and on the population and educational needs of the area in which the institution is to be located, the State properly balances the interest of all by providing for such a percentage of students of the minority community to be admitted, so as to adequately serve the interest of the community for which the institution was established.

In paragraph No. 102 of the judgment rendered by the Constitution Bench of the Supreme Court in P.A. Inamdar vs. State of Maharashtra (supra) while referring to the observations in T.M.A. Pai's case, it was observed that to establish a minority institution, the institution must primarily cater to the requirements of that minority of that State, else its character of minority institution would be lost. It has to be borne in mind that the aforesaid observations was made in the context of cross border

admissions as the main question for consideration in P.A. Inamdar's case was : can a Minority Institution provide cross border or inter-state educational facilities and yet retain the character of minority educational institution? Similarly, the observations made in paragraph 153 of T.M. A. Pai case (supra) with regard to the obligation of the institution to admit the bulk of the students fitting into the description of the minority community or students of that group from the State appear to have been made in the context of cross border admissions. The practice adopted by the institutions established by the religious or linguistic minorities have shown that they will make admission from across the border of the State where the concerned minority was not a minority. The State has to be the unit for determining the minority and it would be possible that a minority in Orissa may not be a minority in Andhra Pradesh or Madhya Pradesh. Surely, if the minority educational institutions are given the right to make admissions from that minority community which is a majority community in another State, it would be a fraud on the Constitution. It is in that context, the observations came to be made that bulk or majority of admission of minority community has to be from within the State where the community is a minority. Despite the observations made above, it has further been observed that there could be a sprinkling of admissions from across the border. These observations

cannot at all be construed to mean that the minority institutions aided or unaided must necessarily admit a fixed percentage of their students from within the community in that State.

It needs to be highlighted that according to the Census Report 2001, Christian population in the State of Orissa was 8,97,861 and the total population of the State of Orissa was 36,804,660. Petitioner institution is situated in Cuttack and the total population of the District of Cuttack was 23,41,094 out of which, population of the Christian community was 10,657. It is stated in the affidavit of Mrs. Smruti Rekha Panda, Head Mistress of the petitioner school that the percentage of the Christian community in Cuttack District is 0.46%. The petitioner school is a primary school. One can make a reasonable guess that the students seeking admission in educational institutions established by the Christian community in the Cuttack District would normally be commensurable to its population. In this view of the matter, the Christian community of the District, Cuttack may not be able to secure more than 0.46% admission from its own community. Similarly, if in a particular State there may be very scanty population of a particular community and number of students seeking admission may be only handful. Would such religious or linguistic minority lose its right to establish and administer educational institution of its choice? Would religious minorities like Sikhs, Buddhists and Jains have no right of establishing and administering educational institutions of their

choice as guaranteed under Article 30(1) of the Constitution? Thus, the fundamental right guaranteed under Article 30(1) would be a teasing illusion or a promise of unreality for them. It is a matter of common knowledge that although the Parsi community is a notified minority community but it is also a dwindling community of our country. That being so, a microscopic minority like Parsi community cannot exercise the rights enshrined in Article 30(1) of the Constitution. This aspect was neither considered in T.M.A. Pai nor in P.A. Inamdar's case. It has to be borne in mind that Article 30(1) of the Constitution is an article of faith and the whole object of conferring the right on the minorities under Article 30(1) is to ensure that there will be equality between the majority and minority. If the minorities do not have such special protection, they will be denied equality, special rights for minorities were designed not to create inequality. Their real effect was to bring about equality by ensuring the preservation of the minority institutions and by guaranteeing to the minorities autonomy in the matter of administration of these institutions (St. Xavier's College, Ahmedabad vs. State of Gujarat 1974 (1) SCC 717). It can be said to be an index of the level of civilization and catholicity of a nation as to how far their minorities feel secure and are not subjected to any discrimination or suppression. As Hon. Venkatarama Aiyer J. observed in AIR 1958 956 at page 990, the Constitution gives the

minorities two distinct rights one a positive and the other a negative one, viz,

(i) The State is under a positive obligation to give equal treatment in the matter of aid, recognition to all educational institutions including those of minorities, religious or linguistic; and

(ii) The State is under a negative obligation as regards those institutions not to prohibit their establishment or interfere with their administration.

Thus, the identifying criteria of fixation of a percentage of the students to be admitted in a minority educational institution does not fit in the constitutional scheme of our constitution.

It needs to be highlighted that a liberal, generous and sympathetic approach is reflected in the Constitution in the matter of the preservation of the right of the minorities so far as their educational institutions are concerned. The Supreme Court has clearly recognized that running of minority educational institution is also as fundamental and important as other rights conferred on the citizens of the country (Managing Board of Milli Talimi Mission Bihar vs. State of Bihar 1984 SCC

(4) 500). Any State action which in any way destroys, curbs or interferes with such rights would be violative of Article 30(1). We may, in this connection, usefully excerpt the following observation of their lordships of the Supreme Court in St. Xavier's College Ahmedabad vs. State of Gujarat AIR 1974 SC 1389.

> "……This Court has consistently upheld the rights of the minorities embodied in those Articles and has ensured that the ambit and scope of the minority rights is not narrowed down. The broad approach has been to see that nothing is done to impair the rights of the minorities in the matter of their educational institutions and that the width and scope of the provisions of the Constitution dealing with those rights are not circumscribed. The principle which can be discerned in the various decisions of this court is that the catholic approach which led to the drafting of the provisions relating to minority rights should not be set at naught by narrow judicial interpretation. The minorities are as much children of the soil as the majority and the approach has been to ensure that nothing should be done as might deprive the minorities of a sense of

> belonging, of a feeling of security, of a consciousness of equality and of the awareness that the conservation of their religion, culture, language and script as also the protection of their educational institutions is a fundamental right enshrined in the Constitution."

The essence of the right guaranteed under Article 30(1) is a free exercise of their choice by minority institutions of the pattern of education as well as of the administration of their educational institutions. Both these, taken together, determine the kind or character of an educational institution in which a minority has the right to choose. The scope and object of Article 30(1) is clear and eloquent. The very back ground of providing rights to minority communities in the matter of running educational institutions of their choice and the said right being not subject to any restriction would be clearly suggestive of the fact that once a community is a minority, it would have the right guaranteed under Article 30(1) of the Constitution.

As stated earlier the petitioner institution has been established by the Christian community. In St. Xavier's College case (Supra), it has been observed as under:

> “As far as Catholic educational institutions are concerned, Catholics believe that education belongs pre-eminently to the church. Catholic dogma categorically denies the premise that secular general education can be isolated from religious teaching. In the 1930 encyclical ‘Christian Education of Youth’ Pope Plus XI has commended: “The only school approved by the Church is one where the catholic religion permeates the entire atmosphere and where all teaching and the whole organization of the school and its teachers, syllabus and textbooks in every branch is regulated by the Christian spirit.”

The minorities regard it as essential that the education of their children should be in accordance with the teachings of their religion and they hold, quite honestly, that such an education cannot be obtained in ordinary schools designed for all the members of the public but can only be secured in schools conducted under the influence and guidance of people well versed in the tenets of their religion and in the tradition of their culture. They also desire that scholars of their educational institutions should go out in the world well and sufficiently equipped with the qualifications necessary for a useful career in life.

The right guaranteed under Article 30(1) of the Constitution implies the obligation and duty of the minority educational institutions to render the very best to the students. Minorities will virtually lose their right to equip their children for ordinary careers if they lose their rights to establish and administer educational institutions of their choice under Article 30(1) of the Constitution. The educational institutions set up by minorities will be robbed of their utility if their children cannot be trained in the institutions of their choice. Thus, the right to establish educational institution of their choice must, therefore, mean the right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions. It is relevant to mention that regulatory measures for ensuring educational standards and maintaining excellence thereof are no anathema to the protection conferred by Article 30(1) of the Constitution. It has been held in the case of T.M.A. Pai (supra) that “the regulations made by the authorities 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”. To regulate, be it noted, is not to restrict, but to facilitate effective exercise of the very right. Regulation which restricts is

bad; but regulation which facilitates is good. Where does this fine distinction lie? No rigid formula is possible but a flexible test is feasible. However, a regulation would be deemed unreasonable only if it was totally destructive of the rights of the minorities to establish and administer educational institutions of their choice. The excellence of the institution provided by an institution would depend directly on the quality and contentment of the teaching staff. The right to administer is to be tempered with regulatory measures to facilitate smooth administration. Regulations in the interest of efficiency of teachers, discipline and fairness in administration are of paramount importance in good administration. The best administration will reveal no trace or colour of minority. A minority institution should shine in exemplary electism in the administration. The best compliment that can be paid to a minority institution is that it does not rest on or proclaim its minority character. However, the fixed formula of a percentage governing admissions in all types of educational institutions established by the minorities does not fall within the domain of academic excellence of an institution and as such it cannot be held as a reasonable restriction. What appears to the correct proposition of law can be culled out from the following observations of their lordships of the Supreme Court in the case of P.A. Inamdar (Supra): -

> “In Kerala Education Bill the scope and ambit of the right conferred by Article 30(1) came up for

consideration. Article 30(1) does not require that minorities based on religion should establish educational institutions for teaching religion only or that a linguistic minority should establish educational institution for teaching its language only. 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 children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the abovesaid two objectives, the institution would remain a minority institution.

(emphasis supplied)

Thus, the said dual test would be the only test to confer the status of minority on a minority educational institution. It is relevant to mention that the right under Article 30(1) is a preferential right of a minority institution to admit students of its community. This obligation is intended to ensure that the institution retains its minority character by achieving the aforesaid twin objects of Article 30(1) enabling a minority community to conserve its religion and language and to give a thorough, good, general education to children belonging to its community. So long as the institution retains its essential character by achieving the said objectives, it would remain a minority institution. Emphasizing the need for preserving its minority character so as to enjoy the privilege of protection under Article 30(1), it is necessary that the objective of establishing the institution was not defeated. That being so, the aforesaid dual test has impliedly disowned the Identifying criteria of a minority educational institution based on bulk or majority of admission of minority community or on the basis of ratio of admission of students belonging to minority community fixed by the State Government. No such rigid formula for identifying a minority educational institution, it appears, can be imposed upon minorities under Article 30(1) of the Constitution. The emphatic point in T.M.A. Pai's case (supra) reasoning is that a minority educational institution is under an

obligation to admit bulk of the students of minority group residing in the State in which the institution is located. A minority educational institution must, therefore, primarily cater to the requirements of that minority of the State in which the institution is located. If not, the very objective of the establishment of the educational institution would be defeated. In other words, the predominance of minority students hailing from the States in which the minority educational institution is established should be present. The management of such institutions cannot resort to the device of admitting bulk of the minority students of the adjoining State in which they are in majority under the façade of the constitutional protection given under Article 30(1) as it would be a fraud on the Constitution. It follows that such admission of minority students would be violative of the minority character of the institution concerned.

It is well settled that a minority educational institution is primarily for the benefit of the minority community which has established it. In the absence of prescription of a percentage governing admissions in a minority educational institution by the State Government concerned in accordance with the directions of the Supreme Court in T.M.A. Pai's case, the students belonging to the minority community of that State seeking admission in a minority educational institution would normally be commensurate to its population in the State. Denying admission to a student of the minority community to which the educational institution

belongs for the purpose of accommodating a student of the non-minority community will be violative of the minority character of a minority educational institution.

It has been held in P.A. Inamdar's case (Supra) that an aided minority educational institution would be entitled to have the right of admission of students belonging to the minority group and at the same time, would be required to admit a reasonable extent of non-minority students, so that the rights under Article 30(1) are not substantially impaired and further citizens' rights under Article 29(2) are not infringed. According to the dictum laid down by the Supreme Court in TMA Pai's case (Supra). "What would be a reasonable extent would depend upon variable factors, and it may not be advisable to fix a specific percentage. The situation would vary according to the type of the institution and the nature of education that is being imparted in the institution. Usually at the school level, although it may be possible to fill up all the seats with students of the minority group, at higher level, either in colleges or in technical institutions, it may not be possible to fill up all the seats with the students of the minority group."

Thus, the intake of students of the minority group in a minority educational institution has to be dependent upon variety of factors like what kind of institution it is, whether primary, secondary, high school or professional or otherwise, the population of that community in the State

and to the educational need of the area in which the institution is located. It is by considering all these factors that the State Government may fix a minimum intake of minority and non-minority students in a minority educational institution.

At this juncture, we must make it clear that this Commission does not have power to fix a percentage governing admission of students of the minority group in a minority educational institution. This is the function of the State Government concerned. There is no complaint whatsoever against the petitioner institution to show or suggest that it had denied admission to any student of the Christian community for the purpose of accommodating a student of the non-minority community. In the absence of prescription of a workable and reasonable percentage governing admission of students of the Christian community in a minority educational institution by the State Government in the manner indicated above, we are unable to hold that the petitioner institution has lost its minority character.

The matter may be looked from another angle. If any State Government has fixed 50% or more as the identifying criteria of minority students admitted to a minority institution for conferral of minority status. Fixation of such a percentage by the State Government obliges a minority educational institution to admit not less than 50% students from within the State from the minority community to which the institution belongs. The

question is: whether a fixed percentage such as 50% as the minimum limit of admission of students of the same community within the State would be unworkable, unreasonable and impractical as also against the rights of minority educational institutions conferred on them under Article 30(1) of the Constitution.

We may mention here at the cost of repetition that it has been held by the Supreme Court in TMA Pai (Supra) that the intake of minority students in the concerned institution has to be dependent upon variety of factors like what kind of institution it is, whether primary, secondary, high school or college or otherwise, the population of that community in the State and to the need of the area in which the institution is located. It is by considering these factors that the State may fix a minimum intake of minority and non-minority students. The Supreme Court has also held that “what would be a reasonable extent would depend upon variable factors, and it may not be advisable to fix any specific percentage.” From the above it is clear that a ceiling of 50% cannot be imposed against the minority institutions, requiring them to compulsorily admit the minority students upto 50%. There cannot be a common rule or regulation in respect of all types of educational institutions from primary to college level and for the entire State fixing the uniform ceiling in the matter of admission of students in minority educational institutions.

As stated earlier, the population of Christians in the State of Orissa is roughly 2.439 %. It is common knowledge that educational institutions established by the Christian community, even if they make all out efforts, may not be able to secure 50% admission from their own community. In this view of the matter, Christian community of Orissa would lose its right to establish and administer educational institutions of its choice guaranteed under Article 30(1) of the Constitution. Surely, if the fixed formula of 50% is to be adhered to, said right of the Christian community of Orissa under Article 30(1) would stand forfeited. In no case, the Christian community shall be able to admit 50% of students from its community because such member of students are not available. To illustrate the impracticability of the said fixed formula we may further give an illustration. In a given academic year, say 2007-2008, an institution run by the Christian community may be able to secure 50% of admissions from its community. In that academic year, it would be a religious minority capable of exercising its right enshrined in Article 30(1). For the next academic year, 2008-2009, it may not be able to secure 50% admissions from its community and for that academic year it would lose the right guaranteed to it under Article 30(1). In the next academic year, 2009-2010, it may again be able to secure 50% admission from its community, its character as a minority educational institution shall be again restored. Would any educational institution established by the Christian community

of Orissa in such a situation would be able to manage its affairs. The only answer appears to us is an emphatic no. The aforesaid fixed formula of percentage governing admission of students in a minority educational institution virtually involves an abject surrender of the right of establishment and management of educational institutions and the same is inconsistent with the Constitutional guarantee enshrined in Article 30(1). In our considered view, the aforesaid identifying test of a minority educational institution is not only impracticable, unworkable but also an ever changing phenomena. It is also an unreasonable restriction wholly impermissible either by virtue of mandate of Article 30(1) of the Constitution or by judicial precedents governing the field. As stated by Sardar Patel as the Chairman of the Advisory Committee dealing with the rights of minority communities that "as long as the Constitution stands as it is today, no tampering with those rights can be countenanced. Any attempt to do so would be not only an act of breach of faith, it would be constitutionally impermissible and liable to be struck down by the Courts." (Extract from the speech delivered by him on 27.2.1947). Thus, imposition of a uniform ceiling on admission of minority students in all types of educational institutions established by the minorities is virtual negation of the constitutional protection of autonomy to minorities in running educational institutions of their choice as guaranteed under Article 30(1) of the Constitution. We need not enlarge the protection but we may not reduce a protection naturally flowing from

the words. Consequently, we find and hold that the identifying criteria of fixation of a percentage governing admission of a minority community in a minority educational institution cannot be included in the indicia for determining the minority status of such an institution.

Needless to add here that a minority educational institution imparting secular education in order to claim the constitutional protection of Article 30(1) must show that it serves or promotes in some manner, the interest of the minority community or a considerable section thereof. Without such proof, there would be no nexus between the institution and the minority as such. In A.P. Christian Medical Association vs. State of A.P., AIR 1986 SC 1490, the Supreme Court has observed that "what is important and what is imperative is that there must exist some real positive index to enable the institution to be identified as an educational institution of the minorities". We have already held that the petitioner school was established and administered by a minority community, viz, the Christian community which is indisputably a religious minority in the State of Orissa where the school is located. We have also held that admission of students in the said school is not violative of the minority character thereof. Consequently, the petitioner school is entitled to claim the constitutional protection of Article 30(1).

For the reasons discussed above, we find and hold that the Buckley Primary School, Mission road, P.O. Buxibazar, Distt. Cuttack, Orissa run by the Buckley Primary School is eligible for grant of minority status on religious basis. Consequently, Buckley Primary School is declared as a minority educational institution within the meaning of Section 2(g) of the National Commission for Minority Educational Institutions Act. A certificate be issued accordingly.

JUSTICE M.S.A. SIDDIQUI,
CHAIRMAN

DR. MOHINDER SINGH, MEMBER(on leave)

DR. CYRIAC THOMAS,
MEMBER

July 6, 2010