

**GOVERNMENT OF INDIA  
NATIONAL COMMISSION FOR MINORITY EDUCATIONAL  
INSTITUTIONS**

**Case No. 1696 of 2012**

**In the matter of:**

Mohammad Ali Jauhar University  
Jauhar Nagar  
Post Singham Khera  
Tehsil Tanda, Distt. Rampur  
Uttar Pradesh  
Through Dr. Tazeen Fatima,  
Secretary,  
Maulana Mohammad Ali Jauhar Trust, Rampur

.... Petitioner

Versus

1. The Chief Secretary  
Government of Uttar Pradesh  
Lucknow  
Uttar Pradesh
  
2. The Secretary,  
Minorities Welfare Department  
Government of Uttar Pradesh  
6<sup>th</sup> Floor, Indira Bhawan  
Lucknow  
Uttar Pradesh

3. Deputy Director,  
Minorities Welfare Department  
Government of Uttar Pradesh  
6<sup>th</sup> Floor, Indira Bhawan  
Lucknow  
Uttar Pradesh

..... Respondent

### **ORDER**

**(Delivered on the 28<sup>th</sup> of May, 2013)**

#### **Justice M.S.A. Siddiqui, Chairman**

The Mohammad Ali Jauhar University, Rampur (hereinafter referred to as the University) has applied for grant of minority status certificate on the ground that the same has been founded by Maulana Mohammad Ali Jauhar Trust constituted by members of the Muslim community and incorporated under the Mohammad Ali Jauhar University Act, 2005 (UP Act No. 19 of 2006). It is also alleged that the University is being administered by the members of the Muslim Community and as such it is entitled to be declared as a minority educational institution within the meaning of Section 2(g) of the National Commission for Minority Educational Institutions Act (for short the Act). Hence this petition.

In its reply dated 3.4.2013, the State Government has supported the petitioner's claim about its minority status. It is also mentioned in the reply that the beneficiaries of the University are also members of the Muslim Community.

In its reply dated 5.3.2013, the Governor's Secretariat, Uttar Pradesh has intimated to the Commission its No Objection for the grant of minority status certificate to the said University.

Although Section 58 of the Evidence Act declares that admitted facts need not to be proved, yet having regard to the facts and circumstances of the case, we would like to evaluate the evidence produced by the petitioner institution in support of its claim of minority status.

Following facts are required to be proved for grant of minority status to an educational institution on religious basis:-

- (i) that the educational institution was established by a member/ members of the religious minority community;
- (ii) that the educational institution was established for the benefit of the minority community; and

(iii) that the educational institution is being administered by the minority community.

Issue No. (i) & (ii)

The first question which arises for consideration is : who has founded the University. The answer to this question lies in the provisions of the Mohammad Ali Jauhar University Act (for short the University Act).

A bare reading of various provisions of the University Act makes it clear and beyond any doubt that the University was founded by Maulana Mohammad Ali Jauhar Trust with an avowed object for empowering the Muslims through education. Section 3 (1) of the University Act lays down that “There shall be established at Rampur in Uttar Pradesh a University by the Trust in the name of the Mohammad Ali Jauhar University”. Clause (r) of Section 2 of the University Act defines trust as under :-

“Trust” means Maulana Mohammad Ali Jauhar Trust, Lucknow, Uttar Pradesh registered under the Societies Registration Act, 1860”.

The petitioner has produced certified copies of the Trust which has been registered as a society under the Societies Registration Act, 1860. The Memorandum of Association of the Trust clearly shows that all the trustees of the trust are from the Muslim Community. The Preamble of the University Act clearly declares that the University was sponsored by Maulana Mohammad Ali Jauhar Trust at Rampur for its incorporation under an Act of the Legislature.

It is well settled that Preamble of a Statute is an admissible aid to construction. The Preamble of an Act is expected to express the scope, objects and purpose of the Act more comprehensively than the long title. It is the key to open the minds of the makers of the Act. It is well settled that the Preamble being part of the Statute can be read with other provisions of the Act to find out the meaning of words in the enacting provisions and the scope, object and purpose of the Act. In the instant case, the preamble of the University Act clearly declares that the University was sponsored by Maulana Mohmmad Ali Jauhar Trust at Rampur.

In addition, reference may also be made to the Statement of objects and reasons of the University Act which are as under:-

“Urdu language is spoken as mother tongue by a particular section of the society of Uttar Pradesh. The Urdu language is required to be developed in such a way that any person of the society may continue their study to the higher stage of learning in Urdu literature including Arabi and Farasi languages. There is no university under the control of State wherein higher study of Urdu, Arabi and Farasi language and research therein could be facilitated to the persons who are interested in Urdu, Arabi or Farasi languages. The Maulana Mohammad Ali Jauhar Trust, Lucknow has sponsored for the establishment of such University. It has, therefore, been decided to establish a University sponsored by the said Trust to be known as Mohammad Ali Jauhar University at Rampur in the State of Uttar Pradesh to provide advance knowledge and wisdom and understanding by teaching and research in Urdu, Arabi and Farasi language to the scholar.

The Mohd. Ali Jauhar University Bill, 2005 is introduced accordingly.”

The weight of judicial authority leans in favour of the view that the Statement of Objects and Reasons accompanying a bill, when introduced in Legislature cannot be used to determine the true meaning and effect of the substantive provisions of the Statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading upto the legislation and the evil which the statute was sought to remedy. However, judicial notice can be taken of the factors mentioned in the Statement of Objects and Reasons and of such other factors as must be assumed to have been within the contemplation of the Legislature when the Act was passed. If the provisions of the University Act are interpreted, keeping in view the background and context in which the Act was enacted and the purpose sought to be achieved by this enactment, it becomes clear that the University was founded by Maulana Mohammad Ali Jauhar Trust and incorporated under the U.P. Act No. 19 of 2006. According to the Halsbury’s law “the essential feature of a University seems to be that it was incorporated as such by the sovereign power”. (Volume 13, 3<sup>rd</sup> Edition at page 707). At this juncture, a reference to clause (s) of Section 2 of the

University Act has become inevitable which defines the university as under:-

(s) “University” means the Mohammad Ali Jauhar University established under this Act by the Trust.”

(emphasis supplied)

Clause (r) of Section 2 of the University Act defines the trust as under:-

“Trust” means Maulana Mohammad Ali Jauhar Trust, Lucknow, Uttar Pradesh registered under the Societies Registration Act, 1860”.

It cannot be disputed that “to found” is one of the meanings of the verb “to establish”. “To bring into existence” is another meaning of the verb “to establish”. In the present context, we are of the opinion that “to found” is a correct meaning as it is clear from the definition of the verb “to establish”. In this connection, we may excerpt the following observations of their Lordships of the Supreme Court in P.U. Indiresan vs. Union of India 2011 AIR SCW 4855:-

“In English language, many words have different meanings and a word can be used in more than one sense. Every dictionary gives several meanings for each word. The proper use of a dictionary lies in choosing the appropriate meaning to the word, with reference to the context in which the word is used. We cannot mechanically apply all and every meanings given in the dictionary. Nor can we choose an inappropriate meaning that the word carry and then try to change the context in which it is used. The context in which the word is used determines the meaning of the word. A randomly chosen meaning for the word should not change the context in which the word is used. This is the fundamental principle relating to use of words to convey thought or explain a position or describe an event”.

It is also relevant to mention that Section 4 of the University Act clearly spells out that the sponsoring body of the University was Maulana Mohammad Ali Jauhar Trust as defined in Clause ( r ) of Section 2”. It needs to be highlighted that the only manner in which the Muslim Community can establish a University was by invoking

exercise of the sovereign power of the State which took the form of an Act of the Legislature and this the Muslim Community did. In other words, the members of the Muslim Community (Maulana Mohammad Ali Jauhar Trust, which was constituted by members of the Muslim Community and registered as a society under the Societies Registration Act, 1860) founded the University in the only manner in which the university could be brought into being, namely by invoking exercise of the sovereign authority of its legislative power. The Muslim Community provided lands, buildings, colleges and endowments for the University and without these, the University as a body incorporate would be an unreal abstraction.

The University Act clearly shows that the university is also being administered by members of the Muslim Community. Section 5 of the University Act provides that the University shall start operation only after the State Government issues to the trust a letter of authorization for the commencement of the functions of the University. Sub Section (2) of Section 5 of the University Act also provides that the State Government shall issue the letter of authorization on receipt of an unambiguous affidavit alongwith documents by the Trust to the effect that all conditions referred to in Section 4 have been fulfilled. At this juncture, it would be appropriate to refer to the reply of the Secretary, Government of Uttar Pradesh which is as under:-

प्रेषक,

लीना जौहरी  
सचिव,

उ०प्र० शासन।

सेवा में,

उप सचिव,

राष्ट्रीय अल्पसंख्यक शैक्षिक संस्थान आयोग,  
भारत सरकार, गेट नं० 4 प्रथम तल, जीवन तारा भवन,  
पटेल चौक, पार्लियामेन्ट स्ट्रीट, नई दिल्ली।

अल्पसंख्यक कल्याण एवं वक्फ अनुभाग-3, लखनऊ:  
दिनांक 03 अप्रैल, 2013

विषय: मुहम्मद अली जौहर वि"वविद्यालय जौहर नगर, जनपद रामपुर बनाम  
उप निदे"ाक, अल्पसंख्यक कल्याण विभाग, उत्तर  
प्रदे"ा सरकार।

महोदय,

उपर्युक्त विषयक अपने पत्र संख्या - 1696/2012-575, दिनांक  
15/01/2013 एवं अनु सचिव, श्री अजय मलिक के पत्र संख्या - 1696/2012 -  
2230, दिनांक 01/03/2013 का कृपया संदर्भ ग्रहण करें। इन पत्रों में मुहम्मद अली  
जौहर वि"वविद्यालय को माइनोरिटी स्टेट्स सर्टिफिकेट दिये जाने के संबंध में मा०  
आयोग के समक्ष प्रस्तुत याचिका पर मा० आयोग में सुनवाई की तिथि को विभाग का  
पक्ष प्रस्तुत किये जाने की अपेक्षा की गयी है।

2- मा० आयोग की अपेक्षा के अनुपालन में मुहम्मद अली जौहर वि"वविद्यालय,  
जनपद रामपुर की याचिका पर विचार किया गया और विचारोपरान्त निम्नलिखित  
तथ्य पाये गये:-

- प्र"नगत वि"वविद्यालय की स्थापना उत्तर प्रदे"ा सरकार की अधिसूचना  
दिनांक 19 जून, 2006 द्वारा की गयी उक्त अधिसूचना के अनुसार पारित  
अधिनियम का नाम मुहम्मद अली जौहर वि"वविद्यालय अधिनियम, 2005 रखा  
गया है।
- उक्त वि"वविद्यालय धार्मिक अल्पसंख्यक समुदाय (मुस्लिम) द्वारा स्थापित एव  
संचालित है।
- वि"वविद्यालय जनपद रामपुर में स्थापित है, जहाँ अल्पसंख्यकों की आबादी  
52 प्रति"ात है तथा अन्य चारों ओर के जनपदों में अल्पसंख्यक समुदाय की  
जनसंख्या 30 से 50 प्रति"ात के मध्य है।

- संस्था का मुख्य उद्देश्य अल्पसंख्यक समुदाय विशेषकर मुसलमानों के चरित्र निर्माण, सामाजिक विकास, शैक्षिक, आर्थिक, सांस्कृतिक तथा सामाजिक उत्थान के साथ-साथ उनमें वैज्ञानिक दृष्टिकोण का विकास करना तथा परम्परागत मदरसा शिक्षा प्रदान करना, स्वास्थ्य तथा चिकित्सा सेवाओं के लिये करते हुये सार्वगीण विकास किया जाना है।
- ऐतिहासिक रूप से मुस्लिम समुदाय द्वारा पढ़ी जाने वाली भाषाओं जैसे – उर्दू, अरबी, एवं फारसी आदि का विकास करना।

3- उपरोक्त वर्णित आधारों को दृष्टिगत रखते हुये यदि मा0 आयोग द्वारा मुहम्मद अली जौहर वि०विद्यालय को माइनोरिटी स्टेटस सर्टिफिकेट प्रदान किया जाता है, तो इससे अल्पसंख्यक समुदाय विशेषकर मुसलमानों के पिछड़ेपन को दूर करने के लिये उन्हें समाज की मुख्य धारा में मदद मिलेगी। अतः सम्यक विचारोपरान्त मुझे यह कहने का निदेश हुआ है कि वि०विद्यालय द्वारा मा0 आयोग के समक्ष प्रस्तुत की गयी याचिका में राज्य सरकार को कोई आपत्ति नहीं है और याचिका को स्वीकार किये जाने की आवश्यकता है।

अतः आपसे से अनुरोध है कि राज्य सरकार के इस अभिमत से मा0 आयोग को अवगत कराते हुये यथोचित निर्णय हेतु अनुरोध करने का कष्ट करें।

भवदीया,

(लीना जौहरी)  
सचिव

Thus the State Government has unequivocally admitted that the University has been established and is being administered by the Muslim Community. Even the Governor's Secretariat, Uttar Pradesh has intimated to the Commission about its no objection against grant of minority status to the University vide letter No. G-862/G.3 dated 5.3.2013. It is relevant to mention that from the very language of Article 30(1) of the Constitution, it is clear that it enshrines a fundamental right of the minority educational institutions to manage and administer their institutions which is completely in consonance with the secular nature of our Constitution itself. Consequently, we

find and hold that the University has been established and is being administered by the Muslim Community.

Next issue which arises for consideration is: whether the beneficiaries of the petitioner institution are members of the Muslim Community?

Needless to add here that an educational institution is established to subserve or advance the purpose for its establishment. Whereas the minorities have the right to establish and administer educational institutions of their choice with the desire that their children should be brought up properly and be eligible for higher education and go all over the world fully equipped with such intellectual attainments as it will make them fit for entering the public service, surely then there must be an implicit in such a fundamental right the corresponding duty to cater to the needs of the children of their own community. The beneficiary of such a fundamental right should be allowed to enjoy it in the fullest measure. Therefore, the educational institutions of their choice will necessarily cater to the needs of the minority community which had established the institution.

The Memorandum of Association of Maulana Mohammad Ali Jauhar Trust clearly reflects that the beneficiaries of the Trust are members of the Muslim Community. Section 6(1) (i) (ii) of the University Act clearly spells out that beneficiaries of the University are also members of the Muslim Community. Proviso to Section 8 of the University Act also support the said fact as it empowers the University for making appropriate provisions for reservation of persons belonging to the Muslim Community with a rider that such reservation cannot exceed more than 50%. It is relevant to mention that the power to manage a University involves the power to admit students to it. The power to admit students is one of the important facets of the right to administer an educational institution. (T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481). Proviso to Section 8 of the University Act embodies a guarantee for reservation of Muslims. The main purpose of the reservation is to raise the standard of education of Muslims. In addition, the Secretary, Government of Uttar Pradesh in his letter dated 3.4.2013 has unequivocally admitted that the beneficiaries of the University are members of the Muslim Community.

Reservation of seats in any minority educational institution is an inevitable corollary of the fundamental right enshrined in Article 30 (1) of the Constitution. It has been held by the Supreme Court in Ahmedabad St. Xavier's College Society Vs. State of Gujarat AIR

1974 SC 1389 that the minorities are given the constitutional protection under Article 30(1) of the Constitution in order to preserve and strengthen the integrity and unity of the country. Thus Article 30(1) is an Article of faith and the whole object of conferring the right on the minorities under this Article is to ensure that there will be equality between the minority and majority. If the minorities do not have such constitutional protection, they will be denied equality.

For a progressive and enlightened democracy, it is necessary that all sections and classes of people are well equipped to shoulder the responsibility of a free nation. According to Sachar Committee's report, Muslims are scratching bottom of the educational barrel of the Country. It is, therefore, necessary to advance, to foster and promote the education of the Muslims at a quicker pace. It appears that the University has provided reservation for the Muslim community in order to achieve the said object. Needless to add here that the sphere of general and 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.

Thus the conspectus of the provisions of the Act clearly indicates that the University is a minority educational institution within the meaning of Article 30(1) of the Constitution. As demonstrated

earlier, the Muslim Community had striven for, and obtained, the establishment of the University for the benefit of its community and endowed it with considerable property and money. Consequently, we find and hold that the main beneficiaries of the University are members of the Muslim community.

It is also relevant to mention that the State Legislature has again reiterated its intention to treat/declare the University as a minority educational institution by passing the Mohammad Ali Jauhar University (Amendment) Act, 2007. By the amendment, Clause ( s) of Section 2 of the University Act is to be substituted by the new definition of the “University” which is as under :-

“University” means the Mohammad Ali Jauhar University established under this Act by the Trust as a minority educational institution.”

(emphasis supplied)

In our opinion there is no inconsistency between the definition of ‘University’ as defined in the Integral University Act, The Teerthanker Mahavir University Act and the Mohammad Ali Jauhar University (Amendment) Bill, 2007. Thus, the definition of the word ‘University’ as defined under clause (s) of the Mohammad Ali Jauhar

University (Amendment), Bill, 2007 can not be faulted on any valid ground. The Mohammad Ali Jauhar University (Amendment) Bill, 2007 is still awaiting for assent of the Governor of U.P.

For the foregoing reasons, we find and hold that the Mohammad Ali Jauhar University, Rampur is 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**

**DR. CYRIAC THOMAS  
MEMBER**

**ZAFAR AGHA  
MEMBER**

May 28, 2013