GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS

Case No. 2334 of 2012

In the matter of:

The Association of Minority
Pharmacy Colleges
Molgi Road
Akkalkuwa
Dist. Nandurbar
Maharashtra
Through its President
Maulana Gulam Mohd. Vastanvi

…. Petitioner

Versus

Pravesh Niyantran Samiti
Govt,. of Maharashtra
305, 3rd Floor
Govt. Polytechnic Building
49, Kherwadi
Ali Yawar Jung Marg
Bandra (E)
Mumbai

….. Respondent

ORDER
(Delivered on the 16th of January, 2013)

Justice M.S.A. Siddiqui, Chairman

By this petition, the petitioner seeks a direction to the respondent to approve the admission of the students admitted through its CET held on 29.8.2012 and also to allow the petitioner to hold CET for the academic year 2013-2014. The petitioner is an association of

minority educational institutions established by members of the Muslim Community. The respondent had allowed the petitioner to hold its own CET for the academic year 2011-12 vide memo dated 7.9.2011 (Annexure P-1). Admission of students selected through the CET conducted by the petitioner was also approved by the respondent vide memos dated 11.4.2012, 17.4.2012 and 21.5.2012 (Annexure P-2). The petitioner applied to the respondent for conducting its own CET for the academic year 2012-13. After repeated reminders, the petitioner was informed about rejection of its application for holding its own CET vide memo dated 7.8.2012 (Annexure P-5). By the letter dated 3.10.2012, extract of the minutes of the meeting and the decision taken by the respondent were also communicated to the petitioner (vide Annexure P-12). The English translation of the decision taken by the respondent on 16.7.2012 on the petitioner's application is as under :

> "Two CETs for admission procedures are available (MAH-MPH-CET2012 & M. Pharm Asso-CET-2012), the third CET for admission procedure from Association of Minority Pharmacy Colleges, Akkalkuwa (AMPCA-CET-2012) is not feasible for admission of students. They should either participate in the admission process of Government

or the admission process of association of Private Un-aided Pharmacy Colleges.“

It is alleged that impugned decision of the respondent is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. Hence this petition.

The respondent resisted the petition on the ground that it is not maintainable as the Commission has no jurisdiction to issue any direction to the State Government or to the Committee constituted by the State Government. It is alleged that the Commission cannot entertain the present petition as the petitioner institution is not a minority educational institution. It is also alleged that the petitioner has no locus standi to file the present petition on behalf of the Y.B, Chavan College of Pharmacy, Ali-Allana college of Pharmacy and Allana College of Pharmacy. It is further alleged that there are about 17 minority unaided pharmacy colleges including the petitioner in the State of Maharashtra, who had participated in the CET conducted by the State of Maharashtra and the Association of Private Pharmacy Colleges and the eligible candidates have been allotted for their admission in the colleges of Pharmacy. It is further alleged that cut off date for approval of students selected through CET conducted under the supervision and control of the Director of Technical Education,

State of Maharashtra expired on 31.8.2012 and as such the present petition which was filed on 15.7.2012, has become infructuous. It is further alleged that according to the decisions rendered by the Supreme Court all professional colleges can admit students only from sources mentioned above and the petitioner cannot be permitted to hold its own CET for admission of students. It is also alleged that the Director of Technical Education, State of Maharashtra is a necessary party to the present proceedings and as such the petition is bad for non joinder of the necessary party.

In view of the rival contention of the parties, following issues arise for consideration:-

(a) Whether the commission has jurisdiction to entertain the petition?

(b) Whether the petition is bad for non-joinder of the necessary party?

(c) Whether the impugned decision dated 16.7.2012 of the respondent debarring the petitioner from holding its own CET is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution?

Issue No. 1

At the outset we must make it clear that this Commission has been created under an Act of Parliament to facilitate exercise of the

educational rights of the minorities enshrined in Article 30 (1) of the Constitution. The statement of objects and reasons accompanying the Bill clearly spell out the object for constitution of this Commission. At this juncture, we may usefully excerpt the Statement of Objects and Reasons of the Bill, which are as under :-

"In one of the Sections of the National Common Minimum Programme, there is a provision to establish a Commission for Minority Educational Institutions (hereinafter referred to as the National Commission) that will provide direct affiliation for minority professional institutions to Central Universities. This long felt demand of the Minority communities was also underscored in a series of meetings held by the Ministry of Human Resource Development with educationists, eminent citizens and community leaders associated with Minority education. Among the various issues raised by the representatives of the Minority communities was the difficulty faced by them in establishing and running their own educational institutions, despite the Constitutional guarantees accorded to them in this regard. The major problem was the issue of securing affiliation to a university of their choice. The territorial jurisdiction of the State Universities, and the concentration of minority populations in some specific areas invariably meant that the institutions could not avail the opportunity of affiliation with the universities of their choice.

2. Subsequently, in a meeting of the National Monitoring Committee for Minority Education held on August 27, 2004, similar views were voiced by many experts. Participants from the various minority communities affirmed the need to provide access to such affiliation in view of the often restrictive conditions imposed by the existing statutes of the Universities, relating to the affiliation of such institutions. They felt that these conditions affected the rights granted to them on account of their Minority status. The fact that there was no effective forum for appeal and quick redressal only aggravated the sense of deprivation of the minority communities.

3. in view of the commitment of the Government in the National Common Minimum Programme, the issue of setting up of a National Commission was a matter of utmost urgency. As the Parliament was not in session and in view of the considerable preparatory work that would be involved to make the national commission's functioning effective on and from the next academic session, recourse was taken to create the National Commission through promulgation of the National Commission for Minority Educational Institutions Ordinance, 2004 on 11th November, 2004.

4. The salient features of the aforesaid ordinance are as follows:-

(i) It enables the creation of a National Commission for Minority Educational Institutions;

(ii) It creates the right of a minority educational institution to seek recognition as an affiliated college to a Scheduled University, notwithstanding anything contained in any other law for the time being in force;

(iii) It allows for a forum of dispute resolution in the form of a Statutory Commission, regarding matters of affiliation between a minority educational institution and a Scheduled University and its decision shall be final and binding on the parties;

(iv) The Commission shall have the powers of a civil court while trying a suit for the purpose of discharging its functions under it, which would provide the decisions of the Commission the legal sanction necessary for such purpose; and

(v) it empowers the Central Government to amend the Schedule to add in, or omit from any University."

The weight of judicial authority leans in favour of the view that the Statement of Objects and Reasons accompanying a bill, when introduced in Parliament 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 National Commission for Minority Educational Institutions Act, 2004 (for short the 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 'Act' is intended to create a new dispensation for expeditious disposal of cases relating to grant of affiliation by the affiliating universities, violation/ deprivation of educational rights of the minorities enshrined in Article 30(1) of the Constitution, determination of Minority Status of an educational institution and grant of NOC etc. This Commission is a quasi-judicial tribunal and it has been vested with the jurisdiction, powers, an authority to adjudicate upon the disputes relating to grant of affiliation

to the colleges covered under Article 30(1) of the Constitution and the rights conferred upon the minorities under the Act without being bogged down by the technicalities of the Code of Civil Procedure.

It needs to be highlighted that the Act provides that the Commission will be guided by the principles of natural justice and subject to the other provisions of the Act and has the power to regulate its own procedure. Sub Section (2) of Section 12 empowers the Commission to exercise the specified powers under the Code of Civil procedure like summoning of witnesses, discovery, issue of requisition of any public record, issue of commission etc. Sub Section (3) of Section 12 specifies that every proceeding before the Commission shall be deemed to be a judicial proceeding in terms of the Indian Penal Code 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). Sections 12A and 12B confer appellate powers to this Commission and they also provide that orders passed by the Commission shall be executable as a decree of a Civil Court. Sub Section (5) of Section 12 A of the Act declares that an order made by the Commission under Sub Section (4) shall be executable by the Commission as a decree of a Civil Court. Section 12F of the Act indicates that no civil court has jurisdiction in respect of any matter with the Commission and is empowered by or under the

Act to determine. Thus, the Commission enjoys all trappings of a court.

There is also an ouster of jurisdiction of the civil court to entertain any suit or proceeding in respect of any matter which the Commission is empowered by or under the Act to determine. The constitution of the Act itself indicates that it is chaired by a retired Judge of the High Court. Thus the Act is a self-contained code intended to deal with all disputes arising out of recognition/affiliation of the educational institutions of the minorities covered by Article 30(1) of the Constitution. The Act also empowers the Commission to deal with the cases relating to deprivation/violation of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

The right to administer in terms of Article 30(1) of the Constitution means the right to manage and conduct the affairs of the institution. It includes right to choose its governing body, right to selection of teaching and non-teaching staff and right to admit students of its choice. All these rights together form the integrated concept of right to administer. The concept of administration within the meaning of Article 30(1) of the Constitution includes the choice in admitting the students. The right to admit the students of its choice is perhaps the most important facet of the right to administer educational

institution and the imposition of any trammel thereon except to the extent of prescribing requisite qualification of eligibility is constitutionally impermissible. The right under Article 30(1) of the Constitution can neither be taken away nor abridged by the State on account of the injunction of Article 13 of the Constitution. The power of regulation of the respondent Committee cannot render these core rights a teasing illusion or a promise of unreality. The controversy in this case pertains to the deprivation of the right of the petitioner to hold its own CET for admission of students in the associate colleges and it is alleged that this deprivation was in violation of Article 30(1) of the Constitution.

In our considered opinion the petitioner has made out a prima facie case of violation/deprivation of the fundamental right guaranteed under Article 30(1) of the Constitution. That being so, the Commission has jurisdiction to entertain the petition.

Learned counsel for the respondent has strenuously urged that the petitioner cannot invoke jurisdiction of the Commission as it is not a minority educational institution. In our opinion the aforesaid submission of the learned counsel does not hold much water. Needless to add here that the Commission has been set up to safeguard and protect the rights of the minorities guaranteed under

Article 30(1) of the Constitution. It needs to be highlighted in its letter No. PNS (H&T) Meeting decision/2010-2011/1152 dated 7.9.2011, the respondent has unequivocally admitted that the petitioner is an Association of Minority Pharmacy College of Maharashtra. In view of the said admission, it does not lie in the mouth of the petitioner to contend that the petitioner is not a minority institution. Consequently, we find and hold that the Commission has the jurisdiction to entertain the petition.

Issue No. 2

It is contended on behalf of the respondent that the Director of Technical Education, Government of Maharashtra is a necessary party to the present proceedings and since the said authority has not been impleaded, the petition is bad for non-joinder of the necessary party. Admittedly , the respondent committee has been constituted by the State Government to monitor admission process and fee fixation in accordance with the directions of the Supreme court in Islamic Academy of Education vs. State of Karnataka (2003) 6 SCC 697. That being so, the Director of Technical Education, Government of Maharashtra has no power to monitor admission process of the colleges in question. Moreover , the petitioner has not sought any relief against the said authority. Consequently, it cannot be held that

the petition is bad for non-joinder of the Director of Technical Education, Government of Maharashtra.

Issue No. 3

It is undisputed that the Government of Maharashtra had constituted the respondent committee in accordance with the directions of the Supreme Court in Islamic Academy of Education (supra) vide orders dated 24.9.2003 (Annexure P-1). It needs to be highlighted that responsibilities of the respondent committee have been enumerated in clause 4(b) of the orders dated 24.9.2003 which are as under :

Admission Regulation Committee

1. The Committee will keep watch on the entrance examination conducted by the institute.

2. The Committee will ascertain that the process of entrance examination is carried out properly and with transparency and will supervise the admission process.

3. The committee will have a right to obtain the question paper/names of the persons assessing the answer books and information about the system of examination from the Institute to confirm that there is no leakage of the question paper for the entrance examination.

4. For those institutes which have their own system of admission, the committee can give approval to the institutes to give admission as per the system. Such admission process can be continued for a minimum of 25 years.

5. It the committee feels that the necessity of a minority institute is proper regarding admission, the committee can permit the institute to fill more seats than the quota sanctioned by the Government for the caste.

6. If any institute is to be exempted from the Admission Regulation Committee or if any Institute wishes to make a change in the percentage in admission, it will be necessary for the Government to put up what it has to say before the Committee."

It has been held by the Supreme Court in Islamic Academy of Education (supra) and P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537 that the main function of Admission Regulation committee to monitor admission process to ensure fairness and transparency in admission procedure. Policing under regulatory measures is permissible but not natiionalisation or total take over. The Committee can't set at naught any decision of the High Court or Supreme Court under the garb of the regulatory measures.

It is beyond the pale of any controversy that the petitioner Association is a minority institution. It is an Association of Minority Pharmacy Colleges established by members of the Muslim community. The affidavit of Mr. Sayyed Nazim Sayyed Chand clearly proves that the three colleges associated with the peitioner, namely Ali-Allana college of pharmacy, Y.B. Chavan College of Pharmacy and Allana College of Pharmacy are only one group of minority institutions of the State of Maharashtra imparting same or similar education. He has clearly stated in his affidavit that no other Muslim minority college in the State of Maharashtra conducts M. Pharma course. It has been held by the Supreme court in P.A. Inamdar case (supra) that "there is nothing wrong in an entrance held for one group

of institutions situated in one state or in more than one State may join together and hold a common entrance test ....."

In P.A. Inamdar (supra) one of the questions that came up of consideration was "whether private unaided professional colleges are entitled to admit students by evolving their own method of admission" and the question was answered by the Supreme court as under:-

> "Pai Foundation has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admission and the procedure therefor subject to its being fair, transparent and non-exploitative. The same principle applied to non-minority unaided institutions. There my be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. All institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the above said triple tests. The State can also provide a procedure of holding a

common entrance test in the interest of securing fair and merit-based admissions and preventing maladministration. The admission procedure so adopted by a private institution or group of institutions , if it fails to satisfy also or ay of the triple tests, indicated hereinabove, can be taken over by the State substituting its own procedure. The second question is answered accordingly"

(emphasis supplied)

It is relevant to mention that the law declared by the Supreme Court is binding on all courts. All the authorities in the territory of India are require to act in aid of it. Any interpretation of law or judgment by the Supreme court is the law declared by the Supreme court (Som Mittal vs. Government of Karnataka AIR 2008 SC 1528). We may mention at the cost of repetition that in Islamic Academy Foundation (supra) and PA Inamdar (supra) the Supreme Court has clearly laid down that the function of the Admission Regulation Committee is to oversee admissions in order to ensure that merit is not the casualty. The committee cannot dilute the fundamental right of a group of minority educational institutions imparting same or similar education to admit students by evolving their own method of admission. This is subject to the condition that such a method should be fair, transparent

and non-exploitative. But such a minority institution is not required to obtain prior approval of the Government or any statutory authority for exercising its fundamental right guaranteed under Article 30(1) of the Constitution. If any rule or regulation obligates a minority institution to obtain such an approval, that would void and ineffective. Article 13 of the Constitution declares that any law in breach of the fundamental rights would be void to the extent of such violation. The term law includes within its amplitude any rule, orders by law, regulation, notification and the prohibition binds all such instrumentalities within the State. That being so, the respondent committee cannot direct a group of minority institutions entitled to hold its own CET to obtain its proper approval for holding such a CET. However, such an institution is required to submit all the requisite documents relating to its own CET including the schedule and brochure to the Admission Regulation committee so that it may keep watch on the entrance test and also to ensure fairness and transparency in admission process.

In the instant case, the petitioner was allowed by the respondent to hold its own CET for the academic year 2011-12 (vide Annexure P-1). Admittedly, the petitioner had approached the respondent for grant of permission to hold its own CET for the academic year 2012-2013. The petitioner had also submitted to the respondent all the requisite documents including schedule and

brochure and repeated reminders from the petitioner did not evoke any response from the respondent. As stated earlier, the petitioner was not required to obtain prior approval of the respondent for holding its own CET. However, it transpires from the record that during sphinx silence maintained by the respondent on the petitioner's application, the petitioner conducted its own CET and admitted 12 Muslim students. It is relevant to mention that there is not even a whisper in the counter filed on behalf of the respondent to show or suggest that admission process of these 12 students was not fair or transparent. Consequently, admission of the said students cannot be faulted on any legal ground. The university concerned has rightly allowed these students to appear in the examination conducted by it.

Learned counsel for the petitioner has invited out attention to the impugned decision taken by the respondent on the petitioner's application for holding its own CET in support of his contention that it is violative of the right guaranteed under Article 30(1) of the Constitution. The said submission of the learned counsel merits acceptance. English translation of the impugned decision is as under:

> "Two CETs for admission procedures are available (MAH-MPH-CET2012 & M. Pharm Asso-CET-2012), the third CET for admission procedure from

> Association of Minority Pharmacy Colleges, Akkalkuwa (AMPCA-CET-2012) is not feasible for admission of students. They should either participate in the admission process of Government or the admission process of association of Private Un-aided Pharmacy Colleges."

By the said decision, the petitioner was directed either to participate in the admission process of the Government or the admission process of association of Private unaided Pharmacy colleges as the third CET for admission procedure from the petitioner is not feasible for admission of students. We are constrained to observe that the impugned decision directly stares into the face of Article 30(1) as interpreted by the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 and P.A. Inamdar (supra). The condition imposed in the impugned decision virtually involves an abject surrender of the substantial right of the minorities and the same is inconsistent with the constitutional guarantee enshrined in Article 30(1) of the Constitution as it directly impinges upon the important facet of administration. Needless to add here that right of a minority community to admit students of its own community is a vital facet of administration. The impugned decision of the respondent debarring the petitioner form holding its own CET is

virtual negation of the constitutional protection guaranteed to the minorities under Article 30(1) of the Constitution.

A bare perusal of the impugned decision of the respondent clearly spells out that it has over stepped its jurisdiction and assumed the powers as never given or intended to be given to the committees by the Islamic Academy Education (supra). By the impugned decision the respondent had deliberately deprived the petitioner of its fundamental right to hold its own CET. Similarly, the respondent has no power to direct a group of minority educational institutions imparting same of similar education to join the CET conducted by the Government or by association of Private Unaided Pharmacy Colleges. At this juncture, we may usefully excerpts the following observations of the Supreme Court in P.A. Inamdar case (supra)

> "However, we would like to sound a note of caution to such Committees. The learned counsel appearing for the petitioners have severely criticized the functioning of some of the committees so constituted. It was pointed out by citing concrete examples that some of the Committees have indulged in assuming such powers and performing such functions as were never given or intended to

be given to them by Islamic Academy. Certain decisions of some of the Committees were subjected to serious criticism by pointing out that the fee structure approved by them was abysmally low which has rendered the functioning of the institutions almost impossible or made the institutions run into losses. In some of the institutions, the teachers have left their jobs and migrated to other institutions as it was not possible for the management to retain talented and highly qualified teachers against the salary permitted by the committees. Retired High court Judges heading the committees are assisted by experts in accounts and management. They also have the benefit of hearing the contending parties. We expect the Committees so long as they remain functional, to be more sensitive and to act rationally and reasonable with due regard for realities. They should refrain from generalizing fee structures and, where needed , should go into accounts, schemes, plans and budgets of an individual institution for

purpose of finding out what would be an ideal and reasonable fee structure for that institution."

(emphasis supplied)

As minority educational institutions associated with the petitioner, management thereof has unfettered right to admit students of its own choice. Reference may, in this connection be made to the following observations of the Supreme Court in P.A. Inamdar (supra):

"The employment of expressions "right to establish and administer" and "educational institution of their choice" in Article 30(1) gives the right a very wide amplitude. Therefore, a minority educational institution has a right to admit students of its own choice, it can, as a matter of its own free will, admit students of non-minority community. However, non-minority students cannot be forced upon it. The only restriction on the free will of the minority educational institution admitting students belonging to a non-minority community is, as spelt out by Article 30 itself, that the manner and number of such admissions should not be violative of the minority character of the institution."

It has also been held by the Supreme Court in T.M.A. Pai Foundation (supra) that a certain percentage of seats can be reserved for admission by the management out of those students who have passed the CET held by itself. It is also relevant to mention that the State Government through its instrumentalities has no power to insist on seat sharing in the petitioner institution. Reference may, in this connection, be made to the following observations of the Supreme Court in PA Inamdar (supra):

> "So far as appropriation of quota by the State and enforcement of its reservation policy is concerned, we do not see much of a difference between non-minority and minority unaided educational institutions. We find great force in the submission made on behalf of the petitioner that the States have no power to insist on seat-sharing in unaided private professional educational institutions by fixing a quota of seats between the management and the State. The State cannot insist on private educational institutions which receive no aid from the State to implement the State's policy on reservation for granting admission on lesser

percentage of marks i.e. on any criterion except merit"

(emphasis supplied)

Learned counsel for the respondent has contended that since the cut off date for admission has expired on 31.8.2012, no approval for admission of the said 12 students can be granted by the respondent and as such the present petition has become infructuous. We are unable to appreciate the said submission of the learned counsel. As demonstrated earlier, the respondent committee has powers to monitor the admission process in order to ensure fairness and transparency. It cannot assume the power to give approval to the petitioner institution to give admission as per its entitlement to hold its own CET. The power to give approval to the institutes to give admission as per the system has been embodied in clause (4) of the order dated 24.9.2003, which is as under:-

"for those institutes which have their own system of admission, the committee can give approval to the Institutes to give admission as per the system. Such admission process can be continued for a minimum of 25 years"

The aforesaid clause applies to those institutes which have been established and which have been permitted to adopt its own procedure for the last, at least 25 years. It is relevant to mention that in Islamic Academy of Education (supra) it has been observed by their Lordships of the Supreme Court that “the committee shall have the power to permit an institution, which has been established and which has been permitted to adopt its own admission procedure for the last, at least, 25 years to adopt its own admission procedure.....”. In para No. 17 of the judgment, their Lordships have mentioned names of the institutions, which have since long, had their own admission procedure. The said para reads as under:-

> “At this juncture it is brought to our notice that several institutions have since long, had their own admission procedure and that even though they have been admitting only students of their own community no finger has ever been raised against them and no complaints have been made regarding fairness or transparency of the admission procedure adopted by them. These institutions submit that they have special features and they stand on a different footing from other minority non-aided professional institutions. It is submitted that

> their cases are not based only on the right flowing from Article 30(1) but in addition they have some special features which require that they be permitted to admit in the manner they have been doing for all these years. A reference is made to few such institutions i.e. Christian Medical College , Vellore, St. John's Hospital, Islamic Academy of Education etc. the claim of these institutions was disputed. However, we do not think it necessary to go into those questions. We leave it open to the institutions which have been established and who have had their own admission procedure for, at lease, the last 25 years to apply to the committee set out hereinafter"

Thus, clause (4) of the orders dated 24.9.2003 applies to those institutes, which have since long had their own admission procedure for the last, at least 25 years and it empowers the committee to give approval to the institute to give admission as per the system. Clause (4) of the said orders has been engrafted in consonance with the directions given by the Supreme Court in Islamic Academy Education (supra). The said clause does not apply to the group of institutions imparting same or similar education and which has been permitted by

the Supreme Court vide decisions rendered in T.M.A. Pai Foundation and P.A. Inamdar (supra) to hold a common entrance test. That being so, clause (4) of the said orders cannot be applied to the petitioner association obligating it to obtain prior approval of the respondent to give admission in the associated colleges.

As regards the petitioner association, the role of the respondent is limited to the extent of ensuring that the CET conducted by it is fair, transparent and non-exploitative. The respondent cannot take away the freedom of management of the petitioner association to hold its own CET so as to reduce it to a satellite of the state. If the respondent committee feels that the CET held by the petitioner was not fair and transparent, it can ask the petitioner to hold another CET for admission of students but it cannot assume powers of giving approval to the petitioner to give admission to those students, who have been selected through the CET, which is fair and transparent. In the instant case, admission of 12 Muslim students selected through the CET held by the petitioner has not been challenged on the ground that the CET held by it was not fair and transparent.

Lastly, it has been contended by the learned counsel for the respondent that the cut off date for approval of students selected through CET conducted under the supervision and control of the

Director of Technical Education expired on 31.8.2012, no approval can be granted to the petitioner to admit the said students selected through the CET conducted by it. We have already held that having regards to the facts and circumstances of the case, no prior approval of the respondent was required for admission of the student, through the CET conducted by the petitioner. At this juncture, learned counsel for the petitioner has invited our attention to the provisional scheme of activities of association of Unaided Private Pharmacy Colleges dated 6.9.2012 (Annexure P-15) which shows that it was allowed to conduct its CET after expiry of the cut off date fixed by the Director of Technical Education. Thus it is obvious that the petitioner has been discriminated against in the matter of giving approval to the admission of the students selected through the CET held by it.

For the foregoing reasons, we find and hold that the impugned decision dated 16.7.2012 of the respondent is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution and the admission of 12 Muslim students admitted by the petitioner cannot be faulted on any legal ground. Relying upon the decisions rendered by the Supreme Court in T.M.A. Pai Foundation and P.A. Inamdar (supra), we find and hold that the petitioner association, being a group of minority educational institutions imparting same or similar education in State of Maharashtra, is

entitled to hold its own CET for admission of students. We also find and hold that the petitioner is not required to obtain prior approval of the respondent or any authority of the State Government for conducting the CET, but the CET shall be conducted before expiry of the cut off date fixed by the Director of Technical Education, Government of Maharashtra for admission of students in the Pharmacy Colleges of the State and the CET shall be monitored by the respondent in order to ensure fairness and transparency in the admission process.

JUSTICE M.S.A. SIDDIQUI
CHAIRMAN

DR. MOHINDER SINGH
MEMBER

ZAFAR AGHA
MEMBER

January 16, 2013