



सत्यमेव जयते

# **ANNUAL REPORT**

## **2008 - 2009**



**NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS**  
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## **CHAPTER 1 – INTRODUCTION**

This is the 4th Annual Report of National Commission for Minority Educational Institutions in pursuance of Section 16 of National Commission for Minority Educational Institutions, Act 2004. The Commission was established through an Ordinance dated 11th November 2004 promulgated by the Government which was replaced by the National Commission for Minority Educational Institutions Act passed by the Parliament in December 2004. The Ministry of Human Resource Development constituted the Commission on 16th November 2004 with its Headquarters in Delhi. On 26th November 2004, Government issued notification appointing Justice M.S.A. Siddiqui as the Chairperson and Shri B.S. Ramoowalia and Shri Valson Thampu as the Members of the Commission. Shri Valson Thampu resigned as Member of the Commission w.e.f. 11th September 2007. Presently the Commission consists of Justice M.S.A. Siddiqui as Chairperson and Shri B.S. Ramoowalia and Sr. Jessy Kurian as Members.

### **NCMEI Act 2004**

The National Commission for Minority Educational Institutions Act 2004 (2 of 2005) was notified on 6th January 2005. The Act constituted the National Commission for Minority Educational Institutions. The key functions and powers of the Commission as given in the Act are to:

- (a) Advise the Central Government or any State Government on any question relating to the education of minorities that may be referred to it;
- (b) Look into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating to affiliation to a Scheduled University and report its findings to the Central Government for its implementation; and
- (c) To do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission.

### **NCMEI Amendment Act 2005**

On the basis of the suggestions received from various quarters for making the Commission more proactive and its functioning more specific, recommendations were made by the Commission to the Government for making amendments to the Act. Government introduced the National Commission for Minority Educational Institutions (Amendment) Bill 2005 in Parliament. However, in the wake of 93rd constitutional amendment passed by the Parliament incorporating Article 15 (5) to the Constitution making specific provision for educational advancement of the Scheduled Castes,

Scheduled Tribes and socially and educationally backward classes of the citizens, it became necessary to bring out the amendments to the NCMEI Act through an Ordinance. Accordingly, an Ordinance was notified by the Government on 23rd January 2006 which later on was replaced by the National Commission for Minority Educational Institutions (Amendment) Act 2006 passed by the Parliament and notified on 29th March 2006.

The amendment brought all affiliating universities within the ambit of the Act to afford a wider choice to the minority educational institutions in regard to affiliation. New Sections were incorporated to maintain the sanctity of the proceedings of the Commission and to amplify the power of the Commission to enquire into matters relating to deprivation of educational rights of the minorities by utilizing the services of any officer of the Central or State Governments. The Commission was empowered to decide on questions relating to Minority status of educational institutions as also to cancel the Minority Status of those institutions which have failed to adhere to the laid down norms. A deeming provision with reference to obtaining NOC by the minority educational institutions from the State Governments was also incorporated whereunder, a Minority Educational Institution can proceed with the establishment of the same if the State Government does not communicate its decision on granting NOC within 90 days. The Commission was also granted appellate jurisdiction in matter of refusal of State Governments to grant NOC for establishing a minority educational institution. The relevant provision of the Act reads as under:-

Section 12F of NCMEI Act stipulates as under:

**12F. Bar of jurisdiction** – No court (except the Supreme Court and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) shall entertain any suit, application or other proceedings in respect of any order made under this Section.

The Commission is a quasi-judicial body and has been endowed with the powers of a Civil Court. This is the first time that a specific Commission has been established by the Central Government for protecting and safeguarding the right of minorities to establish and administer educational institutions of their choice. According to the provisions of the Act, Commission has adjudicatory function and recommendatory powers. The mandate of the Commission is very wide. Its functions include, among other things, resolving the disputes regarding affiliation of minority educational institutions to a university, addressing the complaints regarding deprivation and violation of rights of minorities, to establish and administer educational institutions of their choice and to advise the Central Government and the State Governments on any questions relating to the educational rights of the minorities referred to it.

Section 12 E (2) & (3) of the NCMEI, Act stipulate as under:

**12 E – Power of Commission to call for information, etc.:**

- (2) Where the inquiry establishes violation or deprivation of the educational rights of the minorities by a public servant, the Commission may recommend to the concerned Government or authority, the initiation of disciplinary proceedings or such other action against the concerned person or persons as may be deemed fit.
- (3) The Commission shall send a copy of the inquiry report, together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken, or proposed to be taken thereon, to the Commission.

The Commission which started functioning from 2 rooms in Shastri Bhavan moved to its own premises in the 1st Floor, Jeevan Tara Building located at Sansad Marg, New Delhi in August 2005. Presently, the Commission is functioning from its office at 1st Floor (Gate No. 4), Jeevan Tara Building, 5, Sansad Marg, New Delhi.

Initially Government sanctioned 22 posts for the Commission for providing necessary administrative and office support. Later 11 additional posts were sanctioned by the Government. At present, Commission has the following 33 posts:-

<b>S. No.</b>	<b>Name of Post</b>	<b>Number</b>
1.	Secretary	1
2.	Deputy Secretary	1
3.	Sr. PPS	1
4.	Under Secretary	1
5.	Section Officer	1
6.	Private Secretary	5
7.	Assistant	1
8.	Personal Assistant	5
9.	Librarian	1
10.	Accountant	1
11.	Urdu Translator	1

12.	Stenographer Gr. 'D'	3
13.	Reader/ UDC	1
14.	LDC	2
15.	Staff Car Driver	1
16.	Daftry	1
17.	Peons	6
	<b>Total</b>	<b>33</b>

Some of the posts have been filled by the Commission on deputation basis and some others have been filled through direct recruitment. With the influx of large number of petitions/ applications Commission has found it difficult to cope up with the work with the existing staff and has approached the Government for creation of additional posts especially to take care of the judicial matters, which is its core function and also for taking care of computerization.



## CHAPTER 2 – COMPOSITION OF THE COMMISSION

The Commission was established through an Ordinance (No. 6 of 2004) notified on 11th November 2004. This was followed by the introduction of a Bill to replace the Ordinance and passing of the National Commission for Minority Educational Institutions Act, 2004 (2 of 2005) which was notified on 6th January 2005.

The Parliament passed the NCMEI (Amendment) Act 2006 which was notified on 29th March 2006.

The composition of the Commission during the period is as follows:

1. Justice M.S.A. Siddiqui - Chairperson
2. Shri B.S. Ramoowalia - Member
3. Ms. Jessy Kurian - Member

Shri B.S. Ramoowalia, Member of the Commission resigned w.e.f. 31.3.2009.

The Functions of the Commission are as follows:-

- (a) Advise the Central Government or any State Government on any question relating to the education of minorities that may be referred to it;
- (b) Enquire, suo motu, or on a petition presented to it by any Minority Educational Institution or any person on its behalf into complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating to affiliation to a University and report its finding to the appropriate Government for its implementation;
- (c) Intervene in any proceeding involving any deprivation or violation of the educational rights of the minorities before a court with the leave of such court;
- (d) Review the safeguards provided by or under the Constitution, or any law for the time being in force, for the protection of educational rights of the minorities and recommend measures for their effective implementation;
- (e) Specify measures to promote and preserve the minority status and character of institutions of their choice established by minorities;

- (f) Decide all questions relating to the status of any institution as a Minority Educational Institution and declare its status as such;
- (g) Make recommendations to the appropriate Government for the effective implementation of programmes and schemes relating to the Minority Educational Institutions; and
- (h) Do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission.

The Commission is a quasi judicial body and has been endowed with the powers of the Civil Court for the purpose of discharging its functions under the Act. The powers of the Commission includes:-

- (1) If any dispute arises between a minority educational institution and a University relating to its affiliation to such University, the decision of the Commission thereon shall be final.
- (2) The Commission shall, for the purposes of discharging its functions under this Act, have all the powers of a civil court trying a suit and in particular, in respect of the following matters, namely:-
  - (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
  - (b) requiring the discovery and production of any document;
  - (c) receiving evidence on affidavits;
  - (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872,(1 of 1872) requisitioning any public record or document or copy of such record or document from any office;
  - (e) issuing commissions for the examination of witnesses or documents; and
  - (f) any other matter which may be prescribed.
- (3) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) 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).

Powers of the Commission include deciding all questions relating to the status of any institution as a minority educational institution. It also serves as an appellate authority in respect of disputes pertaining to minority status. Educational institutions aggrieved with the refusal of a competent authority to grant minority status can appeal to the Commission against such order. The Commission has also power to cancel the minority status of an educational institution on grounds laid down in the Act.

The Commission has also powers to call for information while enquiring into the complaints of violation or deprivation of the educational rights of the minorities. Where an enquiry establishes violation or deprivation of educational rights of the minorities by a public servant, Commission may recommend to the concerned Government or authority to initiate disciplinary proceedings or such other action against the concerned person or persons as it may deem fit.

Only Supreme Court or a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution can entertain any suit, application or proceedings in respect of any order made by the Commission.

The Commission receives grant from the Central Government after due appropriation made by the Parliament. The grant is utilized for meeting the expenses of the Commission. The Commission prepares the Annual Statement of Accounts in the form prescribed by the Central Government and the accounts are audited by the Comptroller and Auditor General of India.

The Chairperson, Members, Secretary, Officers and other employees of the Commission are deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

### CHAPTER 3 – SITTINGS OF THE COMMISSION

Section 12 (3), of NCMEI Act stipulates that every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of Section 193 and 228, for the purpose of Section 196 of Indian Penal Code (45 of 1860) and the Commission shall be deemed to be a Civil Court for the purpose of Section 195 Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974). Being a quasi judicial body, Commission conducts formal court sittings. A formal court room is available in the Commission's premises for this purpose.

During the year 2008-09 Commission conducted 93 sittings as a Court and heard 3506 cases as per details given below:-

Sl. No.	Date of Meeting	No. of Cases
1.	01.04.2008	42
2.	08.04.2008	40
3.	15.04.2008	34
4.	16.04.2008	21
5.	22.04.2008	49
6.	29.04.2008	32
7.	06.05.2008	65
8.	21.05.2008	43
9.	22.05.2008	50
10.	27.05.2008	48
11.	29.05.2008	01
12.	03.06.2008	44
13.	10.06.2008	39
14.	11.06.2008	02
15.	17.06.2008	46
16.	24.06.2008	41
17.	30.06.2008	01
18.	01.07.2008	48
19.	07.07.2008	04
20.	08.07.2008	45

21.	10.07.2008	01
22.	14.07.2008	09
23.	15.07.2008	39
24.	22.07.2008	60
25.	29.07.2008	51
26.	05.08.2008	51
27.	06.08.2008	39
28.	12.08.2008	46
29.	13.08.2008	38
30.	19.08.2008	44
31.	26.08.2008	44
32.	27.08.2008	43
33.	28.08.2008	42
34.	02.09.2008	51
35.	03.09.2008	47
36.	09.09.2008	57
37.	10.09.2008	42
38.	16.09.2008	39
39.	17.09.2008	37
40.	23.09.2008	30
41.	24.09.2008	26
42.	30.09.2008	33
43.	07.10.2008	37
44.	08.10.2008	27
45.	14.10.2008	45
46.	15.10.2008	42
47.	16.10.2008	02
48.	21.10.2008	39
49.	22.10.2008	40

50.	23.10.2008	63
51.	04.11.2008	70
52.	05.11.2008	46
53.	11.11.2008	45
54.	12.11.2008	41
55.	18.11.2008	20
56.	19.11.2008	45
57.	20.11.2008	01
58.	25.11.2008	38
59.	26.11.2008	18
60.	02.12.2008	09
61.	03.12.2008	38
62.	15.12.2008	08
63.	16.12.2008	26
64.	17.12.2008	32
65.	18.12.2008	06
66.	23.12.2008	35
67.	24.12.2008	24
68.	06.01.2009	43
69.	07.01.2009	31
70.	15.01.2009	70
71.	20.01.2009	44
72.	21.01.2009	41
73.	27.01.2009	42
74.	28.01.2009	70
75.	03.02.2009	42
76.	04.02.2009	62
77.	10.02.2009	49
78.	11.02.2009	38

79.	16.02.2009	03
80.	17.02.2009	35
81.	18.02.2009	34
82.	24.02.2009	43
83.	25.02.2009	41
84.	02.03.2009	02
85.	03.03.2009	61
86.	04.03.2009	46
87.	09.03.2009	43
88.	12.03.2009	03
89.	17.03.2009	38
90.	18.03.2009	30
91.	24.03.2009	47
92.	25.03.2009	49
93.	31.03.2009	138
	<b>TOTAL</b>	<b>3506</b>

The Commission conducted 93 sittings during 2008-09 as against 73 sittings during 2007-08. The number of cases heard also went-up from 2916 during 2007-08 to 3506 during 2008-09. During the formal Court sittings cases where notices have been issued were taken-up. The Commission has tried to list as many cases as possible in each of its sittings to ensure expeditious disposal of cases and also to ensure that there is no backlog despite constraints of shortage of staff. To ensure disposal of time bound matter additional days of Court sittings were also convened.

Court sittings were held by the Commission at least once a week. In the month of March 10 sittings were held. In September, November 2008 and February 2009, 9 sittings each were held, 8 sittings each were held in July, August, October and December 2008.

To expedite the disposal of cases and to ensure that there is no backlog, the Commission has not fixed any quorum for the court sittings. All cases which are listed on a particular day are taken up and heard on that day itself and appropriate orders are passed by the Members present. Adequate notice period is given to the respondents. In case of pleading of urgency by petitioners, Commission gives early

date of hearing. Commission also takes into consideration the inconvenience expressed by the parties to appear on a particular date and accordingly adjournments are granted to enable the parties to put up their cases effectively in consonance with the principles of natural justice. Commission has never insisted for engagement of any counsel to represent the petitioner. In other words, any petitioner who wants to argue his case is given the liberty to do so.

The Commission's endeavour has been to provide cost-free forum to the members of the minority community for redressal of their grievances relating to their educational rights enshrined under the Constitution. Therefore, Commission has not prescribed any Court fee. Since a large number of petitioners are not conversant with the formalities and procedures of a Court, the Commission has even accepted petitions which are not in conformity with the law of pleadings.

As per the provisions of the Act, the Commission can also hold its sittings outside Delhi. Section 9 of the NCMEI Act provides that Commission shall meet as and when necessary at such time and places as the Chairperson may think fit. This provision empowers the Commission to hold its sittings outside Delhi also. However, during the year 2008-09 the Commission's meetings were held in Delhi only. Some requests were received for holding of Commission's meetings at different locations. In case of large number of cases emanating from a particular place, Commission will hold its sittings at that particular place subject to getting adequate facilities from the concerned State Government.

During the year, Commission also held meetings with the Chairman and senior officers of regulatory authorities. Commission has thought it fit to hold such meetings as many petitions/complaints relate to rules and regulations formulated by the regulatory authorities such as UGC, AICTE, NCTE, MCI, DCI, CBSE, ICSE etc. The issues discussed included problems relating to affiliation, issue of NOC, fulfillment of norms required for affiliation, inspection, norms for staff etc.

The interactions have proved fruitful as the regulatory authorities initiated action to modify/amend some of the rules and regulations which were not in conformity with the rights guaranteed under Article 30 of the Constitution. The Commission has pointed out that the Apex Court judgements which have the effect of law has to be taken into account by the regulatory authorities in modifying / amending their rules and regulations. The meetings held with regulatory authorities have also resulted in better appreciation of the need to setup special cells or appoint nodal officers for dealing with the problems of the minority educational institutions. Commission intends to continue such interactions on a regular basis.



## CHAPTER 4 – HIGHLIGHTS OF THE YEAR

During the year Commission concentrated on disposing of cases pending for sometime. Priority dates were given to earlier cases and parties were cautioned not to take adjournment. Consequently it was possible to dispose of more cases pending from the previous years.

From the analysis of complaints/ petitions, certain basic issues were taken up for discussion with State Government authorities. During the meetings with State Government authorities, it was emphasized that action on the part of State government authorities would go a long way in meeting the grievances of the petitioners and thereby reducing unnecessary litigation.

Information about the Commission, the rules and procedures etc. were put out for general information in Commission's website. Process was started to computerize all the records of the Commission by engaging a consultant for devising appropriate programmes.

Larger number of cases were taken up and more sittings of the Commission were scheduled during the year to ensure speedy disposal of the cases.

Despite inadequate staff, extra efforts were made for expeditious consideration and disposal of the petitions.

## CHAPTER 5 – TOURS AND VISITS

Details of the tours undertaken by the Commission to various places during the year are as follows:

<b>S. No.</b>	<b>Dates of Tour</b>	<b>Station Visited</b>
1.	06.04.08 – 07.04.08	Moradabad
2.	12.04.08 – 14.04.08	Hyderabad, Nanded
3.	19.04.08 – 20.04.08	Allahabad
4.	23.04.08 – 25.04.08	Lucknow, Barabanki, Sultanpur
5.	24.04.08	Mumbai
6.	03.05.08	Gwalior
7.	10.05.08 – 13.05.08	Mumbai, Calicut, Kannur
8.	15.05.08	Patna
9.	17.06.08 – 19.06.08	Kochi, Kottayam
10.	21.06.08	Patna
11.	03.07.08 – 04.07.08	Mumbai
12.	26.07.08 – 29.07.08	Mangalore, Kannur
13.	27.07.08 – 29.07.08	Aurangabad
14.	01.08.08 – 04.08.08	Trivandrum
15.	02.08.08 – 04.08.08	Raipur
16.	09.08.08 – 11.08.08	Lucknow
17.	14.08.08 – 21.08.08	Jabalpur
18.	23.08.08 – 25.08.08	Pune
19.	06.09.08 – 08.09.08	Kolkata
20.	18.09.08 – 20.09.08	Kochi, Pathanamthitta
21.	24.10.08	Muradnagar
22.	25.10.08 – 26.10.08	Goa
23.	17.10.08 – 19.10.08	Bhopal, Pune
24.	01.11.08 – 03.11.08	Lucknow
25.	06.11.08 – 09.11.08	Mumbai

26.	11.11.08	Amroha
27.	24.11.08 – 25.11.08	Khajuraho, Churhat
28.	06.12.08 – 12.12.08	Jabalpur
29.	14.12.08	Ghaziabad
30.	18.12.08 – 19.12.08	Lucknow
31.	26.12.08 – 28.12.08	Chennai, Madurai, Kilakarai
32.	16.01.09 – 18.01.09	Kozhikode, Kochi
33.	07.02.09	Jaipur
34.	17.02.09 – 18.02.09	Vadodara
35.	21.02.09 – 22.02.09	Lucknow
36.	26.02.09 – 28.02.09	Lucknow
37.	07.03.09	Aligarh
38.	14.03.09	Agra
39.	20.03.09 – 22.03.09	Kolkata
40.	29.03.09	Jaipur

The Chairman and Member visited some places together and in other places separately as per their convenience. The tours were undertaken with the intention to interact with members of the minority communities. Such meetings with the members of the minority communities helped in understanding the difficulties faced by them and provided a forum for discussing the grievances. It also enabled the Commission to apprise them about their constitutional rights as well as the powers and functions of the Commission. Wherever possible, the Commission had also interacted with some of the Chief Ministers of the States and Government officials concerned with educational matters. This has helped in sensitizing the State Govt. officials about the rights of the minority communities enshrined in Article 30(1) of the Constitution. The Commission found that many of the officers in the Education Departments of State Governments were not fully aware either of the functions or powers of the Commission or the scope or width of educational rights of the minority communities enshrined under Article 30(1) of the Constitution. These visits and interactions were found to be mutually beneficial as the Commission was able to develop first hand knowledge of the extent and diversity of the problems faced by the minority educational institutions at various places. The interactions resulted in broadening the outlook of the providers and managers of the minority educational institutions and it also fostered in them a sense of partnership with the State in the practice of education.

The Commission being a quasi-judicial body has to function as a Court and many of the stakeholders were not aware of drafting the petitions. During the tours the meetings held with representatives of the minority educational institutions helped in explaining the functions of the Commission and the procedure and formalities involved in approaching the Commission were explained to them. The Commission had devised a specific format for applying for grant of minority status certificate to educational institutions. In many cases, Commission has been receiving petitions/complaints in letter format without giving full details and supporting documents. The interactions held at various places have helped in addressing these problems.

Details of some the visits undertaken by the Commission are as follows:

The Chairman and Member went to Hyderabad on 12 April 2008. During the meeting with the Christian community, the Chairman stressed on the functions and powers of the Commission and Member enlightened the gathering about the procedures followed by the Commission in expeditious disposal of the cases relating to grant of minority status certificate/NOC and the complaints regarding deprivation and violation of educational rights of the minorities guaranteed under Article 30(1) of the Constitution etc. In another meeting organized by the A.P. Minorities Educational Institutions Society, the participants asked various questions relating to the right to establish and administer educational institutions and Chairman provided clarifications.

On 13 April 2008, Chairman and Member attended a function at Nanded (Maharashtra). Addressing the audience, the Chairman spoke about education which is a national wealth essential for the Nation's progress and prosperity. Judicial decisions have elaborated upon the scope and ambit of the right to education. The following points were made out in his address:

- (i) Receipt of aid from the Government does not impair the right guaranteed under Article 30(1) of the Constitution.
- (ii) The State can impose reasonable conditions for obtaining grant in-aid.
- (iii) Conditions granting recognition or affiliation can broadly cover academic and educational matters including the welfare of students and teachers; conditions that are laid down for granting recognition should not be such as may lead to governmental control of the administration of the minority institutions.
- (iv) Affiliation and recognition has to be available to every educational institution that fulfils the conditions for grant of such affiliation and recognition. The statutory authorities cannot impose terms and conditions for grant of affiliation or recognition, which completely destroy the institutional autonomy and the very objective of establishment of the institution.

- (v) Any law, rule, regulation or executive direction which seeks to infringe the substance of the right under Article 30(1) would to that extent be void;
- (vi) Mushrooming educational institutions without having the requisite infrastructure for grant of recognition, are harmful to the interest of the students.
- (vii) For grant of minority status, there must be some positive index to enable the educational institution to be identified with religion minorities.

On April 20, 2008 the Chairman addressed a gathering of representatives of minority educational institutions and Muslim religion scholars at Allahabad. They were apprised of the powers and functions of the Commission and the procedure which is being followed by the Commission in expeditious disposal of the cases. The Chairman also addressed the Managers of Madrasas and apprised them about the Commission's Report on Central Madrasa Board. In another meeting wherein members of the Christian community were present, the contribution of Christian community towards education was lauded. The educational institutions established by them should transform student community into a knowledge society. While apprising the powers and functions of the Commission, they were also told about the educational rights enshrined under Article 30 (1) of the Constitution. The Chairman emphasized the need to develop a very formidable education system with special emphasis on Guru-Shishya relationship. He also told that teachers should be adequately paid. The minority community should also make concerted efforts to develop our country as a major educational hub.

On 23rd April 2008, Chairman visited Barabanki and had useful discussions with Muslim religious scholars on the proposal of the Commission to establish a Central Madrasa Board. Chairman also visited Natvatul Ulma, Lucknow and discussed about the details of the Central Madrasa Board.

On 18 and 19 June 2008, Member visited Pala, Kottayam in Kerala where she addressed Christian community. It was stressed that education should be the backbone of one's character and it should make all round development of a person. Education should be for nation-building and should instill the constitutional values of justice, liberty, equality and fraternity. The powers and functions of the Commission were explained to the audience. During the interaction with the participants, clarifications were given on various matters concerning educational rights of the minorities which included the right to appoint teaching and non-teaching staff, right to appoint Head of the Institution, grant of minority certificate, grant of NOC etc. Details of the cases dealt with by the Commission were also explained to them.

On 27th July 2008, the Chairman visited Dr. Babasaheb Ambedkar Marathwada University, Aurangabad. In his speech, he laid emphasis on the necessity to advance, foster and promote the education of the Muslim community at a quicker pace and as a matter of policy. The enrollment and retention rates at the primary and secondary levels are lower than the national average and this further magnifies existing inequalities at the college level. He also said that the globalization has created new opportunity of promoting growth and development in education. Opposition to the modern education or mere revival of old antiquated knowledge that had unfortunately come to be associated with Islam is perfectly ridiculous. The Madrasa should no longer continue to be like a fixed stone in the midst of the flowing river of life. In order to attain integrity, peace and prosperity and basic security for their life, the Muslim community must concentrate their efforts on the task of restructuring their system of education in general and Madrasa education in particular.

On 28th July 2008 at another function in Aurangabad, Chairman addressed the audience on the scope and ambit of Article 30 and 29 of the Constitution. The scope and objects of the National Commission for Minority Educational Institutions were explained and the Chairman advised the Muslim community that their salvation lies in acquiring knowledge and education. They should strive to bring about revolutionary reforms in education sector. They must also galvanize their efforts to promote internationalism in higher education so that creation of knowledge becomes the main object of higher education.

In a meeting at Kannur in Kerala on 27th July, 2008, the Member addressed a gathering of people including Heads of Institution, Managers, Teachers and members of the Christian community. She told about the rights of the minorities and explained the Supreme Court judgements on minorities' rights.

On 2nd August, 2008, Member attended a function at Trivandrum and in the interaction, problems relating to grant of NOC, grant of recognition of educational institutions, grant of affiliation to educational institutions, issues relating to Minority Status Certificate, appointment of teaching and non-teaching staff, fee structure and admission policies were discussed .

On 24th August, 2008 at a function at Pune, Maharashtra, the Member interacted with the audience on the issues relating to minorities' right. The powers and functions of the Commission under the NCMEI Act were explained to them. Quoting the T.M.A. Pai judgement, the Member explained the rights guaranteed under Article 30(1) of the Constitution which includes the right to appoint teaching and non-teaching staff, right to constitute a Managing Committee, right to set a fee structure, right to take disciplinary action against teaching and non-teaching staff. Every action of the minority management should be fair, transparent, reasonable and non-exploitative.

On 6th September, 2008 Member attended a function at Vijayawada where representatives of Christian minority educational institutions were present. The theme of the conference was Rights of the Minorities. During the interaction the problems faced by the minority educational institutions discussed were:- Government not approving the appointment of teachers, salaries of teachers not being granted, the Government has not implemented the order passed by the Commission, schemes are not being extended to the minority educational institutions etc.

The Member explained the rights of the minorities under Article 30(1) of the Constitution and explained the powers and functions of the Commission. She asked the members to send properly drafted petitions to the Commission giving full details about their problems. The procedure followed by the Commission is that of a Court. The Member also explained details of various judicial pronouncements on minority rights.

The Chairman and the Secretary of the Commission visited Kolkata, West Bengal on 7th & 8th September, 2008. At a meeting organized by All India Milli Council, general problems faced by the members of the minority communities were discussed. The main stumbling block for establishing an educational institution is the requirement of two acres of land which is impossible for minority communities to purchase. Without recognition, the institutions are not able to avail of any benefit. The issues raised in the meeting related to low percentage of educational institutions established by Muslim community, inordinate delay in recognition of schools, non issue of minority status certificates, inordinate delay in considering applications for minority status certificate, application of reservation policy on minority educational institutions, lack of schools teaching Urdu, lack of teachers in Urdu, disparity in the pay of teachers etc. The Chairman in his address elaborated on the fundamental rights available for the minority community as enshrined in Article 30(1) of the Constitution. He mentioned about apex court judgments and also gave details of the powers and functions of the Commission. Without recognition or affiliation no educational institution can survive. He assured the members that the problems raised by them would be taken up with the Government of West Bengal.

On 8th September, 2008, the Chairman and Secretary met with the Chief Minister of West Bengal and discussed the problems raised by the minority educational institutions. The Chief Minister assured that prompt action would be taken on all the issues.

The Commission visited Goa on 25th October, 2008. At a meeting held with representatives of the minority educational institutions the details of the Commission and its duties and powers were explained. The members were asked to send properly drafted petitions to the Commission. They were informed how to draft a petition to the Commission. The points raised by the members included denial of the State Government to fill-up the post of Head of the Institution and teaching staff, insistence

on implementation of the reservation roster on non-teaching staff, interference in the day to day administration of the educational institutions etc. The members were given clarifications on the points raised. Various judgment of the apex court in this matter were discussed.

Addressing the meeting of the members of the muslim community the details of the NCMEI Act were explained. The recommendations of the Commission to establish a Central Madarsa Board were explained to them. The grievances raised included non-availability of books in Urdu, refusal of the Government to upgrade the Urdu Primary Schools to High Schools, non activation of the Wakf Board etc.

On 26th October, 2008, Chairman and Secretary called upon the Chief Minister, Government of Goa, and discussed the issues raised by the minority educational institutions. The Chief Minister assured to look into all the issues for expeditious disposal.

On 11th November, 2008, Chairman addressed a function at Amroha, Uttar Pradesh. In his address he laid emphasis on the importance of girls' education. Girls' education is an intrinsic part of the State policy designed to ensure the reach of education to the population at large in general and muslims in particular. Emphasis was placed on the need to spread girl's education among muslims where poverty, underdevelopment and social disability have to be overcome by making available the benefits of education. The community has to ensure that the drop out rates of girl students especially from muslim community is reduced. Parents should be motivated and encouraged to send their daughters to schools. The government must formulate innovative schemes for empowering muslim women through education. Revolutionary steps and long terms measures have to be taken to provide quality education to girls to enable them to stand up to the intellectual as well as technical strain of the burden that they will have to carry. They should be educated about the essential qualities in the character of a creative citizen so that they may be able to share actively in the common weal and woe and share common burdens willingly.

On 10th December, 2008, Chairman attended a function organized by the Human Rights Commission of Madhya Pradesh at Jabalpur. Delivering the key note address he said that Rule of Law and the promotion and protection of human rights are the main pillars of the democracy. These two ideals are interdependent for human rights are best protected by effective democratic processes and the rule of law. The mandate for law enforcement agencies is for to protect and promote human rights and fundamental freedoms by maintaining public order. He also enlightened the audience about the general aspects of ethical and legal policing.

On 11th December, 2008, Chairman attended a function on educational rights of the minorities organized by the forum of Social Justice, Jabalpur. Delivering the key note address he apprised the audience about the scope and object of the NCMEI Act.



He laid emphasis on acquiring strong knowledge economies powered by information technology, education and innovation. He also cautioned the audience that mushrooming educational institutions without having requisite infrastructural and instructional facilities are harmful to the interest of the students.

The Chairman and Secretary went to Chennai on 26th December, 2008 and in the meeting organized by Muslim Educational Foundation, problems faced by the minority educational institutions in the State of Tamil Nadu were discussed. It was pointed out that the Government is reluctant to grant minority status certificate and in many cases Supreme Court judgments regarding the rights guaranteed under Article 30(1) are not being followed. Muslim community is not getting its due share in the educational institutions. The issues raised included refusal of grant-in-aid, requirement of land for educational institutions being exorbitant etc.

The Chairman explained the details of Article 30 and the width and scope of the Article brought out through the apex court judgments. The minority educational institutions are facing problems mainly because the State Government officials dealing with the matters are not properly informed and sensitized. Explaining the duties and functions of the Commission, Chairman asked them to send properly drafted petitions to the Commission for redressing their grievances. He also mentioned about the guidelines formulated by the Commission regarding recognition, affiliation, grant of minority status certificate etc. Emphasis was made that the quality of education should be excellent and no dilution would be allowed in any rule or regulation meant to ensure academic excellence.

The Chairman and the Secretary visited Kozhikode on 16th January, 2009. In the inaugural address at the anniversary celebrations of Sunni Cultural Center, the Chairman mentioned that the muslim community in Kerala has progressed because of various Islamic organizations and educational institutions which have progressively transformed student community into a knowledge society. He emphasized that our universities which are to be in the prime center of scholarship should play a significant role in generating a base for creating new knowledge and technology. There is pressing need to improve the health of higher education and research. Everyone should strive to develop the concept of global university of excellence and make the existing educational institutions to promote internationalism in higher education. This initiative would create new opportunities of promoting growth and development in education. Private sector should be encouraged to establish educational institutions of global excellence.

The Commission visited Kolkata on 21st March, 2009 and in the meeting organized by All Bengal Association of Minorities' Educational Institutions, the problems faced by the minority educational institutions were discussed. It was pointed out that even though the State Government has notified guidelines for grant of minority status certificate, there has been inordinate delay in the processing of applications. The

issues raised in the meeting included insistence of the state authorities in the implementation of reservation rosters in minority educational institutions, inordinate delay in the issue of minority status certificate, problems relating to Urdu language teachers, lack of girls schools for muslim students, discrimination in grant of scholarships, non recognition of madarasas, non clearance of post of teachers, problems in getting grant-in-aid etc.

Addressing the audience, the details of NCMEI Act were explained. The law prohibits grant of temporary minority status certificate. Article 15(5) has exempted the minority educational institutions from the reservation policy. TMA Pai Foundation judgment of Supreme Court has explained the specific rights under Article 30(1) which includes freedom to constitute the managing committee. The rules and regulations formulated by State Government have to be reasonable and should be meant to ensure academic excellence. They cannot negate or dilute the rights guaranteed under Article 30(1). Government can fix service conditions including reasonable salary scales and other allowances for teaching and non teaching staff. The community should ensure that dropout of school students is minimized. Community has the responsibility of ensuring education to all eligible students of the minority community. Commission asked the members to send petitions to the Commission for redressing their grievances.

Addressing another meeting problems relating to the education of children from the muslim community were discussed. It was pointed out that members of muslim community are unable to establish educational institutions due to stringent rules and financial constraints. Education is a right and Article 21A obligates the State Government to provide appropriate educational facilities. The Commission would like the State Government to provide more facilities for the education of the minority communities. Some of the stringent rules would also be discussed with the State Government for finding appropriate solutions including amendments and relaxation. It was emphasized that conditions for recognition should not be unreasonable. Clarifications were made on the points raised including relating to minority status certificate, programmes of Maulana Azad Foundation, problems relating to orphanage, education of children of people in backward areas, scales of pay, grant-in-aid, NOC etc.

## **CHAPTER 6 – ANALYSIS OF PETITIONS AND COMPLAINTS RECEIVED DURING THE YEAR**

Right from inception, Commission has been registering cases calendar-year-wise. During the year 2008 the Commission registered cases in various subjects such as non-issue of NOC by the State Governments, delay in the issue of NOC, refusal and delay in the issue of minority status, refusal to allow opening of new colleges/schools/ institutions by minorities, refusal to allow additional courses in minority educational institutions, refusal/ delay in the release of grant-in-aid, refusal to give financial assistance, denial of permission to create new posts of teachers in minority educational institutions even though there is increase in number of students, approval of appointment of teachers being denied, inequality in pay scales of minority school teachers vis-à-vis government school teachers, denial of teaching aids/other facilities like computer, library, laboratory, etc. to minority educational institutions on par with government institutions, non-availability of books in Urdu on all subjects for students of Urdu schools, non-appointment of Urdu knowing teachers, madarsa teachers to be paid on par with minority school teachers, madarsa employees to be paid adequately, non-release of grants to madaras, non-payment of retirement benefits to teachers and non-teaching staff of minority schools, extension of Sarva Shiksha Abhiyan facilities to minority educational institutions especially in deprived rural areas, etc. During the year 2008, 1648 cases were registered. Majority of the applications were for minority status certificate. Those applicants who did not submit the application in the prescribed format were asked to submit revised application in the prescribed format along with necessary documents. Even though Commission has instructed concerned applicants to send petitions giving full details, there have been instances where letters were received in the Commission which is usually received in the administrative Ministries or the departments. Since the Commission is a quasi judicial body and has to follow a procedure of a court such applicants were asked to send revised petitions giving full details of the issue involved and the names and address of the respondents.

Some of the petitions were outside the cognizance of the Commission's powers contained in the NCMEI Act. Those cases which pertained to the State Government authorities were sent to the concerned Secretary of the Department for appropriate action with an endorsement to the petitioner. Some of the petitions/ applications related to Maulana Azad Foundation, Central Wakf Board etc. and such petitions were sent to them for such action as deemed appropriate. Since Article 30 includes Linguistic minorities, the Commission, during the course of the year, received some petitions relating to linguistic minorities which were returned back to the petitioner with the direction to approach the Linguistic Minority Commission.

The Commission passed several orders during the year. Some of the orders pertained to the cases registered in the previous years. In this report the orders passed by the Commission pertaining to the period from 1.4.2008 to 31.3.2009 are included. However, all the orders passed by the Commission are not mentioned in this report.

There were 397 cases in which Commission granted minority status certificate to the petitioner institutions. None of these orders are included in this report. For the sake of brevity, only gist of some of the orders are mentioned in this report. Details of all the orders passed by the Commission are included in the website of the Commission.

There were some cases wherein the respondents had failed to submit the replies even after reasonable opportunity was afforded. It is important that the respondents file their replies within the stipulated date. Non-filing of reply would result in losing the opportunity to present their point of view and the Commission is forced to decide the case ex-parte. Commission, as a policy, has made it explicit that inordinate delay in sending reply on the part of the respondents will not be entertained. Even after 2 or 3 notices, failure of the respondents to file reply would also imply that they are not denying the contents of the petitions and in effect are not refuting the claims made. If the averments made in the petition are not controverted, the Commission is bound to proceed on the claims made in the petition.

**Case No. 133 of 2007**

**Request for payment of teachers and filling up posts in School.**

**Petitioner :** Islamiah Girls' Higher Secondary School, Vaniyambadu, Tamil Nadu.

**Respondent :** The Secretary, School Education Department, Government of Tamil Nadu, Fort St. George, Secretariat, Chennai, Tamil Nadu – 600 009.

By this petition, the petitioner school being a minority educational institution covered under Article 30 (1) of the Constitution, seeks the following directions to the State Government: -

- (i) that the State Government should pay salary of twelve teachers appointed by the management of the petitioner school under the self-financing scheme introduced in 1995; and
- (ii) that the petitioner school be allowed to fill up the following vacant posts on grant-in-aid basis;
  - (a) Water woman
  - (b) Sweeper
  - (c) Record Clerk
  - (d) Junior Assistant
  - (e) Full Time Scavenger

In reply, the State Government has stated that if separate proposals are received from the petitioner they will be considered as per Government rules and norms prescribed therefor.

Since the State Government was willing to consider the demands raised by the petitioner school, the Commission disposed of the petition by directing the petitioner to submit fresh and separate proposals to the competent authority of the State Government and on submission of these proposals they shall be considered by the competent authority of the State Government in accordance with the rules and norms prescribed therefor.

**Case No. 141 of 2007**

**Request for facilities to School.**

**Petitioner :** E.K.M. Abdul Gani Gramin Matharasa Islamia High School, 36, Cauvery Road, Erode, Tamil Nadu, 638001.

**Respondent :** The Secretary (School Education), Government of Tamil Nadu.

The petitioner E.K.M. Abdul Gani Matharassa Islamic High School, Tamil Nadu is a recognised aided School established by Muslim Community. By this petition, the petitioner sought directions to the State Government to sanction its up-gradation to Higher Secondary School on grant-in-aid basis. It is alleged that the school management requires about 15 lacs for constructing additional class rooms and labs etc. In addition, it also requires Rs.60,000/- per month towards salary for the post graduate teachers of the upgraded Higher Secondary School which amounts to Rs.7.2 lacs annually.

The respondent resisted the petition on the ground that the petitioner has not submitted the aforesaid proposal to the competent authority. However, the State Government is willing to consider its proposals in accordance with the rules and norms prescribed therefor.

In the rejoinder the petitioner stated that on 10th March,2008 the proposal in the prescribed format had been submitted to the District Education Officer, Erode.

Since the petitioner had already submitted the proposal before the Competent Authority of the State Government for upgradation of the high school to a Higher Secondary School, Commission directed the State Government to consider the said proposal sympathetically.

**Case No. 858 of 2007**

**Request for starting a new Urdu medium primary school.**

**Petitioner :** Sagar Shikshan Va Gramin Vikas Sanstha, Silk Mill Colony, Paithan Road, Aurangabad, Maharashtra.

- Respondent :**
1. The Secretary (School Education), Government of Maharashtra, Mumbai, Maharashtra- 32.
  2. The Director of Education, Maharashtra State, Central Building, Pune – 01.
  3. The Education Officer (Primary Section), Zilla Parishad, Aurangabad, Dist. Aurangabad, Maharashtra.

The petitioner Sagar Shikshan Va Gramin Vikas Sanstha, Aurangabad Maharashtra is a trust registered under the Bombay Public Trusts Act 1950. It is also a Society, formed by members of Muslim community and registered under the Societies Registration Act. The petitioner society applied to the State Government for opening Urdu Primary School at Shah Shukta Colony, Aurangabad for the academic year 2000-2001. By the letter dated 11th May, 2002 the State Government constituted District Level Committee and State Level Committee for scrutinizing the proposals for opening Urdu Primary Schools. District Level Committee had recommended petitioner's proposal but the State Government has not yet taken any decision thereon. According to the petitioner, the action of the State Government in not granting permission as sought by the petitioner and recommended by the District Level Committee is violative of the educational rights guaranteed under Article 30 (1) of the Constitution.

Respondent No.1 resisted the petition on the ground that during the year 2001-2002 the State Government had received about 8000 applications for opening new schools. Since the schools which were to be sanctioned would have been eligible to receive grant in aid in future thereby causing burden on the exchequer, it was therefore practically not possible for the State Government to sanction all the proposals received during that year. Out of the proposals received during the year 2000-2001, the State Government sanctioned permissions to primary schools as under:

(i)	Marathi Medium	-	219
(ii)	Urdu Medium	-	115
(iii)	Hindi Medium	-	14
(iv)	Gujrathi Medium	-	2
(v)	Telgu Medium	-	1
<b>Total :</b>		<b>-</b>	<b>351</b>

It is alleged that the State Government had sanctioned sufficient number of Urdu Primary schools in comparison to the other medium primary schools. It is also alleged that on 24th November, 2001 the state Government took a policy decision to sanction new private schools only on permanent non-grant in aid basis.

Thereafter all the applicants were directed to submit an undertaking to run the primary schools on permanent non-grant in aid basis. Those who submitted an undertaking in terms of the said directions were permitted by the State Government to open new schools on permanent non-grant in aid basis. It is further alleged that since the petitioner had failed to submit an undertaking, its application for opening new schools was not considered. However, the State Government is willing to consider the petitioner's fresh proposal in this regard in accordance with its policy decision.

It need to be highlighted that the petitioner did not file rejoinder to the reply received from the State Government. In the absence of the rejoinder, it may be presumed that the petitioner is satisfied with the reply filed on behalf of the State Government. In this view of the matter, Commission directed the petitioner to submit fresh proposal to the competent authority for starting new Urdu Medium Primary School and the State Government shall consider it in the light of the decision of the Supreme Court rendered in the case of Superstar Education Society Vs State of Maharashtra & Ors, 2008 A.I.R SCW 2052.

### **Case No. 500 of 2007**

#### **Request for opening an Urdu Primary School.**

**Petitioner :** Allama Mohd. Taher Educational & Career (AMTEC) Foundation, Beed, Maharashtra.

**Respondent :**

1. The Secretary (School Education), Government of Maharashtra, Mantralaya Extension Building, Mumbai, Maharashtra – 400 032.
2. The Director of Education, Pune, Secondary & Higher Secondary Edu., Central Building, Pune – 411 001.
3. The Dy. Director, Department of Education, Aurangabad Division, Aurangabad.
4. The Chief Executive Officer, Zilla Parishad, Beed, Maharashtra.
5. The Education Officer (Primary), Zilla Parishad, Beed, Maharashtra.

The petitioner Allama Mohd. Taher Educational & Career Foundation, Beed (Maharashtra) is a Society, formed by members of Muslim community. Pursuant to an advertisement published in newspaper inviting applications for setting up new primay

schools, the petitioner applied to the competent authority for opening a primary school in Urdu medium in the name and style of "Amtee Foundation's Florescent Primary School". The application was submitted on 29.01.2004. Having satisfied about the financial position of the said Society, the District Level Committee recommended to the State Level Committee for grant of permission as sought by the petitioner. On evaluation of the recommendations of the District Level Committee, the State Level Committee did not recommend the proposal as a result whereof, the State Government did not grant permission to the petitioner for opening the proposed school. According to the petitioner, the impugned action of the State Government in declining permission to the petitioner to open the proposed school is violative of the educational rights guaranteed under Article 30 (1) of the Constitution.

Despite service of notice, none entered appearance on behalf of the respondents nos. 1 and 2. The respondent no. 3 has taken the stand that even though the financial position of the petitioner is sound the facility of the Urdu medium education is available in the vicinity. It is alleged that the State Level Committee declined to recommend the petitioner's proposal to the State Government on the ground of availability of the facility of the Urdu medium education in the vicinity..

In the rejoinder, the petitioner has submitted that there is no other Urdu primary school within the radius of 2 km of the proposed school and, therefore, there will be no unhealthy competition. It is alleged that the record of proceedings of the District Level Committee seems to have been interpolated. It is further alleged that the State Government has granted permission for opening so many schools in close proximity with other schools imparting same or similar education. A list of eight schools has been furnished in support of the said contention. Alternatively it is alleged that even if other schools are available nearby, there will only be healthy competition which would improve the quality of education of the school. It is also alleged that since the petitioner is not seeking any aid from the government, there will not be any financial liability on the Government.

Learned counsel for the petitioner has strenuously urged that the action of the State Government in declining permission to open the proposed primary school (Urdu Medium) is violative of the fundamental rights of the minorities enshrined under Article 30 (1) of the Constitution. Needless to add here that consequent to the increase in demand and inadequate response on the parts of the governments, there has been in recent years a development, the attitude of the governments particularly the Government of Maharashtra towards private participation appears to be one of the disapproval. In a recent judgement in Superstar Education Society Vs State of Maharashtra & Ors Civil Appeal No. 1105 of 2008 decided on 16th January 2008, the Supreme Court has observed that it is the duty of the State Government to provide access to education, unless new schools in the private sectors are permitted it will not be possible for the State to discharge its Constitutional obligation. Their Lordships of the Supreme Court have also upheld the view taken by the Bombay High Court in



Gramvikas Shikshan Prasarak Mandal Vs The State of Maharashtra AIR 2000 Bombay 437 that educational institutions covered under Article 30 (1) of the Constitution are outside the purview of the proposed Master Plan. Since the petitioner's proposed primary school is covered by Article 30(1) of the Constitution, the proposed Master Plan cannot be made applicable to it. But the proposed school must follow the parameters and conditions laid down by the Supreme Court in Superstar Education Society (supra). Reference may, in this connection, be made to para No.8 of the judgement, which is as under:

“ (i) To ensure that they have the requisite infrastructure, (ii) to avoid unhealthy competition among educational institutions; (iii) to subject the private institutions seeking entry in the field of education to such restrictions and regulatory requirements, so as to maintain standards of education; (iv) to promote and safeguard the interests of students, teachers and education; and (v) to provide access to basic education to all sections of society, in particular the poorer and weaker sections; and (vi) to avoid concentration of school only in certain areas and to ensure that they are evenly spread so as to cater to the requirements of different areas and regions and to all section of society.”

It needs to be highlighted that Their Lordships of the Supreme Court have also held in the aforesaid judgement that the government order dated 16th May, 2006 permitting new schools will, therefore, continue to be in force. Consequently, Commission recommended to the State Government to consider the petitioner's proposal in question afresh in the light of the decision of the Supreme Court rendered in Superstar Education Society (supra).

### **Case No. 1077 of 2007**

#### **Request for grant of NOC**

**Petitioner :** MEASI Academy of Architecture, Association Gardens 87, Peters Rd., Royapettah, Chennai, Tamil Nadu – 600 014.

**Respondent :** The Secretary, Higher Education Department, Government of Tamil Nadu, Secretariat, Chennai, Tamil Nadu.

The petitioner MEASI Academy of Architecture is a minority educational institution covered by Article 30 (1) of the Constitution. It is alleged that on 14.03.2007, the petitioner had applied to the State Government for NOC for starting M.Arch (Real Estate Development) course for the academic year 2007-08. According to the petitioner on 07th July 2007, a Committee of the experts visited the institute but NOC has not yet been granted by the State Government.

Despite service of notice, the State Government did not contest the proceedings. The petitioner has filed xerox copies of the letters dated 29.03.2003, 28.5.2004 and 28.07.2005 of the Higher Education (J1) Department, Government of Tamil Nadu to prove that the petitioner institution is a educational institution. It is alleged that on 14.03.2007, the petitioner had applied to the State Government for grant of NOC for starting M.Arch (Real Estate Development) course for the academic year 2007-08 and despite spot inspection by the Committee of the experts on 07.07.2007, the State Government has not passed any orders on the said application. Since these facts have not been controverted by the State Government, we may accept them as proved in terms of order VIII rule 45 CPC. In this view of the matter, the petitioner is entitled to invoke the provisions of Sub-Section (3) of Section 10 of the National Commission for Minority Educational Institutions Act 2004, which is as under:

“(3) Where within a period of ninety days from the receipt of the application under sub-section (1) for the grant of no objection certificate,-

- (a) the Competent authority does not grant such certificate; or
- (b) where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate,

it shall be deemed that the Competent authority has granted a no objection certificate to the applicant.”

In the instant case it stands proved that on 14.03.2007, the petitioner had applied to the State Government for grant of NOC and no order has yet been passed by the State Government on the said application. Consequently, Commission declared that the competent authority has granted No Objection Certificate to the petitioner in terms of Sub-Section (3) to Section 10 *ibid*. That being so, the petitioner may proceed for obtaining permission from the regulatory authority for starting M.Arch (Real Estate Development) course on the ground that No Objection Certificate has been granted to him in accordance with law.

### **Case No. 153 of 2007**

#### **Request for grant of recognition**

**Petitioner :** Muslim Education Trust, Krishnagiri, Tamil Nadu.

**Respondent :** The Secretary, School Education Department, Government of Tamil Nadu, Fort St. George, Secretariat, Chennai, Tamil Nadu – 600 009.

By this petition, the petitioner school, claiming to be a minority educational institution, sought direction to the State Government to grant recognition. It is alleged that the petitioner school was established in the year 1999 in accordance with the provisional permission granted by the competent authority. Thereafter, the petitioner filed an application to the Director of Matriculation Schools, Chennai for granting permanent recognition, but it was rejected on the ground of non-remittance of the endowment fund of Rs. 1,20,000/- for I to VI classes. According to the petitioner, it did not remit the said amount believing that because of its minority status it was eligible for the exemption of endowment fund. It is alleged that pursuant to the repeated reminders to the Director of Matriculation Schools, Chennai, the IMS visited the school and after spot inspection agreed to recommend the petitioner's case to the Director's office for recognition. It is further alleged that despite said recommendation, the Director of Matriculation of Schools, Chennai did not grant recognition as sought by the petitioner. Hence the petition.

The respondent resisted the petition on the ground that the petitioner school had not applied to get recognition within the stipulated time of three months from the date of its opening as a result whereof the provisional permission granted to it became inoperative and ineffective. It is alleged that since the petitioner had applied for the recognition after a lapse of five years, its proposal was rejected on the ground of delay.

It needs to be highlighted that by the reply dated 11.4.2007, Sh. D. Jagannathan, Director of Matriculation Schools, Chennai intimated the Commission that the petitioner's proposal for recognition was rejected on the ground of delay. It is significant to mention that case of some of the schools who had failed to apply for recognition within the stipulated time are now under active consideration of the State Government. Reference may, in this connection, be made to the following para of the reply filed by the Director of Matriculation Schools, Chennai: -

“A few other schools also failed to apply for recognition within the stipulated time after getting opening permission. Keeping in view the interests of the students enrolled in such schools, the Director of Matriculation Schools has requested the Government of Tamil Nadu permission to pass order on such belated applications based on the available facilities in the school. Necessary orders will be passed in the case of Wisdom Matriculation School, Krishnagiri by Director of Matriculation School immediately after getting the relaxation orders from the Government of Tamil Nadu.”

However, Sh. D. Jagannathan wants the petitioner to apply for opening permission afresh. According to him, as per G.O.Ms.No. 48 School Education (X2) Department, dated 21.7.2004, the petitioner school is not eligible for getting recognition,

as it had applied for recognition after a lapse of five years instead of applying within three months vide letter dated 29.06.2007. Sh. M. Kutralingam, Secretary to Government of Tamil Nadu has also filed reply in support of the plea taken by the Director of Matriculation Schools, Chennai.

It is beyond the pale of controversy that the school had deposited a sum of Rs. 1,20,000/- towards endowment fund. It is also stated in the petition that on 15.11.2006 the new IMS visited the school and after spot inspection agreed to recommend the petitioner's case for recognition. These allegations have not been controverted either by the Director, Matriculation Schools, Chennai or by the Secretary, School Education Department, Government of Tamil Nadu. Bearing in mind the provisions of order VIII rule 5 CPC Commission had no hesitation in presuming that the aforesaid facts have impliedly been admitted by the respondents. Consequently, Commission directed that a copy of the petition be sent to the Director of Matriculation Schools, Chennai for appropriate orders treating it as a petition filed for grant of recognition. Commission was sure that while dealing with the said petition the Director, Matriculation Schools, Chennai shall adopt the same course of action as reflected in his reply dated 11.4.2007.

### **Case No. 220 of 2008**

#### **Application of reservation policy on minority educational institutions.**

**Petitioner :** Guru Nanak Girls College, Santpura, Yamuna Nagar,  
Haryana – 135 001.

**Respondent :** 1. The Financial Commissioner and Principal Secretary,  
Education Department, Government of Haryana, Civil Secretariat,  
Haryana – 160 001.

2. The Financial Commissioner, Department of Higher Education,  
Government of Haryana, Chandigarh, Haryana.

Challenge in this petition is to the Government's insistence on observation of reservation policy of the Government in the matter of appointment of teaching and non-teaching staff of the petitioner college, which is a minority educational institution within the meaning of Section 2(g) of the National Commission for Minority Educational Institutions Act (for short the Act).

It is beyond the pale of controversy that by the order dated 09.08.2007 passed in Case No. 436/ 2007, the petitioner college has been granted minority status certificate by this Commission; that by the order dated 04.10.2006 of the State Government, the petitioner college was also recognised as a minority educational institution covered under Article 30(1) of the Constitution subject to the following conditions: -

- (i) To fix rational fee structure without any capitation fee or undue profit;
- (ii) Appointment of the Teaching and Non-Teaching staff by the Trust/ Management adopting Government of Haryana/ University/ NCTE/ UGC Rules/ Guidelines;
- (iii) Admission of students of that community will be through Entrance Test in a fair and transparent manner based on pure merit.

It is also undisputed that the Commissioner, Higher Education, Haryana has implemented the reservation policy for the appointment of teaching and non-teaching staff of the aided colleges vide Memo No. 2/32-2005 CII (4) dated 02.06.2006; that one post of lecturer in Computer Science was reserved in the petitioner College for S.C. category; that despite repeated advertisement no scheduled caste candidate was available for the said post; that the petitioner institution approached the Commissioner, Higher Education, Government of Haryana for conversion of the said post into general category vide letter No. GNGC/07 dated 07.11.2007; that the said request was declined by the Commissioner, Higher Education, Government of Haryana vide letters No. 8/111-2006C-4(1) dated 28.11.2007, dated 27.12.2007 and dated 28.01.2008; that the University Grants Commission had issued guidelines for strict implementation of reservation policy of the Government in universities, deemed to be universities, colleges and other grant-in-aid institutions and centers; that the Commissioner, Higher Education, Haryana has issued guidelines for granting minority status for minority educational institutions vide Memo No. 1/66-2003 Co(2) dated 25.09.2006 and that the petitioner institution is an aided minority educational institution.

According to the petitioner, imposing policy of reservation on minority educational institutions by the respondent violates the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

The respondents resisted the petition on the ground that since the petitioner institution is an aided educational institution, it has to implement the reservation policy of the State Government.

The point, which arises for consideration, is: whether imposing reservation policy on the petitioner institution is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

In T.M.A. Pai Foundation Vs State of Karnataka (2002) 8 S.C.C. 481, 11 Judges Bench of the Supreme Court has taken a unanimous view that the right to establish and administer an institution, the phrase as employed in Art. 30 (1) of the Constitution, comprises of the following right:-

- (a) to admit students;
- (b) to set up a reasonable fee structure;
- (c) to constitute a governing body;
- (d) to appoint staff (teaching and non-teaching); and
- (e) to take action if there is dereliction of duty on the part of any of the employee.

Their Lordships have held that the right enshrined in Art. 30 (1) is a regulatory right and the Regulation must satisfy a dual test—the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it. Regulation that embraced and reconciled the two objectives could be considered to be reasonable. Any law, rule or regulation which provides for recognition or certification of a minority educational institution as a minority institution on terms which will involve abridgement of the rights of minorities to establish and administer educational institutions of their choice will offend Article 30(1) of the Constitution.

The Supreme Court has also held in T.M.A. Pai Foundation (supra) that notwithstanding the grant in aid, the minority nature of the institution continues. Their Lordships have also held that any grant that is given by the State to a minority educational institution can not have conditions attached to it, which will in any way dilute or abridge the rights of minorities to establish and administer their institutions. Their Lordships have further elaborated that the conditions that can normally be permitted to be imposed on the educational institutions receiving the grant must be related to the proper utilization of the grant and fulfillment of the objectives of the grant. Any condition, which impinges upon the minority character of the institution, is constitutionally impermissible. The conditions should not in any way take away the freedom of management or administration of the institution so as to reduce it to a satellite of the University or the State.

Learned Additional Advocate General, appearing on behalf of the State, has strenuously urged that since the petitioner institution is an aided institution, it has to implement the reservation policy of the State Government. We are not impressed by the aforesaid submission of the Learned Additional Advocate General. Reference may, in this connection, be made to Article 335 of the Constitution, which is as under:-

**“Claims of Scheduled Castes and Scheduled Tribes to services and posts –** The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of

appointments to services and posts in connection with the affairs of the Union or of a State:

[Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.]”

[emphasis supplied]

A bare reading of Article 335 makes it clear that the mandate of the said Article is to take the claims of members of SC/ST into consideration for their representation in the services of the State. That being so, the reservation policy can not be extended to any private or aided educational institution as reservation contemplated by Article 335 is for SCs/STs in the services under the State. Consequently, we find and hold that imposing reservation on the petitioner institution, which is a minority educational institution, violates the basic structure of the Constitution by obliterating fundamental rights of the minorities to establish and administer educational institutions of their choice guaranteed under Article 30(1) of the Constitution. It is also significant to mention that the guidelines issued by the UGC for strict implementation of reservation policy of the Government in universities, deemed to be universities, colleges and other grant-in-aid institutions and centers clearly declare that the minority institutions covered under Article 30(1) of the Constitution are exempted from implementation of the reservation policy. That being so, the conditions imposed by the State Government relating to implementation of reservation policy is unreasonable restriction and the same is also hit by Article 13 of the Constitution, which injuncts the State from making any law which takes away or abridges the rights conferred by part III of the Constitution and it also declares that any law made in contravention of this Article shall, to the extent of the contravention, be void.

For the foregoing reasons, Commission held that the reservation policy of the State Government cannot be extended to a minority or aided educational institution. Commission also held that the petitioner institution has a right to select and appoint the staff (teaching and non-teaching) subject to the rider that the controlling/ regulatory authorities have the right to scrutinize and find out whether the person selected by the selection committee is eligible and suitable to be appointed as such keeping in view of the minimum qualification of the eligibility prescribed therefor. These findings were sent to the State Government for their implementation in terms of Section 11(b) of the Act.

**Case No. 1012 of 2007**

**Request for permanent location of College.**

**Petitioner :** Shadan Educational Society, Hyderabad, Andhra Pradesh

**Respondent :** The Regional Officer, All India Council for Technical Education (AICTE), Shastri Bhawan, 26, Haddows Road, Chennai – 600 006

Challenge in this petition is to the order passed by the respondent All India Council for Technical Education (for short the Council) directing the petitioner Society to shift the Shadan Women's College of Pharmacy from Khairtabad to Peerancheru.

The petitioner Society established an Engineering College at Peerancheru in the year 1995-96. This Engineering College was initially permitted to have B. Pharmacy course as one of the branches of engineering. Subsequently the branch of Pharmacy was separated and a separate College of Pharmacy was established in the year 1996-97. Both the engineering college and pharmacy colleges are functional at Peerancheru since inception.

In the year 1997-98, the petitioner Society applied for establishment of a separate Women's Engineering College with Pharmacy as one of the branches. On 15th May, 1997, the respondent Council issued the letter of viability in favour of the proposed Shadan Women's College of Pharmacy, at Peerancheru, Hyderabad. On August 1997, the respondent Council accorded approval for the said College at Peerancheru, Hyderabad. The petitioner Society obtained affiliation from Jawaharlal Nehru Technical University (for short 'JNTU') for Women's College of Pharmacy at the address of Khairtabad, Hyderabad. Thereafter, the petitioner Society also established an Engineering College for Women at Khairtabad (Hyderabad) and obtained affiliation from the JNTU. It is alleged that the Shadan Women's College of Pharmacy was initially established at Khairtabad address and continues to function from that address and this address has also been recorded in the JNTU records. According to the petitioner, the confusion about the address of Shadan Women's College of Pharmacy arose as the approval of the respondent Council carried the address at Peerancheru. It is alleged that the Women's College of Pharmacy is centrally located and shifting of the said college from its present location at Khairtabad will cause a lot of inconvenience to poor pardanashin (parda observing) Muslim girl students. On these premises, it is alleged that the respondent Council may be directed to relax the condition imposed by it for shifting the said college from its present location to the Peerancheru.

The respondent Council resisted the petition on the ground that the letter of viability was issued to the petitioner Society to establish the Shadan Women's College of Pharmacy at Peerancheru vide letter dated 15.05.1997. Thereafter, approval was also granted for the said college at the Peerancheru, Hiyayath Sagar Main Road,



Hyderabad vide letter No. 730-50-34(P)/ET/97 dated August 28, 1997. The Government of Andhra Pradesh had also extended provisional approval for the academic year 1998-99 to the Shadan Women's College of Pharmacy at Peerancheru, Hyderabad. Thereafter, the respondent Council also extended approval of the said college at Peerancheru address only. Since the said college remained functional from Khairtabad, a show cause notice for no admission (Failure of shifting of the institution to the permanent site) was issued to it for the academic year 2003-04 and it was also kept under no admission for the academic year 2007-08 due to some deficiencies. However, at the request of the said college, conditional extension of approval was granted for the academic year 2007-08 on an undertaking given on behalf of the college about its shifting from the present site (Khairtabad) to the original site (Peerancheru) within 12 months. It is alleged that as per norms of the AICTE, there are deficiencies and it is not possible to relax the conditions as sought by the petitioner.

The dispute in this case centres around the location of the college. It is beyond the pale of controversy that the location of the said college was approved by the respondent Council for Peerancheru but it continued to function from Khairtabad address and this address has also been recorded in the JNTU records. It needs to be highlighted that records of the respondent Council had always carried the Peerancheru address for the said college. It is undisputed that the said college is functioning at Khairtabad and the respondent Council had granted extension of approval for conducting the Pharmacy course during the years subject to the condition that the college shall be shifted from its temporary location at Khairtabad to its permanent address at Peerancheru. It is also undisputed that the present location of Khairtabad and the approved location Peerancheru of the college are within the same district, namely, Hyderabad. It is relevant to mention that the guidelines formulated by the Government of Andhra Pradesh vide Memo No. PSP821/EC.2/2004-1 dated 28th October 2004 clearly provide that request for shifting of Engineering College from one place to another can be considered only within the district in which the college has earlier been allowed to be established. It transpires from the record that in the year 1997-98, the petitioner's Society applied for establishment of a separate Women's Engineering College with Pharmacy as one of the branches at Khairtabad (Hyderabad) and the respondent Council permitted the same in the separate campus of the Khairtabad. However, the petitioner could not establish the Engineering College and established only the Pharmacy College for Women as a separate institution. The petitioner obtained affiliation from the JNTU for Women's Pharmacy College at the Khairtabad address. Subsequently, the Engineering College for Women was established in 2002-03 at Khairtabad and affiliated to the JNTU. It needs to be highlighted that the JNTU has issued a No Objection Certificate for change of name of the existing Pharmacy College vide letter dated 23.08.2008, which is as under: -

**“JAWAHARLAL NEHRU TECHNOLOGICAL UNIVERSITY  
KUKAIPALLY, HYDERABAD – 500 085, A.P. INDIA**

Lr.No.A2/NOC/Shadan Women’s CP/2008 Date: 23.08.2008

**Dr. K. Lal Kishore  
REGISTRAR**

To  
The Chairman,  
Shadan Women’s College of Pharmacy,  
Peerancheru, Hyderabad – 500 008.

Sir,

Sub : JNT University, Hyderabad – Academic & Planning – Issue  
of NOC for change of name of the existing Engineering  
College – Reg.

Ref : Lr.No.nil, dated: 19-09-2008

\* \* \*

With reference to the letter cited above, I am by direction to inform you that the University has No Objection for changing the address from “Shadan Women’s College of Pharmacy, Peerancheru” to “Shadan Women’s College of Pharmacy, Khairtabad” for the academic year 2008-09, subject to approval from the AICTE, New Delhi and Govt. of A.P.

It may be noted that, the issue of NOC does not imply the grant of affiliation by the University. The affiliation will be granted only after fulfilling the following:

1. Apply for affiliation in the required format of the University with necessary fee.
2. Satisfying the norms of the University with respect to infrastructure, staff, laboratory equipment and space.
3. Satisfactory report of the Fact Finding Committee which is to be submitted after the inspection of the College.
4. Approval by the Affiliation Committee.
5. Production of AICTE approval letter.
6. Production of State Govt. approval letter.

Yours faithfully,

**REGISTRAR”**  
(emphasis supplied)

A bare reading of the said letter makes it clear that the NOC of the JNT University does not speak of shifting the College but changing the address, which clearly shows that the petitioner college, since its inception 11 years back, has been functioning at Khairtabad address. As stated earlier under the new guidelines, the State Government has now permitted shifting of Engineering College from one place to another within the same district and the same guidelines of the State Government can also be adopted by the respondent Council in approving the present location of the petitioner's college. In our opinion, the petitioner's request for allowing it to function from the present location is squarely covered by the guidelines formulated by the State Government. Taking into account the fact that the petitioner College is girls college and is catering to the educational need of the conservative section of the Muslim community, whose education is to be encouraged as a matter of policy, and the respondent Council has been granting approval for the course on year to year basis and the JNT University has also decided to inspect the premises of the petitioner College at Khairtabad, the respondent Council is directed to consider approval of the location of the petitioner College at Khairtabad subject to fulfillment of norms and conditions on the basis of the inspection carried out by the JNT University.

**Case No. 987 of 2007**

**Recognition of School.**

**Petitioner :** Muslim Educational Foundation, 2, Pachaiappan Street, Mount Road, Chennai, Tamil Nadu – 600 002.

**Respondent :** 1. The Secretary, School Education Department, Government of Tamil Nadu, Fort St. George, Secretariat, Chennai, Tamil Nadu.  
2. Inspector of Matriculation Schools, Egmore, Chennai, Tamil Nadu.

By this petition, the Secretary, Muslim Educational Foundation, Chennai sought a direction to the State Government to continue the recognition of Hameed Fathima Matriculation School, Royapettah, Chennai (Tamil Nadu). It is alleged that the Inspector of Matriculation School has raised objections against continuation of the recognition of the said school on the ground that it does not have 6 grounds of land as per requirements of the norms prescribed therefor. According to the petitioner, the school is located in a 4 storeyed newly constructed building which has 12 rooms and a big hall. The petitioner school also got Library, Chemistry Laboratory, Physics Laboratory and Biology Laboratory separately. Since the school is located in the congested area, it does not have a play ground and sports and allied functions are being conducted on the Corporation playground, as is being done by those schools, which have no playgrounds.

The respondent resisted the petition on the ground that on inspection by the Inspector of Matriculation of Schools, it was found that the minimum area requirement of 6 grounds is not met by the school and it does not have a playground also. Some other deficiencies have also been pointed out. It is alleged that without the petitioner school having minimum of 6 grounds, it would not be possible to continue its recognition.

As per averments made in the petition, it is not possible for the school to get 6 grounds of land as the school is located in a congested area and no additional land is available for the said purpose. It is alleged that adequate space arrangement has been made by the school by constructing 4 storeyed building and the total built up area is now 7922 sq. ft. which meets requirement of the prescribed norms. It is also alleged that the adequate facilities have been provided for accommodating library and the laboratories. Viewing the said averments of the petitioner, it would be appropriate to give direction to the Inspector of Matriculations of Schools, Chennai to re-inspect the premises of the petitioner school to consider the total built up area of 7922 sq. ft. for granting permanent recognition, instead of insisting on the norms of 6 grounds, which is not possible on account of non-availability of the land in the locality. Having regard to the facts and circumstances of the case, if the competent authority on re-inspection of the school premises, is satisfied that its total built up area is sufficient to meet the minimum prescribed requirements, permanent recognition may be granted to the petitioner school.

#### **Case No. 1861 of 2006**

#### **Asthapana Anumati of school in Jharkhand.**

**Petitioner :** Idrisiya Tanzim Urdu Middle and High School, Hinpidi, Ranchi, Jharkhand.

**Respondent :** The Joint Secretary, Human Resource Development Department, Government of Jharkhand, Ranchi.

The petitioner Idrisiya Tansim Urdu Middle and High School, Hindpidi, Ranchi, sought a direction to the State Government to grant Asthapana Anumati. According to the petitioner, the school was established in 1982 and got recognition in 1988-89 from Government of Bihar. The petitioner's school is the only Urdu middle and High school in the area. It is alleged that even though the petitioner's school has all infrastructural and instructional facilities, the State Government declined to grant Asthapana Anumati on the sole ground that it does not have one acre of land as per norms prescribed therefor. It is also alleged that the petitioner's school does not have financial wherewithal to acquire one acre of land. It is, therefore, prayed that having regard to the weak financial position of the petitioner's school, recognition be granted to it by relaxing the said norm prescribed for recognition.

The petition has been resisted by the Deputy Director, Secondary Education, Department of Human Resource Development, Government of Jharkhand on the ground that since the petitioner's school does not have one acre of land as required by the Vidyalaya Ashapana Anumati Adhiniyan 2004, recognition, can not be granted.

It is well settled that the right of the minorities to establish and administer educational institutions of their choice under Article 30 (1) of the Constitution is subject to the regulatory power of the State for maintaining and facilitating the excellence of the standard of education. Recognition is a facility, which the State grants to an educational institution. No educational institution can survive without recognition by the State Government. Without recognition, the educational institutions cannot avail any benefit flowing out of various beneficial schemes implemented by the Government. It is undisputed that the petitioner's application for grant of recognition was rejected by the competent authority on the sole ground that it does not have one acre of land, which is the criteria fixed by the Government. According to the petitioner, the petitioner school does not have financial wherewithal to acquire one acre of land. Having regard to the weak financial position of the petitioner's school, it would be appropriate to recommend the State Government to relax the said norms of acquiring one acre of land for recognition of the petitioner's school.

The Chairman wrote a letter to the Chief Minister of Government of Jharkhand, requesting him to issue directions to the competent authority for granting recognition to the petitioner's school by relaxing the norms of one acre of land prescribed by the Vidhyalaya Asthapana Anumati Adhinyam 2004.

### **Case No. 488 of 2007**

#### **Permission to establish English medium primary school.**

**Petitioner :** Suffa Education Society, 102, Ghorpade Peth, Pune – 411 042, Maharashtra

**Respondent :**

1. Principal Secretary, School Education Department, 4th Floor, Mantralaya, Annexe, Mumbai – 411 0032.
2. The Director of School Education, Maharashtra State, Pune – 411 001.
3. The Dy. Director of Education, Pune Division, 17, Dr. Ambedkar Road, Camp, Pune – 411 001.

By this petition, the petitioner Society sought direction to the State Government to grant permission to establish an English medium primary school at Pune. The petitioner Society has been declared as a minority educational institution by the State

Government vide order No. ASS-2007/52/C.R.74/2007/35 dated 21st July, 2007. According to the petitioner, it has got the requisite infra-structural and instructional facilities for establishment of a primary school but the respondent declined to grant permission for starting such school vide letter dated 23rd March 2007 bearing No. shius/prashi-3/01/P.D/2007. It is alleged that the said impugned action of the respondent in not granting permission as sought by the petitioner is violative to the educational rights of the Minorities enshrined in Article 30(1) of the Constitution.

The Dy. Director, Education, Pune resisted the petition on the ground that since the State Government has not issued any advertisement inviting the applications for opening new primary schools, permission cannot be granted. The Administrative Officer, Pune Municipal Corporation has stated in his short reply that he has no power to grant permission as sought by the petitioner. The learned counsel for the petitioner has invited Commission's attention to the inspection report dated 30.6.2008 of the Education Officer which clearly proves that the petitioner Society has all the infra-structural and instructional facilities for starting the proposed primary school. According to the learned counsel that in view of the said inspection report the impugned action of the State Government in denying the permission as sought by the petitioner is violative of the educational rights of the minorities guaranteed under Article 30(1) of the Constitution. Article 30(1) of the Constitution declares that all minorities whether based on religion or language have fundamental rights to establish and administer educational institutions of their choice. It needs to be highlighted that it has been held by the Supreme Court in Superstar Education Society vs. State of Maharashtra and Ors Appeal (Civil) No. 1105 of 2008 that the educational institutions covered by Article 30(1) of the Constitution cannot be brought within the purview of the proposed master plan to be prepared by the Government of Maharashtra. Their Lordships have further held that before granting permission for new private schools, following facts are required to be taken into consideration:-

1. To ensure that they have the requisite infrastructure;
2. To avoid unhealthy competition among educational institutions;
3. To subject the private institutions seeking entry in the field of education to such restrictions and regulatory requirements, so as to maintain standards of education;
4. To promote and safeguard the interests of students, teachers and education;
5. To provide access to basic education to all sections of society, in particular the poorer and weaker sections; and
6. To avoid concentration of schools only in certain areas and to ensure that they are evenly spread so as to cater to the requirements of different areas and regions and to all section of society.

In view of the said direction of the Supreme Court, the Dy. Director (Education) was directed to inspect the primary school proposed to be set up by the petitioner and submit his report. Pursuant to the said direction, the Education Officer (Primary), Pune Zila Parishad inspected the petitioner school and submitted his inspection report dated 30/6/2008, which proves the following facts:-

1. The infra-structure is already in place specially building, furniture and fixtures, sufficient qualified teaching staff and funds.
2. At present this is the only English Medium School run by Muslims Minority Educational Institute existing in Guruwar Peth, Ghorpade Peth, Ganj Peth etc. area.
3. This educational institute is covered by Article 30(1) of the Constitution and hence cannot be brought within the purview of proposed Master Plan.
4. The student's interest as well as teacher's interest will be safeguarded as stated by the said society.
5. This institution is providing easy access to basic education to all poorer section of society.
6. As per my observation in Guruwar Peth, Ghorpade peth, Ganj peth area, is having high density population of Muslim minority and other weaker section of the society. This pre-primary school will get the sufficient feeding of students for standard 1.

Since the inspection report clearly proves that the petitioner Society has Infra-structural and instructional facilities for starting the proposed primary school, the impugned action of the State Government in declining to grant permission as sought by the petitioner is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. The inspection report also fulfills all the requirements prescribed by the Supreme Court in the case of Superstar Education Society vs. State of Maharashtra (Supra). Moreover, Article 21 - A of the Constitution declares the right to education as fundamental right to all children in the age group of 6-14 years and the State is under constitutional obligation to provide affordable and free education to all children in the state. If the State is unable to discharge its constitutional obligation in providing free education to the children in age group 6-14 years, it should encourage managers of private primary schools to discharge its constitutional obligation by providing adequate facilities and treat them as partners in the making Article 21 A, a meaningful reality on the ground.

For the foregoing reasons, Commission was constrained to observe that in the facts and circumstances of the case, the impugned action of the State Government in denying the permission to the petitioner Society to start the proposed primary school is violative of the educational rights of the minorities guaranteed under article 30(1) of the Constitution. The government can grant the permission as sought by the petitioner on permanent no grant-in-aid basis. A copy of the order be sent to the state Government for implementation of the said finding of the Commission in terms of Section 11 (a) of the National Commission for Minority Educational Institutions Act.

### **Case No. 311 of 2008**

#### **Request for filling post of teacher.**

**Petitioner :** Falah-e-Daran Punjabi Inter College, Moradabad, Uttar Pradesh.

**Respondent :**

1. The Secretary, Higher Education Department, Government of Uttar Pradesh, Secretariat, Lucknow, Uttar Pradesh.
2. The Deputy Director, Minorities Welfare Department, Government of Uttar Pradesh, 6th Floor, Indira Bhavan, Lucknow, Uttar Pradesh.
3. The District Inspector of Schools, Moradabad, Uttar Pradesh.

The petitioner Falah-e-Daran Punjabi Inter College sought a direction to the respondent District Education Officer, Moradabad to grant sanction for filling up one post of Junior Teacher, which had fallen vacant on account of superannuation of a Junior Teacher.

The respondent District Education Officer, Moradabad has resisted the petition on the ground that 21 posts of teachers have been sanctioned in the primary section of the petitioner college. Against these sanctioned posts, there are 22 junior teachers working in the institution. On 30.06.2007, two posts of teachers fell vacant on account of superannuation. Since there was an excess teacher already there compared with the sanctioned posts, he had granted sanction for filling up one post only. According to the District Education Officer, the petitioner has made the appointment on 18.11.2007, which was approved on 06.02.2008. It is also alleged that he has no power to grant permission to fill post in excess of the sanctioned posts.

The petitioner, in his rejoinder, has stated that against the two posts of teachers which had fallen vacant on account of superannuation of teachers, one post was adjusted towards the deceased dependent. The petitioner, therefore, wants that the teacher appointed in the category of the deceased dependent should be adjusted in any other institution.



It is beyond the pale of controversy that the petitioner institution is an aided minority educational institution. It is also undisputed that 21 posts of junior teachers have been sanctioned in the primary section and against these sanctioned posts, 22 teachers are already working in the institution. It is also admitted that on 30.06.2007, two posts of teachers fell vacant on account of superannuation and on 18.11.2007, the petitioner institution had appointed one Junior Teacher, which was approved by the District Inspector of Schools on 06.02.2008, and that the other vacant post was adjusted against the teacher appointed in the category of the “deceased dependent”. It appears that the expression ‘deceased dependent’ indicates that the appointment might have been made on compassionate ground on account of death of a teacher. Be that as it may, the fact remains that at present all the sanctioned posts of the teachers have been filled up and as such there is no vacancy for appointment of any other teacher. In this view of the matter, it would not be appropriate to direct the District Education Officer to transfer the teacher appointed on compassionate ground to some other institution.

For the forgoing reasons, the petition devoid of merit was dismissed.

**Case No. 2024 of 2006**

**Request for financial aid.**

**Petitioner :** Muslima Girls Junior High School, Lakriwalan, Moradabad, Uttar Pradesh

**Respondent :** The Deputy Director, Minorities Welfare Department, Government of Uttar Pradesh & Anr.

By this petition, the petitioner Muslima Girls Junior High School, Lakriwalan, Moradabad seeks the direction to the State Government for inclusion of its name in the list of financial aid institutions as it is eligible for getting financial aid from the State Government.

The respondent resisted the petition on the ground that the petitioner institution is governed by the provision of U.P. Intermediate Education Act 1921 and as such the petitioner institution is not eligible for grant-in-aid from the State Government. It is alleged that by the notification dated 9.9.2006 the State Government invited applications for grant-in-aid from the educational institutions covered under Basic Education Act 1972. Pursuant to the notification the petitioner institution filed an application on 3rd October 2006 before the Basic Education Officer, Moradabad for inclusion of its name in the list of financial aid institutions. On 28th October 2006, inspection was carried on the petitioner school and it was found that the petitioner school had classes from 6th to 12th in one premises and there was only one principal for the entire school. Therefore, the petitioner school was not recommended for grant-

in-aid. Aggrieved by the said decision of the State Government, the petitioner institution filed a Writ Petition 9977/2007 before the Allahabad High Court and by the order dated 23.02.2007 passed by the Allahabad High Court; the Government was directed to consider and decide claim of the petitioner school within 4 months from the date of the order.

Pursuant to the said direction of the Allahabad High Court, another inspection was carried out on 21st April 2007 and it was found that the names of Girls High School's teachers were included in the staff of the petitioner institution and as such the petitioner institution was found ineligible for grant of financial aid. It is further alleged that the payment in respect of wages for teaching and non-teaching staff of the permanent recognized junior high school is governed under the provisions of the Payment of Wages Act 1978. Under this Act, there is no provision for payment of wages for the employees of high school or intermediate school as such schools are governed under the U.P. Intermediate Education Act 1921 and not Basic Education Act 1972. In special leave Civil No. 1195/2002 and Civil Appeal No. 1039/2005 in the case of State of Uttar Pradesh and others vs. Ram Chand Tyagi and others decided on 4.2.2005, the Allahabad High Court has held that payment of salaries of the members of the staff of the junior high schools recognized by the State Government as high schools and intermediate colleges will not be governed by Payment of Wages Act 1978. Relying on the aforesaid cited decision of Allahabad High Court, the State Government rejected the petitioner's claim for grant of financial aid. It is alleged that since the petitioner institution is conducting classes from 6 to 12 as an integral part of the high school and the intermediate college, it is not eligible for grant-in-aid by the State Government.

In the rejoinder, the petitioner institution has reiterated that the Muslima Girls Intermediate College and Muslima Girls Junior High School are two separate institutions and they are also housed in separate premises.

It needs to be highlighted that by the Order dated 23rd February 2007 passed in Writ Petition 9977/2007, the High Court of Allahabad had directed the State Government to consider the claim of the petitioner institution and pursuant to these directions another inspection was carried on 21st April 2007 and it was found that the names of Girls High School's teachers were included in the teaching staff of the Muslima Girls Inter College. Consequently, the competent authority of the State Government found that the petitioner's case is squarely covered by the dictum laid down by the Allahabad High Court in the case of State of Uttar Pradesh and others vs. Ram Chand Tyagi and others (supra). There is nothing on the record to show or suggest that the findings recorded by the inspection committee, which had carried out inspection on 21st April 2007, are factually incorrect. Consequently, Commission had no other option but to accept the factual position found by the inspection committee. Since it was found that the classes from 6 to 12 are being conducted as a part of the High School and intermediate college, the provisions of the Basic Education Act 1972 and the

Payment of Wages Act 1978 cannot be pressed into service for payment of salaries for teaching and non-teaching staff of the petitioner institution. Consequently, the decision of the State Government about the non-inclusion of the petitioner's name in the list of financial aid institutions cannot be faulted on any legal ground.

For the foregoing reasons the petition is dismissed.

**Case No. 913 of 2008**

**Request for establishment of B. Ed College for Muslim girls.**

**Petitioner :** Royal Higher Education Society, 390, Sir J.J. Road, Mumbai, Maharashtra.

**Respondent :** The Regional Director, Western Regional Committee, National Council for Teacher Education, Manas Bhavan, Shymala Hills, Bhopal, Madhya Pradesh.

The Royal Higher Education Society (hereinafter be referred as the Society) is registered under the Bombay Public Trust Act 1950 as also under the Society Registration Act. On 21.12.2007, the Society submitted an application under Section 14/15 of the National Council for Teacher Education Act, 1993 (for short the Act) for grant of recognition of B. Ed. College for girls at Meera Bhyandar, Thane (M.S.). By the letter Code No. APWO 6959/123871 (ENG) dated 14.1.2008, the petitioner was directed to remove the deficiencies enumerated therein within 90 days. Thereafter, the petitioner removed the deficiencies and informed the respondent accordingly vide letter dated 4.8.2008. On 2.09.2008, the petitioner applied to the respondent for inspection of the premises of the proposed college but it did not evoke any response from the respondent. Hence, this petition.

Despite service of notice, the respondent did not contest the proceedings.

It is alleged that the petitioner Society has been certified as a minority education institution vide order dated 14.8.2008 issued by the competent authority of the State Government. According to the petitioner, it had removed all the deficiencies pointed out by the respondent and despite repeated reminders, the respondent did not take any step for inspection of the premises. It transpires from the record that the petitioner has not submitted the requisite document of the land title certificate to show that the land is free from encumbrance or the petitioner has acquired land on lease from the Government for a period of not less than 30 years as the proposed college is to be established in a rented building. The petitioner Society could not submit the requisite documents as it wants to establish the proposed college in a rented building.

Thus, the main cause for non-grant of the recognition as sought by the petitioner society appears to be the prohibition against establishment of such a college in a rented building. Reference may, in this connection, be made to Regulation 8(7) of the National Council for Teachers Education (Recognition Norms and Procedures) Regulations 2007 (for short the Regulations) which is as under :-

“No institution shall be granted recognition under these regulations unless it is in possession of required land on the date of application. The land free from all encumbrances could be either on ownership basis or on lease from Government/ Government institutions for a period of not less than 30 years. In cases where under relevant State/UT laws the maximum permissible lease period is less than 30 years, the State Government/UT Administration law shall prevail. However, no building could be taken on lease for running any teacher training course.”

(emphasis supplied)

Regulation 11 of the Regulations confers power on the Chairperson of the National Council for Teachers Education to relax any of the provisions of the Regulations on recommendations of the State Government/UT Administration concerned. Regulation 11 is as under : -

“On the recommendations of State government/UT Administration concerned and only for removal of any hardship caused in adhering to the provisions in these regulations, in circumstances peculiar to the said State/ U.T., it shall be competent for the Chairperson, National Council for Teacher Education, for reasons to be recorded in writing, to relax any of the provisions of these regulations in respect of any class or category of institutions in the concerned state/U.T., to such extent and subject to such conditions, as may be specified in the order allowing relaxation. In exceptional cases and for reasons to be recorded in writing the Chairperson can relax the provisions of the Regulations and the related Norms and Standards in case of a Government Institution.”

The question which arises for consideration is as to whether the petitioner has made out prima facie case for relaxation of the provisions contained in Regulation 8 (7) of the Regulations. It needs to be highlighted that the petitioner wants to establish B.Ed college for Muslim girls as there is no such college for them within the radius of 20 kms. from the District Headquarter.

According to the Sachhar Committee's report, the Muslim community is scratching educational barrel of the country. In view of the poor socio-economic status of Muslims, the Central Government has launched various schemes for their empowerment through education. There is no denying the fact that the literacy rate among the Muslim women is worse than the women from other religious groups. There is an urgent need to empower Muslim women through education so that they can move out of the confines of their home and community for their progress and prosperity. The importance of the spread of girl's education is an intrinsic part of the State Policy designed to ensure the reach of education to the population at large in general and Muslims in particular. The primary duty to ensure spread of education is one that the Constitution requires the State to perform. The Supreme Court in the case of Unnikrishnan J.P. vs. State of Andhra Pradesh AIR 1993 SC 2178 has recognized that the role of private institutions is important in order to supplement the role of the State in achieving the spread of education. There is significant need to spread girls education in among Muslims where poverty, under-development and social disability have to be overcome by making available the benefit of education to the widest strata of Muslim society.

It needs to be highlighted that the owner of the premises in question is the Registered Society of Bombay (hereinafter to be referred to the Bombay Society) which is a society registered under the Bombay Public Trust Act as also under the Society Registration Act. The Bombay Society is the parent society of the petitioner Society. The objects of both the societies are common viz advancement to the cause of education. The society has already been conducting art, science and commerce classes in the premises owned by the Bombay Society in the same complex since 1989. The premises owned by the Bombay Society are situated on land which was leased by the Government of India under the Lease Deed dated 23.01.1915 to Mr. S. D. Nawalkar for a period of 999 years calculated from 12.12.1889 and the said lease would expire on 12.2.2888. The heirs and successors of the original lessee (S.D. Nawalkar) have assigned all their rights, title and interest to the Eversmile Properties (Pvt.) Ltd. under various documents including supplementary agreements dated 2.09.1993.

Under the rights vested on the said agreement of lease, the Eversmile Properties (Pvt.) Ltd. sub-leased a part of the land bearing S. N. 236 to the Bombay Society for establishing an educational institute. Thereafter, the Bombay Society has constructed a multi-storeyed building on the said land. On 15.3.1994, the Bombay Society had sub-let a portion of the said building to the society on a nominal rent of Re.1- per annum. By the agreement of tenancy dated 17.1.2000, the Bombay Society leased out the 4th floor of the building to the Society for establishment of the proposed B.Ed. college. The said lease deed is supported by an undertaking given by the Bombay Society in favour of the Society that it will not disturb the user of the fourth floor premises for the proposed B.Ed College. This undertaking, if otherwise violated, would be enforceable against the Bombay Society.

Thus, the factual position, which emerges out, is that the Bombay Society had constructed a multi-storeyed building on a portion of the land (SN 236 measuring 10186.50 sq.mtrs) and that by the agreement of lease dated 17.1.2000, the Bombay Society had leased out the fourth floor of the said building to the Society for establishment of the proposed B.Ed. college. It is well settled that when an open site is leased out for a period as long as 99 years and the lessee builds on the demised land, then for that limited period the lessee becomes the owner of such building and the building can be said to belong to him. Reliance can be placed on the decision rendered by the Madhya Pradesh High Court in Ramesh Chand Agarwala vs. Gopalkrishna Upadhyay and Ors. (1997(1) MPLJ 459). That being so, the Bombay Society became owner of the building constructed on the demised land bearing S.N. 236 and further the Bombay Society leased out the fourth floor of the said building to the Society for establishment of the proposed B.Ed. college for girls with an undertaking that it will not disturb the user of the said portion of the building. Moreover, the Bombay Society is the parent society of the petitioner society and the lease deed agreement dated 17.1.2000 is supported by an undertaking that the Bombay Society will not in any way disturb the user of the demised portion of the building. The petitioner society has no other building for the proposed B.Ed. college for girls. In this view of the matter, the command of Regulation 8(7) that 'no building could be taken on lease for running any teacher training course' causes considerable hardship to the petitioner society for establishment of the proposed college. That being so, the petitioner society has made out a prima facie case for relaxation of the aforesaid provision of the Regulation 8(7) of the Regulations.

For the foregoing reasons, Commission was of the opinion that the petitioner has made out prima facie case for removal of hardships in adhering to the provisions of Regulations 8 (7) as it prohibits establishment of a B.Ed. college in a rented building. Having regard to the peculiar facts and circumstances of the case, the State Government is advised to recommend to the Chairperson of the NCTE to exercise his power under Regulation 11 for relaxation of the aforesaid provisions of Regulation 8 (7) of the Regulations, which is causing hardships in establishment of the proposed B.Ed. college for Muslim girls at Meera Bhayandar, Thane.

### **Case No. 305 of 2008**

#### **Request for recognition to establish teacher's training institute.**

**Petitioner :** Crescent Teacher Training Institute, Karaikal, Pondicherry.

**Respondent :** The Secretary, National Council for Teacher Education, 1st Floor, CSD Building, HMT Post, Bangalore, Karnataka – 560 031.

By this petition the petitioner Managing Trustee of Sara Educational and Charitable Trust, Dharapuram, Tamil Nadu seeks a direction to the respondent to grant

recognition to establish Crescent Teacher Training Institute in the Union Territory of Pondicherry for conducting a course of training in teacher education. After repeated inspection of the site of the proposed training institute by the inspecting team the petitioner did not rectify the deficiencies pointed out by the respondent. However, the petitioner's proposal is to establish the said institute in a rented building.

The respondent resisted the petition on the ground that the petitioner's proposal was rejected on the ground of various deficiencies found on inspection of the site. Aggrieved by the decision of the respondent the petitioner preferred an appeal which was rejected by the appellate authority. Thereafter, the petitioner filed the Writ Petition No. 19940 of 2006 in the High Court of Madras. The High Court of Madras directed the respondent to get the institute in question inspected within 3 weeks. Pursuant to the said direction, the respondent conducted the inspection on 16.8.2007 and found that there is no institution which existed in the address given by the petitioner. Consequently, the petitioner's application for recognition was again rejected under intimation to the High Court of Madras. The petitioner reagitated the issue by filing the Contempt Petition No. 660 of 2007 which was also rejected by the High Court of Madras.

In the rejoinder the petitioner has stated that the Trust has purchased a land measuring 2.5 acres and it has submitted the approved building plan to the respondent. It is also alleged that the institute has been started in a rented building which has all the infra-structural facilities.

It is undisputed that the petitioner Trust wants to establish the Crescent Teacher Training Institute in a rented building. It needs to be highlighted that the National Council for Teacher Education has formulated regulations namely, the National Council for Teacher Education (Recommendation, Norms and Procedure) Regulations 2007 (for short the Regulations). Regulation 7(8) provides that in the matter of grant of recognition, the Regional Committee shall strictly act within the ambit of the National Council of Teacher Education Act 1993, the National Council of Teachers Education Rules 1997 and the regulations made under the NCTE Act, 1993 and shall not make any relaxation thereto. The Regulation 8(7) provides that no building could be taken on lease for running any teacher training course. In view of these regulations, the respondent was perfectly justified in rejecting the application filed by the petitioner Trust for grant of recognition for conducting the course of training in teacher education in a rented building. Accordingly, the petition is dismissed.

### **Case No. 307 of 2008**

#### **Complaint regarding interference in the administration of a minority college.**

**Petitioner :** Falah-e-Darain Inter College, Moradabad, Uttar Pradesh.

- Respondent :**
1. The Secretary, Higher Education Department, Government of Uttar Pradesh, Secretariat, Lucknow, Uttar Pradesh.
  2. The Deputy Director, Minorities Welfare Department, Government of Uttar Pradesh, 6th floor, Indira Bhavan, Lucknow, Uttar Pradesh.
  3. The District Inspector of Schools, Moradabad, Uttar Pradesh.

The petitioner Falah-e-Darain Inter College, Moradabad is a minority education institution covered under Article 30(1) of the Constitution. The petitioner has raised various issues and has complained about the harassment by the officials of the State Government. The petitioner's main grievance is about undue interference of the educational authorities in selection and appointment of its teaching staff. According to the petitioner, directions of the educational authorities to seek their prior approval for advertising the vacant posts, for selection and appointment and for releasing the salary etc. are violative of the rights of the minorities enshrined in Article 30(1) of the Constitution.

In reply, the District Education Officer, Moradabad stated that the petitioner, being a minority educational institution, enjoys complete autonomy in the matter of selection and appointment of its teaching staff. It is also alleged that as soon as any proposal for selection of the staff is received in the office, approval is conveyed to the petitioner institution for selection and appointment of its staff.

It has been held by the Supreme Court in TMA Pai Foundation vs. State of Karnataka (2002) 8SCC481 and [P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537] that an educational institution covered under Article 30 (1) of the Constitution enjoys the complete autonomy in respect of selection and appointment of its teaching and non-teaching staff. The role of the State Government or the regulatory authorities is limited to the extent of ensuring that teachers/ lectures/ head masters/ principals selected by the management of a minority educational institution fulfill the requisite qualifications of eligibility prescribed therefor. Autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institution. The State or any University/Statutory authority can not under the cover or garb of adopting regulatory measures destroy the administrative autonomy of a minority educational institution or start interfering with the administration of the management of the institution so as to render the right of the administration of the institution concerned nugatory or illusory. The State government or a University cannot regulate the method or procedure for appointment of teachers/lecturers/ headmasters/principals of a minority educational institution. Once a teacher/ lecturer/ headmaster/ principal possessing the requisite qualifications prescribed by the State or the University has been selected by the management of the minority educational institution by adopting a rational procedure of selection, the State Government or the University would have no right to veto the selection of those teachers etc.



The State Government or the University cannot apply rules/ regulations/ ordinances to a minority educational institution, which would have the effect of transferring control over selection of staff from the institution concerned to the State government or the University, and thus, in effect allow the State Government or the University to select the staff for the institution, directly interfering with the right of the minorities guaranteed under Article 30(1). Composition of the Selection Committee for appointment of teaching staff for a minority educational institution should not be such as would reduce the management to a helpless entity having no real say in the matter of selection/ appointment of staff and thus destroy the very personality and individuality of the institution which is fully protected by Article 30(1) of the Constitution.

The State Government or the educational authorities are not empowered to require a minority educational institution to seek their prior approval in the matter of selection/appointment or initiation of any disciplinary action against any member of its teaching and non-teaching staff. That is the law declared by the Supreme Court in the case of TMA Pai Foundation and P.A. Inamdar (supra). It is well settled that the law declared by the Supreme Court cannot be forsaken on any pretext by any authority.

It has been held by the High Court of Allahabad in Committee of Management, Sri Kund Kund Jain Inter College, Muzaffar Nagar versus State of U.P. and Others [2006(4)ADJ 663 (All)] that a District Inspector of Schools does not have a right to exercise any power of prior approval for advertising vacancy of teaching and non-teaching staff of a minority education institution covered under Article 30(1) of the Constitution of India. The role of the District Inspector of Schools is limited to the extent of ensuring that members of the teaching and non-teaching staff selected by the management of an aided minority educational institution fulfills the requisite qualification and eligibility prescribed therefor. Sub Section (4) of Section 16FF of the Intermediate Education Act 1921 clearly declares that the appropriate authority cannot withhold the approval for the selection made where the person selected possesses the minimum qualification prescribed and is otherwise eligible. An aided minority education institution is not supposed to take prior approval of the District Inspector of Schools for advertising the vacant post. Consequently, the District Inspector of Schools, Moradabad is directed to obey the law declared by the Supreme Court and the High Court of Allahabad in the aforesaid decisions as well as the command of sub Section (4) of Section 16FF of the Intermediate Education Act 1921.

### **Case No. 786 of 2007**

#### **Request for recognition of B.Ed. College.**

**Petitioner :** The Konkan Muslim Education Society, Thane District, Bhiwandi, Maharashtra.

- Respondent :**
1. The Regional Director, Western Regional Committee, National Council for Teachers Education, Manas Bhawan, Shyamala Hills, Bhopal.
  2. The Principal Secretary, Higher & Technical Education Department, Government of Maharashtra, 4t Floor, Mantralaya, Annexe, Mumbai – 411 032.
  3. The Registrar, University of Bombay, Mumbai.
  4. The Director of Higher Education, Maharashtra State, Central Building, Pune, Maharashtra-411 001.

By this petition, the petitioner Society seeks direction to the respondent National Council for Teacher Education (for short the NCTE) to grant recognition for B.Ed. (E) CO-ED course for one year duration with an annual intake of 100 students. The petitioner society is a public trust established by the Muslim community and is running schools and Degree College in Thane District, (Maharashtra). The petitioner society applied to the University of Bombay in the prescribed format alongwith the requisite documents. It has also paid a sum of Rs.50,000 as course-wise affiliation fee to the University. Thereafter the petitioner society applied to the Western Regional Director, Western Regional Committee, NCTE, Bhopal. It is alleged that the proposed B.Ed.(E) CO-ED college has all the infrastructural and instructional facilities. The petitioner society has also removed all the deficiencies pointed out by the NCTE within the period specified therefor. In the letter of intent issued by the NCTE dated 24.10.2008 and 5.11.2008 it is mentioned that the Western Regional Committee in its 109th Meeting held on 19-20/10.2008 was satisfied about availability of all the infrastructural and instructional facilities in accordance with the norms prescribed by the NCTE but the NCTE did not grant recognition for conducting the B.Ed.(E) CO-ED course as sought by the petitioner society. It is further alleged that on going through the website of Western Regional Committee, NCTE, Bhopal the petitioner society found that in the minutes of the 112th meeting of Western Regional Committee meeting, NCTE held on 7-8 December, 2008, the decision of the Western Regional Committee has been displayed as “Not permissible as per guidelines from NCTE Headquarters, New Delhi”. It is further alleged that impugned action of the NCTE in not granting recognition for B.Ed course to the petitioner society is violative of educational rights of the minorities enshrined under Article 30(1) of the Constitution.

Despite service of the notice none entered appearance on behalf of the NCTE, as a result whereof, the case was proceeded ex-parte against it. The Joint Director of Higher Education, Bombay Region, Government of Maharashtra vide its letter dated 15.5.2008 informed the Commission that according to Government policy regarding starting of college of education prior permission/approval of the NCTE is mandatory. It is alleged that the NCTE, Bhopal has informed the petitioner that a team of experts

will be sent to verify about availability of infrastructural and instructional facilities as per the norms prescribed therefor vide letter dated 15.4.2008. It is also alleged that after getting recognition from the NCTE, the State Government will grant permission to the petitioner society.

The point which arises for consideration is as to whether impugned action of the NCTE in not granting recognition for B.Ed. (E)CO-ED course under Clause 7(9) of the NCTE (Recognition, Norms and Procedure) Regulations, 2007 is violative of the rights of the minorities enshrined under Article 30(1) of the Constitution. Article 30(1) of the Constitution confers on linguistic and religious minorities a fundamental right to establish and administer educational institution of their choice. A stream of Supreme Court decisions commencing with the Kerala Education Bill Case (AIR 1958 SC 255) and climaxed by the Eleven Judges Bench case in T.M.A. Pai Foundation versus State of Karnataka [(2002) 8 SCC 481] has settled the law for the present. The whole edifice of case law on Article 30 has been bedrocked in T.M.A. Pai Foundation case (supra). Accordingly the Apex Court benignly regulated liberty which neither abridges nor exaggerate autonomy but promotes better performance is the right construction of the Article 30 of Constitution. Such an approach enables the fundamental right meaningful to fulfill its trust with the minorities' destiny in a pluralist polity.

It has been held in T.M.A. Pai Foundation case (supra) that the right of minority community to establish and administer educational institution of its choice guaranteed under Article 30(1) of the Constitution is subject to the regulatory power of the State government for maintaining and facilitating excellence of its standard. But the regulations must satisfy a dual test-that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it. The regulations would be deemed to be unreasonable only if it was totally destructive of the rights of minorities enshrined under Article 30 of the Constitution.

Recognition is a facility, which a regulatory authority or the state grants to an educational institution. No educational institution can survive without recognition by the regulatory/statutory authority. Although Article 30(1) of the Constitution does not speak of the condition under which the minority educational institution can be recognized or affiliated to a regulatory body yet the article by its very nature implies where recognition or affiliation is asked for, the regulatory authorities can not refuse the same without sufficient reasons or try to impose such conditions as would completely destroy the autonomous administration of the educational institution. In Managing Board of the Milli Talimi Mission Bihar & Ors. versus State of Bihar & Ors. 1984 (4) SCC 500, the Supreme Court has clearly recognized that running a minority institution is also as fundamental and important as other rights conferred on the citizens of the country. If the regulatory authority/State Government declines to grant recognition to a minority educational institution without just and sufficient grounds, the direct consequence would be to destroy the very existence of the institution itself. Thus, refusal to grant recognition

or affiliation by the statutory authorities without just and sufficient grounds amounts to violation of the rights guaranteed under Article 30(1) of the Constitution (P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537).

A minority educational institution seeking recognition/affiliation must fulfill statutory requirements concerning the academic excellence. It must have sufficient infrastructural and instructional facilities as well as financial resources for its growth. No condition should be imposed for grant of recognition or affiliation which would in truth and in fact impinge upon the minority character of the institution concerned. In the instant case it is clearly mentioned in the letter of intent for grant of recognition No. WRC/APW05418/123672(E)CO-ED/ 109/ 2008/45897 dated 24.10.2008 that the Western Regional Committee was fully satisfied about availability of infrastructural and instructional facilities as well as financial resources for its growth. In this view of the matter the impugned action of the NCTE in not granting recognition as sought by the petitioner society is violative of the educational rights of the minorities enshrined under Article 30(1) of the Constitution.

For the foregoing reasons, Commission directed the NCTE to implement the findings of the Commission in terms of Section 11 (b) of the National Commission for Minority Educational Institutions Act by granting recognition to the petitioner society under Clause 7(9) of the National Council for Teacher Education (Recognition, Norms and Procedure) Regulations 2007.

### **Case No. 32 of 2008**

#### **Request for recognition of D. Ed. College.**

**Petitioner :** The Konkani Muslim Education Society of Thane District, District Thane, Maharashtra.

**Respondent :**

1. The Regional Director, Western Regional Committee, National Council for Teacher Education, Manas Bhavan, Shymala Hills, Bhopal, Madhya Pradesh.
2. The Secretary, School Education Department, Government of Maharashtra, 4th Floor, Mantralaya, Annexe, Mumbai.
3. The Director of School Education, Maharashtra State, Pune.

By this petition, the petitioner society seeks direction to the respondent National Council for Teacher Education (for short the NCTE) to grant recognition for the proposed D.ED. college. The Konkani Muslim Education Society of Thane is a public trust constituted by the Muslims of Bhiwandi and registered with the Deputy Charity Commissioner, Mumbai under the Bombay Public Trust Act 1950. The petitioner society

is running various educational institutions in the District of Thane. The petitioner society, desirous of establishment of D.Ed college for Muslim community, submitted a proposal to the Director, Maharashtra State Council for Teachers Training and Research, Pune for starting a new D.Ed. college which was accepted on 7.2.2007. Thereafter, the petitioner society approached the Regional Director, Western Regional Committee, NCTE, Bhopal for grant of recognition of the proposed D.Ed college. The petitioner society also deposited a sum of Rs. 40,000 as course-wise affiliation fee to the NCTE. The petitioner society has all the infrastructural and instructional facilities for starting the proposed D.Ed college as per the norms prescribed under the National Council of Teachers Education (Recognition Norms and Procedures) Regulations 2007 but the respondent NCTE has not granted recognition for the said college. It is alleged that the impugned action of the respondent NCTE in not granting recognition for the D.Ed course is violative of the rights enshrined in Article 30(1) of the Constitution.

Despite service of notice none entered appearance on behalf of the NCTE as a result whereof the case proceeded ex-parte.

The point which arises for consideration is as to whether the impugned action of the NCTE in not granting recognition for D.Ed. course under Clause 7(9) of the National Council for Teachers Education (Recognition Norms and Procedures) Regulations 2007 is violative of the rights of the minorities enshrined in Article 30(1) of the Constitution.

Article 30(1) of the Constitution confers on linguistic and religious minorities, a fundamental right to establish and administer educational institution of their choice. A stream of Supreme Court decisions commencing with the Kerala Education Bill Case (AIR 1958 SC 255) and climaxed by the Eleven Judges Bench case in T.M.A. Pai Foundation versus State of Karnataka [(2002) 8 SCC 481] has settled the law for the present. The whole edifice of case law on Article 30 has been bedrocked in T.M.A. Pai Foundation case (supra). Accordingly the Apex Court benignly regulated liberty which neither abridges nor exaggerate autonomy but promotes better performance is the right construction of the Article 30 of the Constitution. Such an approach enables the fundamental right meaningful to fulfill its trust with the minorities' destiny in a pluralist polity.

It has been held in T.M.A. Pai Foundation case (supra) that the right of minority community to establish and administer educational institution of its choice guaranteed under Article 30(1) of the Constitution is subject to the regulatory power of the State government for maintaining and facilitating excellence of its standard. But the regulations must satisfy a dual test-that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it. The regulations would be deemed to be unreasonable only if it was totally destructive of the rights of minorities enshrined in Article 30 of the Constitution.

Recognition is a facility, which a regulatory authority or the state grants to an educational institution. No educational institution can survive without recognition by the regulatory/statutory authority. Although Article 30(1) of the Constitution does not speak of the condition under which the minority educational institution can be recognized or affiliated to a regulatory body yet the article by its very nature implies where recognition or affiliation is asked for, the regulatory authorities can not refuse the same without sufficient reasons or try to impose such conditions as would completely destroy the autonomous administration of the educational institution. In Managing Board of the Milli Talimi Mission Bihar & Ors. versus State of Bihar & Ors. 1984 (4) SCC 500, the Supreme Court has clearly recognized that running a minority institution is also as fundamental and important as other rights conferred on the citizens of the country. If the regulatory authority/State Government declines to grant recognition to a minority educational institution without just and sufficient grounds, the direct consequence would be to destroy the very existence of the institution itself. Thus, refusal to grant recognition or affiliation by the statutory authorities without just and sufficient grounds amounts to violation of the rights guaranteed under Article 30(1) of the Constitution (P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537).

In the instant case the NCTE vide its letter dated April 9/10, 2008 had intimated the society about its intention to carry out inspection of the building. The respondent Director, Maharashtra State Council for Teachers Training and Research, Pune vide letter No. MSCERT/ TTS/ 2/ NCME/ 2008/ 2688 intimated the Commission that as per the National Council for Teachers Education Act, 1993 and the rules framed thereunder, the NCTE is the appropriate authority for granting recognition of D.Ed. colleges in the State and as per the notification dated 27.9.2001 no NOC of the State is required for starting new D.Ed. colleges in the State. It transpires from the record that the NCTE inspected the petitioner's premises and found the following deficiencies and vide letter No. WRC/ APW05419/ 1221494/ 107th / 2008/44726 dated 26/ 30.09.2008 intimated to the petitioner society.

1. Staff not qualified as per NCTE norms.
2. Building plan submitted is of medical college.
3. Built-up area is only 451.65 sq.mts. As indicated by the VT report is not sufficient for running D.Ed. and recognized B.Ed. college.
4. Books are insufficient as per NCTE norms
5. The built-up area for all the educational institutions in the campus may be specified with an approved building plan
6. The classroom size is inadequate as per NCTE norms

The NCTE directed the petitioner to rectify the deficiencies within 30 days of the issue of the notice.

The petitioner has filed an affidavit stating that it had submitted details of the teaching staff with full particulars including qualification, specialty in relevant subjects, mark sheets, certificates and personal details etc. along with consent letter duly signed by each of the staff stating that they are ready to work as teacher in the proposed college. The staff to be employed fulfills all the requisite qualification prescribed by the NCTE. It is stated in the affidavit that the petitioner society has also got adequate building and infrastructure as they have 27 acres of land, which was purchased for the medical college. Since the medical college is proposed to be built elsewhere, the building is to be utilized for the proposed D.Ed. college. The area available for the proposed institution is 1668.69 sq. mtrs. The petitioner has also purchased 2846 books and for the remaining books orders have already been placed and the delivery is expected any day. The built up area of the proposed college is 1668.69 sq. mtrs. consisting of seven sections on the ground floor measuring 322.18 sq. mtrs., six sections on the first floor measuring 298.21 sq. mtrs., and six sections on the second floor measuring 252.19 sq. mtrs. Apart from this, auditorium measuring 423 sq. mtrs., fitness centre measuring 124 sq. mtrs., health care centre 105.11 sq. mtrs and canteen of 144 sq.mtrs are also available. The classrooms are having the size of 119.51 sq. mtrs. in the same building. The petitioner has undertaken to construct additional class rooms on the third floor of the existing building for the second year of the D.Ed. course. Although a copy of the said affidavit was supplied to the respondent NCTE, but the respondent did not file counter affidavit to rebut the facts stated therein. Consequently, we have no hesitation in acting upon the unrebutted evidence produced by the petitioner in support of its case.

It needs to be highlighted that the petitioner has furnished all the necessary details supported by documents, which were sent to NCTE, Western Regional committee, Bhopal on 27.10.2008 well within 30 days from the date of the receipt of the notice. The petitioner has stated that in addition to prescribed fee deposited earlier they have got endowment fund of Rs. 5 lacs and reserve fund of Rs. 3 lacs also deposited in 2006 in the NCTE, Western Regional Office, Bhopal. The petitioner has submitted a copy of the resolution passed by the managing committee of the petitioner society on 22nd July 2006 which is as under:-

**RESOLUTION NO. 6(C) :-**

“it is unanimously resolved to shift the site of proposed Medical College Building from Rais High School Campus, Thana Road, Bhiwandi (C.S.No. 2157) to the land purchased at Gorsai Village, Tal. Bhiwandi Dist. Thane, for that purpose. It is further resolved that the Building already constructed on C.S. No. 2157, at Rais High School Campus, Thana Road, Bhiwandi, will be utilized to start the proposed D.Ed. & B.Ed. (College) Courses.”

For the foregoing reasons Commission was satisfied that the petitioner society has all the infrastructural and instructional facilities as per the norms prescribed by the National Council for Teachers Education Act and the regulations framed thereunder. Since the deficiencies pointed out by the NCTE have been rectified by the petitioner, the impugned action of the NCTE in not granting recognition for the D.Ed. course is violative of the rights of the minorities enshrined in Article 30(1) of the Constitution.

Consequently, the respondent NCTE was directed to implement the findings of the commission under Section 11 (e) of the National Commission for Minority Educational Institutions Act by granting recognition for D.Ed. course as sought by the petitioner society.



## CHAPTER 7 – CASES REGARDING DEPRIVATION OF RIGHTS OF MINORITY EDUCATIONAL INSTITUTIONS AND AFFILIATION TO UNIVERSITIES

Commission has given the analysis of the petitions and complaints received during the year in the previous chapter. Gist of some of the orders have also been detailed therein. In this chapter details of the orders passed by the Commission relating to deprivation of the rights of minority educational institutions and cases relating to affiliation are given.

It is well settled that under Article 30 (1) of the Constitution, a religious or linguistic minority has a right to establish and administer educational institutions of its choice, which right, however, is subject to the regulatory power of the State for maintaining and facilitating the excellence of educational standards. In the 11 Judges Bench decision of the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka 2002 8 SCC 481, the Apex Court has explained the right to establish and administer an educational institution. The phrase employed in Article 30 (1) of the Constitution comprises of the following rights:

- a. To admit students;
- b. To set up a reasonable fee structure;
- c. To constitute a governing body;
- d. To appoint staff (teaching and non teaching); and
- e. To take action if there is dereliction of duty on the part of any of the employees.

The Commission subscribes to the view that the minority educational institutions should not fall below the standards of excellence expected of educational institutions under the guise of exclusive right of management. The minority educational institutions need not be allowed to decline to follow the general pattern. Regulatory measures for ensuring educational standards and maintaining excellence thereof are no anathema to the protection conferred by Article 30 (1) of the Constitution. Some of the cases decided during the years are as follows:

### **Case No. 164 of 2008**

#### **Request for starting additional courses**

**Petitioner :** Maulana Azad Degree College, Siddharth Nagar, Uttar Pradesh

**Respondent :** 1. The Principal Secretary, Higher Education Department, Government of Uttar Pradesh, 8-B, New Building Secretariat, Lucknow, Uttar Pradesh

2. The Registrar, Deen Dayal Upadhyay Gorakhpur University, Civil Lines, Gorakhpur, Uttar Pradesh.

The petitioner Maulana Azad Degree College, Baital, Quadirabad, Siddharth Nagar (Uttar Pradesh) has been certified by the State Government as a minority educational institution covered under Article 30 (1) of the Constitution of India. The petitioner College is affiliated to Deen Dayal Upadhyay Gorakhpur University (Uttar Pradesh). The petitioner sought a direction to the State Government for granting permission to start new courses in specified subjects namely, Physics, Chemistry, Maths, Botany and Zoology. The State Government had already given No Objection Certificate for starting Science stream in the said College vide Memo No. 5148/70-6-2006-2(25)99-TC dated 08.09.2006. On 28.06.2007, the respondent University had conducted inspection of the College and found that the infrastructure and other facilities provided by the College conform to the norms prescribed for grant of affiliation. Consequently, the respondent University recommended to the State Government for enlarging the privileges of the petitioner College in specified subjects as sought by it. On receiving the said recommendations, the State Government sought certain clarifications which had been provided by the respondent University. Whereas the State Government has not yet granted the permission as sought by the petitioner College. On these premise, it is alleged that the impugned action of the State Government in withholding the permission to enlarge the privileges of the petitioner College in specific subjects is violative of the educational rights of the minorities enshrined under Article 30(1) of the Constitution.

In the short reply, the Assistant Secretary, Government of Uttar Pradesh has intimated the Commission that the State Government has sought certain clarifications from the respondent University vide letter no. 4585/70-6-2007-2(25)/99TC dated 03.03.2008 and after getting the clarifications from the respondent University, request of the petitioner College would be considered by the Government.

The respondent University has stated in their reply that it had inspected the petitioner College and on being satisfied about availability of the infrastructure or other facilities in accordance with its norms, it recommended to the State Government for enlarging the privileges of the petitioner College. It is also alleged that by the letter dated 20.03.2008 the University has already provided clarification as sought by the State Government vide letter dated 03.03.2008.

The point which arises for consideration is as to whether an impugned action of the State Government in withholding the permission to enlarge the privileges of the petitioner College in the specified subjects is violative of the educational rights of the minorities enshrined under Article 30(1) of the Constitution.

Article 30(1) of the Constitution confers on all minorities, whether based on religion or language, the right to establish and administer educational institutions of

their choice. Article 30 of the Constitution, as observed by their Lordships of the Supreme Court in the case of P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537, leaves it to the choice of the minority to establish such educational institutions as will serve both purposes, namely the purpose of conserving their religion, language or culture and also a purpose of giving a thorough good general education to their children. The key to the understanding of the true meaning and implication of the Article 30(1) of the Constitution lies in the words of “their choice”. It is said that the dominant word is “choice” and the content of that article is as wide as the choice of the particular minority community may make it.

The language of Article 30(1) of the Constitution is wide and must receive full meaning and any attempt to whittle down the protection of minorities cannot be allowed. We need not enlarge the protection but we may not reduce a protection naturally flowing from the words employed in Article 30(1) of the Constitution. In Re: Kerala Education Bill AIR 1958 SC 956, Hon'ble the Chief Justice S.R. Das, had observed as under:-

“So long as the Constitution stands as it is and is not altered, it is, we conceive the duty of this Court to uphold the fundamental rights and thereby honor our sacred obligation to the minority communities which are of our own.”

Needless to add here that the fundamental rights under Chapter III of the Constitution have been considered to be heart and soul of the Constitution. It has been held by the Supreme Court in the case of St. Stephens College vs. Delhi University (1992) 1 SCC 558 that the words “of their choice” under Article 30(1) leave vast options to the minorities in selecting the type of educational institutions which they wish to establish. They can establish institutions to conserve their distinctive language, script or culture for imparting general secular education or both the purposes. The phrase “any educational institution of their choice” has been interpreted to include all types of educational institutions which the minority desires. (A.P. Christian Minority Education Society vs. Government of A.P. AIR 1986 SC 1490). While advocating that provisions of the Constitution should be construed according to the liberal, generous and sympathetic approach, Khanna J. observed in the case of Ahmedabad St. Xavier's Society vs. State of Gujarat (1974) 1 SCC 717 as under:-

“.....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 protection of their educational institutions is a fundamental right enshrined in the Constitution. ....It

can, indeed 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 subject to any discrimination or suppression.”

In the case of St. Xavier's College (supra) it has been held by the Supreme Court that recognition or affiliation is a facility which the University grants to an educational institution. In T.M.A. Pai Foundation vs. State of Karnataka 2002 (8) SCC 481, it has been held by the Supreme Court that “affiliation or recognition has to be available to every educational institution that fulfills the conditions for grant of such affiliation or recognition and it is not open to the statutory authorities to impose terms of the scheme as a condition for grant of affiliation or recognition which completely destroys the institutional autonomy and the very objective of establishment of the institution. It must be stressed that refusal to grant recognition or affiliation by the statutory authority without just and sufficient grounds amounts to violation of the fundamental right guaranteed under Article 30(1) of the Constitution. The right under Article 30(1) cannot be exercised in vacuo nor would it be right to refer to affiliation or recognition as privileges granted by the State. In a democratic system of Government with emphasis on education and enlightenment of citizens, there must be elements which give protection to them. The meaningful exercise of the right under Article 30(1) of the Constitution would and must necessarily involve recognition of the secular education imparted by the minority institutions and also their affiliation to the Universities without which the right will be a mere husk.

Section 10-A of the National Commission for Minority Educational Institutions Act, 2004 (for short the Act) confers a substantive right on a minority educational institution to seek affiliation to any University of its choice subject to such affiliation being permissible within the Act under which the said university is established. To deny recognition or affiliation to a minority educational institution except upon terms is tantamount to the surrender of its constitutional right of establishment of institutions of its choice and in effect to deprive it of its right under Article 30(1) of the Constitution. Although Article 30 does not speak of the conditions under which a minority educational institution can be affiliated to a University yet the Article 30(1) by its very nature implies that when an affiliation is asked for, the University concerned cannot refuse the same without sufficient reason or try to impose such conditions as would completely destroy the right guaranteed under Article 30(1) of the Constitution.

It is not the case of the State Government that infrastructure or other facilities provided by the petitioner College do not conform to the norms laid down by the respondent University relating to affiliation of a College. Commission observed that the Inspection Committee of the respondent University had conducted an inspection of the facilities available at the petitioner College and after being satisfied about availability of the requisite infrastructure and facilities, recommendations were made for enlarging the privileges thereof in the specified subjects namely, Physics, Chemistry, Maths, Botany and Zoology.

It also needs to be highlighted that the respondent University had provided clarification to the State Government vide letter dated 20.03.2008. At this stage, it would be useful to refer to Section 37 of the Uttar Pradesh State Universities Act, 1973 (for short the universities Act), which is as under: -

**“Affiliated Colleges-(1)** This section shall apply to the Universities of Agra, Gorakhpur, Kanpur and Meerut and such other Universities (not being the University of Lucknow) as the State Government may, by notification in the Gazette, specify.

(2) The Executive Council may, with the previous sanction of the [State Government], admit any college which fulfils such conditions of affiliation, as may be prescribed, to the privileges of affiliation or enlarge the privileges of any college already affiliated or subject to the provisions of sub-section (8), withdraw or curtail any such privilege:

[Provided that if in the opinion of the [State Government], a college substantially fulfils the conditions of affiliation, the [State Government] may sanction grant of affiliation to that college or enlarge the privileges thereof in specific subjects for one term of a course of study on such terms and conditions as he may deem fit:

Provided further that unless all the prescribed conditions of affiliation are fulfilled by a college, it shall not admit any student in the first year of the course of study for which affiliation is granted under the foregoing proviso after one year from the date of commencement of such affiliation.]

(3) It shall be lawful for an affiliated college to make arrangement with any other affiliated college situated in the same local area, or with the University, for cooperation in the work of teaching or research.

(4) Except as provided by this Act, the management of an affiliated college shall be free to manage and control the affairs of the college and be responsible for its maintenance and upkeep, and its Principal shall be responsible for the discipline of its students and for the superintendence and control over its staff.

(5) Every affiliated college shall furnish such reports, returns and other particulars as the Executive Council or the Vice-Chancellor may call for.

(6) The Executive Council shall cause every affiliated college to be inspected from time to time at intervals not exceeding five years by one or more persons authorised by it in that behalf, and a report of the inspection shall be made to the Executive Council.

(7) The Executive Council may direct an affiliated college so inspected to take such action as may appear to it to be necessary within such period as may be specified.

(8) The privileges of affiliation of a college which fails to comply with any direction of the Executive Council under sub-section (7) or to fulfil the conditions of affiliation may, after obtaining a report from the Management of the college and with the previous sanction of the [State Government], be withdrawn or curtailed by the Executive Council in accordance with the provisions of the Statutes.

[(9) Notwithstanding anything contained in sub-sections (2) and (8), if the Management of an affiliated college has failed to fulfil the conditions of affiliation, the [State Government] may, after obtaining a report from the Management and the Vice-Chancellor, withdraw or curtail the privileges of affiliation.]

[(10) Notwithstanding anything to the contrary contained in any other provisions of this Act, a college, which has already been given affiliation to a University before the commencement of the Uttar Pradesh State Universities (Amendment) Act, 2003 in specific subjects for a specified period shall be entitled to continue the course of study for which admissions have already taken place but it shall not admit any student in the first year of such course of study without obtaining affiliation under sub-sections (2).]”

Reference may also be made to Section 10A of the Act, which confers a substantive right on a minority educational institution to seek affiliation to any University of its choice subject to such affiliation being permissible within the Act under which the

said University is established. Section 12 of the Act confers power on this Commission to decide any dispute relating to affiliation to such University.

**“12. Powers of Commission.** – (1) If any dispute arises between a minority educational institution and a university relating to its affiliation to such University, the decision of the Commission thereon shall be final.

(2) The Commission shall, for the purposes of discharging its functions under this Act, have all the powers of a civil court trying a suit and in particular, in respect of the following matters, namely: -

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents; and
- (f) any other matter which may be prescribed.

[(3) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860 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).]”

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 have 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. Sections 12A and 12B confer right of appeal to this Commission and they also provide that orders passed by the Commission shall be executable as a decree of a civil court. Section 12F of the Act indicates that no civil court has jurisdiction in respect of any matter which the Commission is empowered by or under the Act to determine. Thus, the conspectus of the provisions of the Act clearly indicates that the disputes between the university and a minority institution relating to affiliation is within the purview of the Act. A plain reading of Section 10A of the Act in the light of the preamble to the Act and the objects and reasons for enacting the Act, indicates that the dispute relating to affiliation between the concerned parties is to be determined by a specialized tribunal constituted for that purpose. There is also an ouster of jurisdiction of the civil court to entertain any suit or proceeding in respect of any matter which 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. That being so, this Commission has jurisdiction to adjudicate upon the dispute relating to affiliation of a minority educational institution to a university. Sub Section (1) of Section 12 declares that the decision of the Commission on such dispute shall be final. It can not be disputed that the present dispute falls within the ambit of Section 12 of the Act. Section 11(b) of the National Commission for Minority Educational Institutions Act declares that the findings of the Commission on any dispute relating to affiliation to a University shall be implemented by the appropriate Government.

A bare reading of Section 37 of the Universities Act makes it clear that the subject matter relating to affiliation of a College is covered by it. Sub-section (2) of Section 37 provides that the University may, with the previous sanction of the Government, admit any college which fulfills such conditions of affiliation, as may be prescribed to the privileges of affiliation or enlarge the privileges of any college already affiliated. Proviso to sub-section (2) *ibid* lays down that if in the opinion of the State Government, a college substantially fulfils the conditions of affiliation, the State Government may sanction grant of affiliation to that college or enlarge the privileges thereof in specified subjects. The proviso is intended to effectuate the right created under sub-section (1) of Section 10-A of the Act, which is as under: -

“A Minority Educational Institution may seek affiliation to any University of its choice subject to such affiliation being permissible within the Act under which the said University is established.”



It is a fundamental rule of construction that proviso must be considered in relation to the principal matter to which it stands as a proviso. The proviso to Section 37 of the Universities Act cannot travel beyond the provision of Sub-section (2) of Section 37 to which it is a proviso. Though the word 'may' employed in the proviso might connote merely an enabling or permissive power in the sense of the usual phrase, but enabling words have been construed as compulsory wherever the object of the power is to effectuate a legal right (See AIR 1966 SC 1318). It has been held by the Supreme Court in Official Liquidator vs. Dharti Dhan AIR 1977 S.C. 740 that "if the conditions in which the power is to be exercised in particular cases are also specified by a statute then, on fulfillment of those conditions, the power conferred becomes annexed with a duty to exercise it in that manner." If a college substantially fulfils the conditions of affiliation, the proviso to sub-section (2) of Section 37 of the Universities Act imposes a duty on the State Government to sanction grant of affiliation to that college or enlarge the privileges thereof in specific subjects. It is well settled that when the context shows that the power is coupled with an obligation, the word 'may' which denotes discretion should be construed to mean a command (Ranga Swami Textile Commissioner vs. Sagar Textile Mill (P) Ltd. AIR 1977 S.C. 1516 at page 1517)

It is an admitted position that the petitioner college was affiliated to the respondent University with the previous sanction of the State Government. It is not the case of the State Government that the petitioner College does not fulfil conditions prescribed for enlarging the privileges as sought by it. On the contrary, the respondent University has clearly stated in its reply that the petitioner College fulfils conditions prescribed for the said purpose. It is unfortunate that despite clarification provided by the respondent University vide letter dated 20.03.2008, the State Government has not yet granted permission for enlarging the privileges of the petitioner College in the specified subjects. It appears that the State Government is deliberately delaying the issue without any justifiable or valid reasons. Since, the petitioner College substantially fulfils the conditions of affiliation, the State Government can not refuse permission to enlarge the privileges thereof in the specified subjects as sought by it. Consequently, the Commission was constrained to observe that the impugned action of the Government in withholding the permission to enlarge the privileges of the petitioner College in the specified subjects namely, Physics, Chemistry, Maths, Botany and Zoology, is violative of the educational rights of the minorities guaranteed under Article 30(1) of the Constitution.

For the foregoing reasons, the Commission directed the State Government under Section 12(1) of the National Commission for Minority Educational Institutions Act to grant permission for enlarging the privileges of the petitioner College in the specified subjects namely, Physics, Chemistry, Maths, Botany and Zoology as recommended by the respondent University. The findings of the Commission was sent to the State Government for implementation under Section 11(b) of the Act.

**Case No. 747 of 2007**

**Request for opening a new Urdu medium school.**

**Petitioner :** The President, Alamgir Education & Welfare Society, Aurangabad, Maharashtra.

**Respondent :**

1. The Principal Secretary, Department of School Education, Government of Maharashtra, Mantralaya Extension Building, Mumbai, Maharashtra – 400 032.
2. The Director, Directorate of School Education (Primary), Maharashtra State Central Building, Pune, Maharashtra – 1.
3. The Deputy Director of Education, Aurangabad Region, Aurangabad, Maharashtra.
4. The Education Officer (Primary), Zilla Parishad, Aurangabad, Maharashtra.

The petitioner, Alamgir Education and Welfare Society, Aurangabad (Maharashtra) is an educational Trust duly registered under the provision of the Bombay Public Trust Act 1950 as well as under Societies Registration Act 1860. This Trust has been formed by the members of the Muslim community. The petitioner Trust had applied to the competent authority of the State Government for opening an Urdu Medium Primary School under the name and style of “Jable Rahmat Urdu Primary School”. Having satisfied about the financial position of the said Trust, the District Level Committee recommended to the State Level Committee for grant of permission as sought by the petitioner. In the meanwhile the petitioner started construction of the building for the school and also spent heavy expenditure on infrastructural and instructional facilities. It is alleged that the State Government declined to grant permission as sought by the petitioner. It is also alleged that since the petitioner had applied for starting the proposed Urdu Primary School on permanent no grant-in-aid basis, the action of the State Government in declining to grant the requisite permission is violative of the educational rights of the minorities enshrined under Article 30(1) of the Constitution.

Despite service of notices, none of the respondents filed reply in opposition of the petition, filed by the petitioner.

The question, which arises for consideration is as to whether the action of the State Government in declining to grant permission to the petitioner to establish an Urdu Primary School is violative of the educational rights of the minorities enshrined under Article 30 of the Constitution. It is alleged by the petitioner that the petitioner

Trust has sufficient funds to start and maintain an Urdu Primary School and it has also incurred heavy expenditure on infrastructural and instructional facilities. It is also alleged that since the petitioner had applied for starting the proposed school on permanent no grant-in-aid basis, the action of the State Government in declining the permission is arbitrary and malafide. It needs to be highlighted that the respondents have not controverted these pleadings and, therefore, the aforesaid facts may be taken to have been impliedly admitted by the respondents.

Article 30(1) of the Constitution confers on all minorities, whether based on religion or language, the right to establish and administer educational institutions of their choice. Article 30 of the Constitution, as observed by their lordships of the Supreme Court in the case of P.A. Inaamdar vs. State of Maharashtra (2005) 6 SCC 537, leaves it to the choice of the minority to establish such educational institutions as will serve both purposes, namely the purpose of conserving their religion, language or culture and also a purpose of giving a thorough good general education to their children. The key to the understanding of the true meaning and implication of the Article 30(1) of the Constitution lies in the words of “their choice”. It is said that the dominant word is “choice” and the content of that article is as wide as the choice of the particular minority community may make it.

The language of Article 30(1) of the Constitution is wide and must receive full meaning and any attempt to whittle down the protection of minorities cannot be allowed. We need not enlarge the protection but we may not reduce a protection naturally flowing from the words employed in Article 30(1) of the Constitution. In Re: Kerala Education Bill AIR 1958 SC 956, Hon'ble the Chief Justice S.R. Das, had observed as under:-

“So long as the Constitution stands as it is and is not altered, it is, we conceive the duty of this Court to uphold the fundamental rights and thereby honor our sacred obligation to the minority communities which are of our own.”

Needless to add here that the fundamental rights under Chapter III of the Constitution have been considered to be heart and soul of the Constitution. It has been held by the Supreme Court in the case of St. Stephens College vs. Delhi University (1992) 1 SCC 558 that the words “of their choice” in Article 30(1) leave vast options to the minorities in selecting the type of educational institutions which they wish to establish. They can establish institutions to conserve their distinctive language, script or culture for imparting general secular education or both the purposes. The phrase “any educational institution of their choice” has been interpreted to include all types of educational institutions which the minority desires. (A.P. Christian Minority Education Society vs. Government of A.P. AIR 1986 SC 1490). While advocating that provisions of the Constitution should be construed according to the liberal, generous and sympathetic approach, Khanna J. observed in the case of Ahmedabad St. Xaveirs Society vs. State of Gujarat (1974) 1 SCC 717 as under:-

“.....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 protection of their educational institutions is a fundamental right enshrined in the Constitution. ....It can, indeed 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 subject to any discrimination or suppression.”

The right under Article 30(1) cannot be exercised in vacuo nor would it be right to refer to grant of permission to open an educational institution or recognition as privileges granted by the State. In a democratic system of Government with emphasis on education and enlightenment of citizens, there must be elements which give protection to them. The meaningful exercise of the right under Article 30(1) of the Constitution would and must necessarily involve grant of permission to establish an educational institution and recognition without which the right will be a mere husk.

Needless to add here that consequent to the increase in demand and inadequate response on the parts of the governments, there has been in recent years a development, the attitude of the governments particularly the Government of Maharashtra towards private participation appears to be one of the disapproval. In a recent judgement in Superstar Education Society vs. State of Maharashtra & Ors 2008 AIR SCW 2052, the Supreme Court has observed that it is the duty of the State Government to provide access for education, unless new schools in the private sectors are permitted it would not be possible for the State to discharge its Constitutional obligation. Their Lordships of the Supreme Court have also upheld the view taken by the Bombay High Court in Gramvikas Shikshan Prasarak Mandal vs. The State of Maharashtra AIR 2000 Bombay 437 that the educational institutions covered under Article 30 (1) of the Constitution are outside the purview of the proposed Master Plan. Since the petitioner's proposed primary school is covered by Article 30(1) of the Constitution, the proposed Master Plan cannot be made applicable to it. But the proposed school must follow the parameters and conditions laid down by the Supreme Court in Superstar Education Society (supra). Reference may, in this connection, be made to para No.8 of the judgement, which is as under: -

“ (i) To ensure that they have the requisite infrastructure,  
(ii) to avoid unhealthy competition among educational institutions; (iii) to subject the private institutions seeking entry in the field of education to such restrictions and regulatory requirements, so as to maintain standards of

education; (iv) to promote and safeguard the interests of students, teachers and education; and (v) to provide access to basic education to all sections of society, in particular the poorer and weaker sections; and (vi) to avoid concentration of school only in certain areas and to ensure that they are evenly spread so as to cater to the requirements of different areas and regions and to all section of society.”

For the forgoing reasons, Commission held that action of the State Government in declining to grant permission to the petitioner to open the proposed Urdu Medium School on permanent no grant-in-aid basis is violative of Article 30(1) of the Constitution. Commission therefore, recommended to the State Government to grant permission to the petitioner trust for opening the proposed Urdu Medium School on permanent no grant-in-aid basis in the light of the decision of the Bombay High Court in Gram Vikas Shikshan Parasarak Mandal vs. State of Maharashtra (supra).

#### **Case No. 432 of 2007**

#### **Request for conducting entrance test and admission of students.**

**Petitioner :** Planning Coordination & Monitoring Board for Minorities (PCMB),  
Khairatabad, Hyderabad, Andhra Pradesh.

**Respondent :** 1. The Chairman, State Council of Higher Education, Masab Tank,  
Hyderabad, Andhra Pradesh.  
2. The Principal Secretary, Higher Education Department, J – Block,  
4th Floor, Room No. 407, Government of Andhra Pradesh, A.P.  
Secretariat Complex, Hyderabad, Andhra Pradesh – 500 022.

The petitioner Planning Coordination and Monitoring Board for Minorities (for short the ‘Board’) has been constituted by members of the Muslim community, which is a notified minority community. The ‘Board’ had applied to the competent authority of the State government for conducting MEMCET Entrance Test for admitting Muslim students into the engineering colleges under its control but it was rejected by the State Government. Feeling aggrieved by the said order of the State Government, the ‘Board’ filed a petition before this Commission seeking a direction to the State Government to allow it to conduct the MEMCET Entrance Test. Since the academic year is going to start and the State Government has notified the admission schedule starting from 15.07.2008, the said application has now become infructuous. Consequently, the ‘Board’ filed another application seeking permission to exercise the right to admit students of its choice by picking up students of Muslim community from out of list of successful candidates prepared at the CET.

This petition has been resisted by the State Government on the ground that the present dispute pertains to the admission of students into minority educational institutions and the said dispute is outside the cognizance of this Commission. According to the respondent, in so far as the admission into the minority educational institutions are concerned, the Government has a role to play and it would not amount to interfering with the administration of the minority educational institutions. It is alleged that since the petitioner has not made out a case of deprivation or violation of an educational rights of the minorities guaranteed under Article 30(1) of the Constitution, the Commission has no jurisdiction to intervene in the matter. It is also alleged that in view of the admission rules issued in G.O.Ms.No. 54, HE (EC.2) Department, dated 10.05.2006, an individual Institution or an Association (group) of Institutions cannot pick and choose the candidates if they want to admit them into their colleges. These rules have been framed in accordance with the clarificatory judgement of the Supreme Court in P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537. It is further alleged that the admission procedure prescribed by the aforesaid rules does not affect any substantial rights of minority educational institutions.

In view of the rival contentions of the parties, the point for consideration is as to whether the petitioner 'Board' can exercise the right to admit the Muslim students of their choice in the engineering colleges under its control? If so, whether such choice can be exercised from out of the list of successful candidates prepared at CET without altering the order of merit inter se of the students so chosen. It has been held by the Supreme Court in TMA Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 and P.A. Inamdar's case (supra) that the right of a minority educational institution to admit students is an essential facet of the right to administer educational institutions of their choice as contemplated under Article 30(1) of the Constitution. Under Question No. 5(a) pertaining to the minorities' right to establish and administer educational institutions of their choice is to include in the said right, the procedure and methods of admission and selection of students, it was held by the Supreme Court in the case of T.M.A. Pai Foundation (supra) that the minority institution can have its own procedure and methods of admission as well as selection of students, but such procedure should be fair, transparent and non-exploitative. The procedure should not be tantamount to maladministration. We may usefully excerpt the following observations of their lordships in answering the Question No. 5(a).

“A minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit. The procedure adopted or selection made should not be tantamount to maladministration. Even an unaided minority institution ought not to ignore the merit of the students for admission, while exercising its right to admit students to the colleges aforesaid, as in that event, the institution will fail to achieve excellence.”

The system of students' selection, if it was to deprive the private educational institution, the right of rationale selection was held to be unreasonable. Reference may, in this connection, be made to the following observations of their lordships of the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (supra).

“Any system of student selection would be unreasonable if it deprives the private unaided institution of the right of rational selection, which it devised for itself, subject to the minimum qualification that may be prescribed and to some system of computing the equivalence, between different kinds of qualifications, like a common entrance test. Such a system of selection can involve both written and oral tests for selection, based on principle of fairness.”

It was further observed that the educational institutions would have the right to choose and select students who can be admitted to the course of studies. It was observed in para 65 of the judgment of the T.M.A. Pai Foundation vs. State of Karnataka (supra).

“The reputation of an educational institution is established by the quality of its faculty and students, and the educational and other facilities that the college has to offer. The private educational institutions have a personality of their own, and in order to maintain their atmosphere and traditions, it is but necessary that they must have the right to choose and select the students who can be admitted to their courses of studies. It is for this reason that in St. Stephen's College case, this Court upheld the scheme whereby a cut-off percentage was fixed for admission, after which the students were interviewed and thereafter selected. While an educational institution cannot grant admission on its whims and fancies, and must follow some identifiable or reasonable methodology of admitting the students, any scheme, rule or regulation that does not give the institution the right to reject candidates who might otherwise be qualified according to, say, their performance in an entrance test, would be unreasonable restriction under Article 19(6), though appropriate guidelines/ modalities can be prescribed for holding the entrance test in a fair manner. Even when students are required to be selected on the basis of merit, the ultimate decision to grant admission to the students who have otherwise qualified for the grant of admission must be left with the educational institution concerned. However, when the institution rejects such students, such rejection must not be whimsical or for extraneous reasons.”

Even when students are required to be selected on the basis of merit, the ultimate decision to grant admission to the students who have otherwise qualified for the grant of admission must be left with the educational institution concerned. It was held in P.A. Inamdar vs. State of Maharashtra (supra) that there is nothing wrong in an entrance test being held for one group of institutions imparting same or similar professional education. Such institutions situated in one State or in more than one State may join together for holding a common entrance test satisfying the triple test i.e. the procedure for selection must be fair, transparent and non exploitative. The State can also provide a procedure for holding a common entrance test in the interest of securing fair and merit based admissions and preventing maladministration. It was also held in Inamdar's case (supra) that single window system relating to admission does not cause any dent in the right of minority unaided educational institutions to admit the students of their choice. Such choice can be exercised by selecting students from out of the list of the successful candidates prepared at CET without altering the order of merit inter se of the students so chosen. It was further held in P.A. Inamdar's case (supra) that neither the policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or non minority unaided educational institutions. Reference may, in this connection, be made to the following observations of their lordships of the Supreme Court in para No.132 of the judgment.

“Our answer to the first question is that neither the policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or non-minority unaided educational institution. Minority institutions are free to admit students of their own choice including students of non-minority community as also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational institution status is lost. If they do so, they lose the protection of Article 30(1).”

(emphasis supplied)

It is crystal clear from the observations made by the Supreme Court as reproduced above that minority unaided institutions have an unfettered fundamental right to choose the students to be allowed admission and the procedure therefor subject to it being fair, transparent and non exploitative. This according to the constitutional Bench in Inamdar's case is the law laid down in T.M.A. Pai Foundation vs. State of Karnataka (supra).

It would be useful to reproduce the following paragraphs of the judgement in P.A. Inamdar's case (supra) rendered by the Supreme Court.



118. “Pai Foundation is unanimous on the view that the right to establish and administer an institution, the phrase as employed in Article 30(1) of the Constitution, comprises of the following rights: (a) to admit students; (b) to set up a reasonable fee structure; (c) to constitute a governing body; (d) to appoint staff (teaching and non-teaching); and (e) to take action if there is dereliction of duty on the part of the employees. (Para 50)

124. 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 petitioners 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.

125. As per our understanding, neither in the judgment of Pai Foundation nor in the Constitution Bench decision in Kerala Education Bill which was approved by Pai Foundation is there anything which would allow the State to regulate or control admissions in the unaided professional educational institutions so as to compel them to give up a share of the available seats to the candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such private institutions. This would amount to nationalisation of seats which has been specifically disapproved in Pai Foundation. Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions. Such appropriation of seats can also not be held to be a regulatory measure in the interest of the minority within the meaning of Article 30(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution. Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend

to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidates. Unaided institutions, as they are not deriving any aid from State funds, can have their own admissions if fair, transparent, non-exploitative and based on merit.

126. The observations in para 68 of the majority opinion in Pai Foundation on which the learned counsel for the parties have been much at variance in their submissions, according to us, are not to be read disjointly from other parts of the main judgment. A few observations contained in certain paragraphs of the judgment in Pai Foundation if read in isolation, appear conflicting or inconsistent with each other. But if the observations made and the conclusions derived are read as a whole, the judgment nowhere lays down that unaided private educational institutions of minorities and non-minorities can be forced to submit to seat-sharing and reservation policy of the State. Reading relevant parts of the judgment on which learned counsel have made comments and counter-comments and reading the whole judgment (in the light of previous judgments of this Court, which have been approved in Pai Foundation) in our considered opinion, observations in para 68 merely permit unaided private institutions to maintain merit as the criterion of admission by voluntarily agreeing for seat-sharing with the State or adopting selection based on common entrance test of the State. There are also observations saying that they may frame their own policy to give freeships and scholarships to the needy and poor students or adopt a policy in line with the reservation policy of the State to cater to the educational needs of the weaker and poorer sections of the society.

127. Nowhere in Pai Foundation either in the majority or in the minority opinion, have we found any justification for imposing seat-sharing quota by the State on unaided private professional educational institutions and reservation policy of the State or State quota seats or management seats.

128. We make it clear that the observations in Pai Foundation in para 68 and other paragraphs mentioning fixation of percentage of quota are to be read and understood as possible consensual arrangements which

can be reached between unaided private professional institutions and the State.

129. In Pai Foundation it has been very clearly held at several places that unaided professional institutions should be given greater autonomy in determination of admission procedure and fee structure. State regulation should be minimal and only with a view to maintain fairness and transparency in admission procedure and to check exploitation of the students by charging exorbitant money or capitation fees.

132. Our answer to the first question is that neither the policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or non-minority unaided educational institution. Minority institutions are free to admit students of their own choice including students of non-minority community as also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational institution status is lost. If they do so, they lose the protection of Article 30(1).

136. Whether minority or non-minority institutions, there may be more than one similarly situated institutions imparting education in any one discipline, in any State. The same aspirant seeking admission to take education in any one discipline of education shall have to purchase admission forms from several institutions and appear at several admission tests conducted at different places on the same or different dates and there may be a clash of dates. If the same candidate is required to appear in several tests, he would be subjected to unnecessary and avoidable expenditure and inconvenience. There is nothing wrong in an entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding of such test. Out of such common merit list the successful candidates can be identified and chosen for being allotted to different institutions depending on the courses of study offered, the number of seats, the kind of minority to which the institution belongs and other relevant factors. Such an agency conducting the common entrance test ("CET" for

short) must be one enjoying utmost credibility and expertise in the matter. This would better ensure the fulfilment of twin objects of transparency and merit. CET is necessary in the interest of achieving the said objectives and also for saving the student community from harassment and exploitation. Holding of such common entrance test followed by centralised counselling or, in other words, single-window system regulating admissions does not cause any dent in the right of minority aided educational institutions to admit students of their choice. Such choice can be exercised from out of the list of successful candidates prepared at CET without altering the order of merit inter se of the students so chosen.

137. Pai Foundation has held that the 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 may 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 abovesaid triple tests. The State can also provide a procedure of holding common entrance test in the interest of securing fair ad merit-based admissions and preventing maladministration. The admission procedure so adopted by a private institution or group of institutions, if it fails to satisfy all or any 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)

Bearing in mind the aforesaid observations of their lordships in the case of P.A. Inamdar (supra) the stand taken by the State Government that a minority institution cannot exercise the right to admit students of its choice from selecting students of the minority community out of the list of successful candidates prepared at CET directly stares into the face of law declared by the Supreme Court in the aforesaid decisions. In order to jettison the petitioner’s claim, strong reliance has been placed on the admission rules issued in G.O.Ms.No. 54, HE (EC.2) Department, dated 10.05.2006.

According to the statement, these rules are in accordance with the clarificatory judgement of the Supreme Court in P.A. Inamdar's case (supra). Rule 6 of the rules is as under: -

“(6) (a) Minority candidates shall be called for counselling and provisional allotment of courses/ Institutions shall be made in the order of merit assigned to them at EAMCET by following the rules of reservation as laid down in Rule 7 hereunder firstly in the order of merit assigned in EAMCET and secondly in the order of merit assigned in the qualifying examination to other eligible candidates.

(b) Vacant seats, if any, at the end of the above counselling process shall be filled up by single window counselling by inviting candidates, other than the concerned minority in the order of merit assigned in EAMCET.

(7) The selection of candidates as above and allotment of Courses/ Institutions in respect of Unaided Minority Professional Institutions, shall be solely on the basis of merit and following the preferential order as provided under clause (6) above subject to the condition that the candidates should have passed the qualifying examination. However, mere appearance at the Entrance Test and obtaining rank in the merit list does not entitle a candidate to be considered for admission automatically into any Course/ Institution unless he/ she also satisfied the rules and regulations of admission prescribed by the concerned University/ Government including marks to be obtained in the qualifying examination.

(8) Once a candidate secures admission to a particular College/ Institution based on his/ her option, no more claim for admission into other Colleges, to any other kind of seat or any other course, be entertained during that phase of admissions except for the facility of sliding as provided under clause (c) above.

(9) The candidates admitted into Unaided Minority Professional Institutions shall pay at the time of admission the fees payable per student per annum as prescribed by the AFRC.

(10) The Convener, EAMCET Admissions shall hand over the vacant seats, if any, to the Institutions concerned only after conducting single window counselling as provided for under clause (6) above.

(11) The institution shall fill, on merit basis, such vacant seats handed over by the Convener of Admissions duly conducting internal sliding initially in each courses before issuing the notification for admissions by the individual Institutions. The vacant seats so arising in each course, after the exercise of internal sliding, shall be filled up following the rule of reservation as provided in Rule 7 hereunder first the eligible candidates belonging to the concerned minority and then with eligible candidates other than the concerned minority.

(12) The institution shall obtain ratification from the Competent Authority for all the admissions including internal sliding conducted by the Institution.

(13) The Convener of EAMCET Admissions shall prepare the final list of candidates, admitted course-wise and Institution-wise and send the same to concerned Universities, Institutions and AFRC.

(14) The Competent Authority in consultation with the Committee of EAMCET Admission shall fix the cut off dates for each stage of admissions.

(15) All the candidates called for Counselling shall produce the specified original documents along with duly attested photocopies and the Convenor of EAMCET Admissions shall be entitled to cause verification of all the documents produced by the candidates”.

(emphasis supplied)

A bare reading of the said rule makes it clear that rules or reservation has been made applicable to a minority educational institution which is violative of Article 15(5) of the Constitution which declares that the educational institutions covered under Article 30(1) of the Constitution are exempted from the policy of reservation in admission. There is nothing in the aforesaid rule restraining the minority educational institution to exercise its right to admit students of its choice by selecting students from out of the list of successful candidates prepared at CET. It needs to be highlighted that Article 13 of the Constitution declares that any law rules or regulation in breach of the fundamental rights would be void to the extent of such violation.

As demonstrated earlier the concept of administration includes the choice in admitting students. It needs to be highlighted that the petitioner Board was not allowed to conduct entrance test for admission of students of its choice in the engineering colleges under its control. However, the petitioner wants to exercise its right to administer educational institutions of its choice guaranteed under Article 30(1) of the Constitution by selecting students from out of the list of successful candidates prepared

at CET. Commission observed at the cost of repetition that it has been held in the case of P.A. Inamdar (supra) that a minority educational institution has a right to admit students of its choice and such choice can also be exercised by selecting students from out of the list of successful candidates prepared at CET without altering the order of merit inter se of the students so chosen. Surprisingly, the State Government does not even want to allow the petitioner to exercise the said right guaranteed under Article 30(1) of the Constitution. The aforesaid right of the management is well insulated by the protective cover of Article 30(1) of the Constitution and it cannot be chiseled out through any legislative act or executive fiat. The language of Article 30(1) is wide and must receive full meaning. We are dealing with protection of minorities and attempts to whittle down the protection cannot be allowed. Needless to add here that the State's power of regulation cannot render these core rights a teasing illusion a promise of unreality. As Hon'ble Venkatarama Aiyer J observed in AIR 1958 Supreme Court 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 and 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.

Consequently, the impugned action of the State Government in denying the petitioner's the right to choose students of Muslim community from out of the list of successful candidates prepared at CET is not only inconsistent with a law declared by the Supreme Court in the aforesaid cases but it also completely annihilates the right of the minority educational institution to admit students of its choice attracting the wrath of Article 13 read with Article 30(1) of the Constitution. That being so, the Commission has jurisdiction to entertain the present petition under Section 11(b) of the National Commission for Minority Educational Institutions Act (for short the 'Act') as it empowers the Commission to enquire into complaint regarding deprivation or violation of educational rights of minorities to establish and administer educational institutions of their choice. Section 11(b) ibid also empowers the Commission to report its finding of the said enquiry to the appropriate Government for implementation.

For the forgoing reasons Commission held that the impugned action of the State Government clearly infringed the Constitutional protection guaranteed to the minorities under Article 30(1) of the Constitution. The petitioner has the right to admit students of Muslim community in the Engineering colleges under its control by selecting students of its choice from out of the list of successful candidates prepared at CET without altering the order of merit inter se of the students so chosen. The petitioner is also free to admit students of non-minority community to a limited extent only in terms of the decision rendered by the Supreme Court in P.A. Inamdar's case (supra). As

held by the Supreme Court in P.A. Inamdar's case (supra), the petitioner cannot be forced to submit to seat sharing and reservation policy of the State Government.

The findings of this Commission was sent to the State Government for implementation in terms of Section 11(b) *ibid*. It was decided that the factual matrix of this case along with the reply received from the State Government be included in the Report of the Commission to be tabled before the Parliament.

### **Appeal No. 1 of 2006**

#### **Request for NOC/ Essentiality Certificate to start medical college.**

**Petitioner :** Ameeruddin Academy of General Technical & Professional Educational Society, Giddalur, Prakasam Dist., Andhra Pradesh.

- Respondent :**
1. The Director of Medical Education and Member Convenor/ Chairman, High Power Committee, Director of Medical Education Office, Room No. 103, Sultan Bazar, Koti, Hyderabad.
  2. The Secretary, Minorities Welfare Department, A.P. Secretariat, Hyderabad, A.P.
  3. The Registrar, N.T.R. University of Health Sciences, Vijayawada, Andhra Pradesh.
  4. The Secretary, Ministry of Health & Family Welfare, Department of Health, Government of India, Nirman Bhavan, New Delhi – 110 011.
  5. The Principal Secretary, Department of Health, Medical and Family Welfare, Government of Andhra Pradesh, Hyderabad, A.P.

Challenge in this appeal under Section 12A of the National Commission for Minority Educational Institutions Act (for short "the Act") is to the order of the State Government, rejecting the appellant's application for grant of NOC/ Essentiality Certificate for the establishment of the proposed medical college in the Prakasam District (Andhra Pradesh). By the order dated 05.06.2007, the Commission directed the State Government to reconsider the appellant's application for grant of NOC/ Essentiality Certificate. Surprisingly, the order of the Commission did not evoke any response from the State Government, which clearly indicates the Government's disinclination to reconsider the appellant's application. On the contrary, the Chairman of the High Power Committee constituted by the State Government has challenged the validity of the said order. It appears that either the State Government has abdicated its function to grant NOC/ Essentiality Certificate in favour of the Chairman, High Power



Committee or the Chairman himself has assumed the said power which is not vested in him under the law. However, it has to be borne in mind that the statutory power of the State Government to grant NOC/ Essentiality Certificate as sought by the appellant can not be delegated to the Chairman, High Power Committee. This Commission could have granted the NOC/ Essentiality Certificate in favour of the appellant under Section 12A (4) of the Act. Instead of granting the NOC/ Essentiality Certificate, the Commission relying upon the decisions rendered by the Supreme Court in Thirumuruga Kirupanada Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust vs. State of Tamil Nadu (1996) 3 SCC 15 and Government of Andhra Pradesh vs. Medwin Education Society (2004) 1 SCC 86 directed the State Government to reconsider the appellant's application for grant of NOC/ Essentiality Certificate. Keeping in view of the aforesaid decisions of the Supreme Court and the mandate of Article 30(1) of the Constitution it was also observed that the appellant has a fundamental right to establish and administer educational institutions of its choice and as such neither the State Government nor the University can by a policy decision prevent a minority community from establishing a minority college in accordance with the provisions of the Indian Medical Council Act. It is reiterated that for the grant of Essentiality Certificate, the State Government is only required to consider the desirability and feasibility of having the proposed medical college at the proposed location. The Essentiality Certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of a new medical college now rests with the Central Government alone and the establishment of medical college does not fall within the ambit of Andhra Pradesh Education Act 1982. It appears that the State Government did not even care to reconsider the appellant's request in terms of the order dated 05.06.2007. On the contrary, the Chairman of the High Power Committee constituted by the State Government has contended in his reply that the policy in the matter of establishment of a new medical college now rests with the State Government alone. Suffice it to say that the aforesaid contention of the Chairman, High Power Committee is inconsistent with the proposition of law enunciated by the Supreme Court in the aforesaid decisions.

It needs to be highlighted that the State Government has not declined to issue NOC/ Essentiality Certificate to the appellant on the ground of non-availability of adequate infrastructure and clinical material etc. as per regulations framed by the Medical Council of India. On the contrary, the appellant's application has been rejected on the ground that the State Government has not issued any notification under Section 20 of the Andhra Pradesh Education Act 1982 for establishment of new medical colleges and as such the appellant is not entitled for grant of Essentiality Certificate/ NOC for establishment of the proposed medical college. Learned counsel for the appellant has invited our attention to Sub-Section (4) of Section 12A of the National Commission for Minority Educational Institutions Act in support of his contention that the NOC/ Essentiality Certificate be granted by this Commission. It would be useful to reproduce Section 12A of the Act, which is as under: -

**“12A. Appeal against orders of the Competent authority.-**(1) Any person aggrieved by the order of refusal to grant no objection certificate under sub-section (2) of section 10 by the Competent authority for establishing a Minority Educational Institution, may prefer an appeal against such order to the Commission.

(2) An appeal under sub-section (1) shall be filed within thirty days from the date of the order referred to in sub-section (1) communicated to the applicant:

Provided that the Commission may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period.

(3) An appeal to the Commission shall be made in such form as may be prescribed and shall be accompanied by a copy of the order against which the appeal has been filed.

(4) The Commission, after hearing the parties, shall pass an order as soon as may be practicable, and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

(5) An order made by the Commission under sub-section (4) shall be executable by the Commission as a decree of a civil court and the provisions of the Code of Civil Procedure, 1908 (5 of 1908), so far as may be, shall apply as they apply in respect of a decree of a civil court.”

[emphasis supplied]

Having regard to the totality of the facts and circumstances of the case Commission was of the opinion that by denying NOC/ Essentiality Certificate as sought by the appellant the State Government has violated the educational rights of the minorities enshrined under Article 30(1) of the Constitution. Consequently, Commission deemed it just and expedient in the interest of justice to grant NOC/ Essentiality Certificate to the appellant under Sub-Section (4) of Section 12A of the National Commission for Minority Educational Institutions Act to establish the proposed medical college in accordance with the provisions of the Indian Medical Council Act and the regulations framed there under.

## **Case No. 2 of 2008**

### **Applicability of Statute No. 28 of college code framed by Barkatullah University.**

**Petitioner :** Hahnemann Homeopathic Medical College & Hospital, Karond, Bhopal, Madhya Pradesh.

**Respondent :** The Registrar, Barkatullah University, Hoshangabad Road, Bhopal, Madhya Pradesh.

The petitioner college sought a direction to the respondent University to continue its affiliation as the Statute No. 28 of the college code is not applicable to a minority educational institution. The petitioner college has been declared as a minority educational institution vide certificate granted by this Commission on 29.08.2008. The petitioner college is imparting education in homeopathy science and has been duly recognized by the Central Council in accordance with the provisions of the Homeopathy Central Council Act, 1973. After obtaining recognition from the Central Council, the petitioner college obtained temporary affiliation from the respondent University in 1995-96. The petitioner college got the affiliation extended from time to time. Thereafter, petitioner college applied for extension of affiliation for the academic year 2007-08. It is alleged that the respondent University threatened the petitioner college that to continue the temporary affiliation, it has to follow the selection process of the teaching staff prescribed under Statute No. 28 of College Code (in short Code 28), which has been framed under the Barkatullah Vishwavidyalaya Statutes No. 1 to 36. According to the petitioner, the Code No. 28 can not be applied to the petitioner college as it is violative of the Article 30(1) of the Constitution of India.

The respondent University has filed statement of objection resisting the petition. The stand taken by the University may be summarised thus: The impugned Code is regulatory in character and, therefore, doesn't come into conflict with Article 30(1) of the Constitution.

Having regards to the pleadings of the parties, the following issues arise for consideration;

- (i) Whether the petitioner college is clothed with protection of Article 30(1) of the Constitution?
- (ii) If the management of the petitioner college is entitled to protection under Article 30(1) of the Constitution, whether the Code No. 28 can not be made applicable to the petitioner college on the ground that it comes into conflict with Article 30(1) of the Constitution?

Since both the questions are interlinked, they are taken together. Article 30(1) of the Constitution gives the minorities the right to establish and administer educational institutions of their choice. It has been held by the Eleven Judge Bench of the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka [2002 (8) SCC 481] that the right to appoint teaching and non-teaching staff is the most important facet of minority's "right to administer" under Article 30(1) of the Constitution. In State of Kerala vs. Very Rev. Mother Provincial [1970 (2) SCC 417], a Constitution Bench of the Supreme Court explained 'right to administer' thus:

“Administration means ‘management of the affairs’ of the institution. This management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right.”

(Emphasis supplied)

It has been held by the Supreme Court in the Ahmedabad St. Xavier's College Society vs. State of Gujarat [1974 (1) SCC 717] that “autonomy in administration” means right to administer effectively and to manage and conduct the affairs of the institutions. The distinction is between a restriction on the right of administration and a regulation prescribing the manner of administration. The right of administration is day to day administration. The choice in the personnel of management is a part of the administration.

Among the questions formulated in the case of T.M.A. Pai Foundation (Supra) and answered by the majority while summarising conclusions, Question 5(c) and answer thereto has a bearing on the issue on hand: Question 5(c) is extracted below:

“Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/ withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

The first part of the answer to Question 5(c) related to unaided minority institutions. With reference to statutory provisions regulating the facets of administration, this court expressed the view that in case of an unaided

minority educational institutions, the regulatory measure of control should be minimal' and in the matter of day-to-day management, like the appointment of staff (both teaching and non-teaching) and administrative control over them, the management should have the freedom and there should not be any external controlling agency. But such institutions should have to comply with the conditions of recognition and conditions of affiliation to a University or Board; and a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself. This Court also held that fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee.

The second part of the answer to Question 5(c) applicable to aided minority institutions, is extracted below: -

“For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a judicial officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff.”

(Emphasis supplied)

The proposition enunciated in T.M.A. Pai Foundation is reiterated in P.A. Inamdar vs. State of Maharashtra [2005 (6) SCC 537]. The general principles relating to establishment and administration of educational institutions by minorities may be summarised as under: -

“(i) the right of minorities to establish and administer educational institutions of their choice comprises the following rights;

- (a) to choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution;
- (b) to choose and appoint teaching/ non-teaching staff; and to take action if there is dereliction of duty on the part of any of its employees;
- (c) to admit eligible students of their choice and to set up a reasonable fee structure;
- (d) to use its properties and assets for the benefit of the institution.

(ii) Regulations can be made by the State prescribing eligibility criteria and qualifications for appointment as also conditions of service of employees (both teaching and non-teaching) and such regulations do not in any manner interfere with the right guaranteed under Article 30(1) of the Constitution.

(iii) Subject to the eligibility conditions/ qualifications prescribed by the State being met, minority educational institutions will have the freedom to appoint teachers/ lecturers by adopting any rational procedure of selection.

(iv) Extension of aid by the State, does not alter the nature and character of the minority educational institution. Conditions can be imposed by the State to ensure proper utilization of the aid, without however diluting or abridging the right under Article 30(1).”

(Emphasis supplied)

It has been held by the Supreme Court in Secretary, Malankara Syrian Catholic College vs. T. Jose 2007 AIR SCW 132 that all laws made by the State to regulate the administration of educational institutions, and grant of aid, will apply to minority educational institutions also. But if any such regulations interfere with the overall administrative control by the Management over the staff, or abridges/ dilutes, in any other manner, the right to establish and administer educational institutions, such regulations, to that extent, will be inapplicable to minority institutions.

It has been held by the Supreme Court in State of Kerala vs. Very Revs. Mother Provincial (Supra) that the imposition of any trammel on the right of minority management to select and appoint teaching and non-teaching staff of its educational institution except to the extent of prescribing the requisite qualifications and experiences or otherwise fostering the interests of the institution itself cannot but be considered as a violation of the right guaranteed by Article 30(1) of the Constitution. So long as the persons chosen

have the qualification prescribed by the university, the choice must be left with the management. That is part of the fundamental right of the minorities to administer the educational institutions established by them.

It is thus clear that freedom to choose the qualified persons as Principal/teachers by a minority institution has always been recognised by a stream of Supreme Court rulings as a vital facet of the right to administer the educational institution. Thus it is well-settled that a minority management is free to choose a qualified person as Principal/teacher. The State or University can not regulate the method or procedure for appointment of the teaching/ non-teaching staff. The limited power vested with them is only to prescribe the qualifications for the post of Principal and teachers. The role of the University is limited to the extent of ensuring that Principal/ teachers selected by a minority management of the affiliated college fulfill the qualifications laid down by it.

The selection committee for appointment of Principal and teachers are covered by clause 17(1) and 17(2) of the Statute No. 28 of the College Code, which is as under: -

“17(1). The selection committee for the appointment of the Principal shall consist of: -

1.	Kulpati or his nominee	Chairman
2.	One nominee of the Management	Member
3.	Dean/ Director College Member Development Council	Member
4.	One nominee of the Madhya Pradesh Uchcha Shiksha Vibhag	Member
5.	If in case the Hon'ble Minister being President/ Chairman of the Governing Body is present in the meeting of the Selection Committee, he will preside the meeting. The Kulpati or his nominee will present as member of the Committee.	

17(2). The selection committee for the appointment of a teacher of the college, other than the Principal shall consists of: -

1.	Kulpati or his nominee	Chairman
2.	One nominee of the Member Management from amongst its members who are not teachers	Member
3.	One expert in the subject concerned nominated by the Kulpati.	Member

4.	One expert in the subject concerned nominated by the Madhya Pradesh Uchcha Shiksha Vibhag.	Member
5.	Principal of the Institution	Member/ Secretary

A bare reading of the Code 28 reveals that the selection committee consists of five members, out of which the management of the affiliated college can have one nominee as the Member of the selection committee and the principal of the institution is the Member Secretary. The Chairman of the committee is Kulpati or his nominee and one member, who is an expert on the subject, is nominated by Kulpati. One Member is nominated by the Madhya Pradesh Uchcha Shiksha Vibhag. Therefore, it is quite clear that the majority of the members of the selection committee are not from the management of the affiliated college and, therefore, they do not have right to exercise the veto power. That being so, the composition of the selection committee in accordance with Code 28 completely takes away the autonomy and freedom of the petitioner's college to choose its principal/ teachers. The said ordinance if applied to the petitioner college, would transfer control over selection of staff from the minority institution to the university, and thus, in effect allow the university to select the staff for the institution, directly interfering with the right of the minorities to administer their institutions. It has been held in the case of T.M.A. Pai Foundation (Supra) that it would be permissible for the authorities to prescribe regulations, which must be complied with, before any minority institution could seek or retain affiliation or recognition. But the regulations made by the controlling authority should not impinge upon the minority character of the institution.

Notwithstanding the constitutional guarantee against interference in respect of administration of the colleges established by religious or linguistic minorities guaranteed by Article 30(1) of the Constitution, the respondent University has treated the petitioner college just like all other affiliated colleges. As demonstrated earlier, the composition of the selection committee under Code 28 completely destroys the institutional autonomy or the objects of establishment of institution. Article 13 of the Constitution declares that any law, rule or regulation in breach of the fundamental rights would be void to the extent of such violation.

It needs to be highlighted that the University Grants Commission in the letter no. 3-1/78/CP dated 12.10.1981, issued instructions to all universities that while framing the statutes/ ordinances/ regulations, they should ensure that these do not infringe with Article 30(1) of the Constitution relating to the administration of minority educational institutions. Thus the University has no power to frame and apply statute, which infringes the fundamental right guaranteed under Article 30(1) of the Constitution. In the instant case, the respondent University has totally ignored the mandate of the Article 30 of the Constitution as well as the direction of the University Grants Commission contained in



the aforesaid letter dated 12.10.1981. That being so, the Code 28 crosses the zone of permissible regulation and enters the forbidden territory of the restrictions and as such it can not be made applicable to affiliated colleges established by the religious or linguistic minorities.

It is beyond the pale of controversy that by the order dated 29th August 2008, the petitioner college has been declared by this Commission as a minority educational institution within the meaning of Section 2(g) of the National Commission for Minority Educational Institutions Act. Thus the petitioner college is clothed with protection of Article 30(1) of the Constitution. We have already held that the Code 28 can not be made applicable to the petitioner college as it comes into conflict with Article 30(1) of the Constitution. It is undisputed that the respondent University has threatened the petitioner college to withdraw the affiliation on the ground that its teaching staff has not been appointed in accordance with the procedure prescribed under Code 28. This threat is tantamount to asking the management of the petitioner college to surrender its constitutional right of administration of the educational institution of its choice and as such it is in truth and in effect to deprive the management of its right under Article 30(1) of the Constitution.

It has been held by the Supreme Court in Brahmo Samaj Education Society vs. State of West Bengal (2004) 6 SCC 224 that the State Governments are obliged to take note of the declarations of the law by the Supreme Court and amend their laws, rules and regulations to bring them in conformity with the principles set out therein. Thus it was imperative for the State Government and the respondent University to amend the Barkatullah Vishwavidyalaya Statutes No. 1 to 36 and the ordinances framed thereunder to bring them in conformity with the principles of law set out in the case of T.M.A. Pai Foundation (Supra).

For the forgoing reasons, Commission held that in view of the decision of the Supreme Court in T.M.A. Pai Foundation (Supra) the Code No. 28 could not be made applicable to the petitioner College as it is violative of Article 30(1) of the Constitution. The management of the petitioner college has the right to choose and appoint the teaching/ non-teaching staff subject to the rider that the respondent University has the right to disapprove the appointment if they find the person selected is ineligible or unsuitable keeping in view the qualifications for eligibility prescribed by it. Commission further held that the respondent University can not withdraw the affiliation of the petitioner college on the sole ground that its teaching staff has not been selected by the selection committee constituted in accordance with Code 28. A copy of the order was sent to the University Grants Commission with the direction to issue appropriate direction to the respondent University to get Code No. 28 amended suitably so as to bring it in conformity with the law declared by the Supreme Court in T.M.A. Pai Foundation case (Supra). Copy of the order was also sent to the Secretary, Ministry of Human Resource Development, Government of India for issuing appropriate directions to the University Grants Commission to take action in accordance with the directions of the Supreme Court in Brahmo Samaj Education Society vs. State of West Bengal (Supra).

## **Case No. 1326 of 2008**

### **Request for affiliation of petitioner college for B.Ed. course.**

**Petitioner :** Maulana Azad Degree College, Baital, Quadirabad, Siddharth Nagar, Uttar Pradesh.

**Respondent :** The Principal Secretary, Higher Education Department, Government of Uttar Pradesh & Anr.

The petitioner Maulana Azad Degree College is a minority educational institution covered under Article 30(1) of the Constitution vide order No. 3780(1)/70-6-2004-3(2)93 dated 8.10.2004 issued by the Government of Uttar Pradesh. The petitioner College submitted an application under Section 14 (1) of the National Council for Teacher Education Act (for short the Act) before the National Council for Teacher Education (for short the NCTE) for grant of recognition for B.Ed. course. After verifying the adequacy of infra-structural and instructional facilities, the NCTE granted recognition for B. Ed course to be started by the petitioner College for one year duration with an intake capacity of 100 students vide Order No.F.NRC/NCTE/F-7/UP-2589/2008 dated 1st April 2008.

After receipt of the said order, the petitioner College applied to the Deen Dayal Upddhyay Gorakhpur University for affiliation of B.Ed. course granted by the NCTE. The said University inspected the College on 27.7.2008 and on being satisfied about the adequacy of the requisite facilities, recommended to the Secretary, Higher Education Department, Government of Uttar Pradesh for sanction of B. Ed. course to the petitioner College vide letter No. 1854/Sambandhata/2008 dated 15.9.2008. According to the petitioner, despite repeated reminders, the State Government did not accord the requisite sanction. It is alleged that NCTE is the final authority and has a primary voice in establishing technical educational institution and once recognition has been accorded by the NCTE under Section 14(6) of the Act, every examining body is obliged to grant an affiliation to such institution and the action of the State Government in not granting the permission sought by the petitioner is violative of Section 14(6) of the Act as well as under Article 30(1) of the Constitution.

Despite service of notices none has entered appearance on behalf of the respondent. Consequently the case proceeded ex–parte against the respondent.

The question for consideration is as to whether the State Government can refuse permission to an institution which had been granted permission to start B.Ed. course by NCTE under the Act. At the outset we must make it clear that the dispute squarely falls within the domain of Section 10A of the National Commission for Minority Educational Institutions Act (for short the NCMEI Act), which confers a substantive right on a minority educational institution to seek affiliation to any university of its choice

subject to such affiliation being permissible within the Act under which the said University is established. Section 12 of the NCMEI Act confers power on this Commission to decide any dispute relating to affiliation to such University. Section 12 reads as under :

**“12. Powers of Commission . – (1) If any dispute arises between a minority educational institution and a university relating to its affiliation to such University, the decision of the Commission thereon shall be final.**

(2) The Commission shall, for the purposes of discharging its functions under this Act, have all the powers of a civil court trying a suit and in particular, in respect of the following matter, namely:-

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents; and

(f) any other matter which may be prescribed.

[(3) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) 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)"]

It needs to be highlighted that the NCMEI 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 right of appeal to this

Commission and they also provide that orders passed by the Commission shall be executable as a decree of a Civil Court. Section 12F of the Act indicates that no civil court has jurisdiction in respect of any matter which the Commission is empowered by or under the Act to determine. Thus, the conspectus of the provisions of the NCMEI Act clearly indicates that the dispute between the university and a minority institution relating to affiliation is within the purview of the Act. A plain reading of Section 10A of the NCMEI Act in the light of the preamble to the Act and the objects and reasons for enacting the Act, indicates that the dispute relating to affiliation between the concerned parties is to be determined by a specialized tribunal constituted for that purpose. 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 NCMEI 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. That being so, this Commission has jurisdiction to adjudicate upon the dispute relating to affiliation of a minority educational institution to a university. Sub Section (1) of Section 12 declares that the decision of the Commission on such dispute shall be final. It can not be disputed that the present dispute falls within the ambit of Section 12 of the Act. Section 11(b) of the National Commission for Minority Educational Institutions Act declares that the findings of the Commission on any dispute relating to affiliation to a University shall be implemented by the appropriate Government.

It is relevant to mention that Section 12 (e) of the Act commands the NCTE to prescribe norms for specified category of course or trainings in teacher education, duration of the course, contents and mode of curriculum. Sub-Section (3) of Section 14 imposes duty upon the Regional Committees of the NCTE to be satisfied about fulfillment of necessary conditions for grant of recognition of an institution which had made an application. The said provision however required the institution to have adequate financial resources, academic education, library, qualified staff, laboratory etc. for proper functioning of the institution for a course of training in teacher education. Sub-Section (6) of Section 14 commands that every examining body shall on receipt of the letter under Sub Section (4), grant affiliation to the institution where recognition has been granted by the NCTE. Section 15 of the Act empowers the council to grant permission for a new course of training by an institution recognized by the NCTE. The primary object of the Act is to provide for the establishment of an All India Council for Teacher Education with a view, among others, to plan and coordinate the development of teacher education system through out the country and to promote qualitative improvement of such education and to regulate and properly maintain the norms and standards in the teacher education system which is a subject within the exclusive legislative field of the Central Government as is clear from Entry 66 of the union list in the Seventh Schedule of the Constitution of India. Thus the field of teacher education is fully and completely occupied by an Act of Parliament and covered by Entry 66 of list-I of the Seventh Schedule. That being so, the NCTE is the final authority and has primary voice in establishing teachers educational institutions. Once the State is

consulted and had granted NOC to NCTE as required by it, the function of the State comes to an end. Thereafter, it is only for the NCTE to take any appropriate decision in accordance with law and the State has no power to overrule the decision of the NCTE. In so far as the examining body is concerned, considering the provisions of Sections 15 and 16 of the Act, once permission has been granted under Sections 14, the examining body is bound to conduct examination and it is not open to the State Government to interfere in such matters. If the State Government has any reservation in respect of any course or curriculum prescribed for teacher education, it should approach the NCTE but it cannot set at naught any provision of the Act by an executive fiat. As stated earlier the Act has been enacted by Parliament in exercise of powers under Entry 66 of List-I of Schedule-VII to the Constitution, the State Government has no locus in such matters. In this view of the matter, we are fortified by a decision of the Supreme Court in State of Maharashtra vs. Sant Gyneshwar Shikshan Shastra Mahavidyalaya and Ors. (2006) 9 SCC 1. Thus, the impugned inaction of the State Government on the recommendation of the Deen Dayal Upadhyay Gorakhpur University directly stares into the face of sub Section (6) of Section 14 of the Act which commands every examining body to grant affiliation to the institution where recognition has been granted under sub Section (4) of Section 14 *ibid*. In view of the said provisions no further scope is left for the State Government to interfere in respect of which recognition has been granted by the NCTE under sub Section (4) of Section 14 of the Act. The NCTE is the repository of the power to prescribe courses of instruction in teacher education. Once recognition has been granted under sub Section (4) of Section 14 of the Act, the State Government cannot nullify the recommendation of the affiliating university.

Reference may, in this connection, be made to the following observations of their Lordships of the Supreme Court in Jaya Gokul Educational Trust vs. Commissioner and Secretary to Government of Kerala, Higher Education Department (2005) SCC 231.

“Therefore, the State could not have any policy outside the AICTE Act and indeed if it had a policy, it should have placed the same before AICTE and that too before the latter granted permission. **Once that procedure laid down in the AICTE Act and Regulations had been followed under Regulation 8(4), and the Central Task Force had also given its favorable recommendations, there was no scope for any further objection or approval by the State.** We may however add that if thereafter, any fresh facts came to light after an approval was granted by AICTE or if the State felt that some conditions attached to the permission and required by AICTE to be complied with, were not complied with, then the State Government could always write to AICTE, to enable the latter to take appropriate action.”

These observations have been quoted with approval in State of Maharashtra vs. Sant Gyneshwar Shikshan Shastra Madhavidyalaya and Ors. (supra). After considering the scheme, scope and objects of the NCTE Act, their Lordships of the Supreme Court have clearly held that once recommendation has been granted by the NCTE under Section 14(6) of the Act, every examining body is obliged to grant an affiliation to such institution and the State Government does not have any authority to interfere with the decision of the NCTE. Their Lordships have further held that neither it is open to the State Government nor to the University to overrule the decision of the NCTE. As stated earlier, the Deen Dayal Upadhyay Gorakhpur University has already recommended to the State Government to grant formal permission to the petitioner College for starting B.Ed. course sanctioned by the NCTE. Strangely enough, the State Government has not yet responded on the said recommendation. This sphinx silence of the State Government on the recommendation of the said University is virtually negation of the educational rights of the minorities enshrined in Article 30(1) of the Constitution of India.

Relying on the aforecited decision of the Supreme Court Commission had no hesitation in coming to the conclusion that the impugned action of the State Government in not granting formal permission sought by the petitioner is not only violative of Section 14(6) of the NCTE Act, but it also infringes the fundamental rights enshrined in Article 30(1) of the Constitution. Consequently in exercise of the power conferred under Section 12(1) of the NCMEI Act, the Commission directed the Deen Dayal Upadhyay Gorakhpur University to grant affiliation to the petitioner College for the B. Ed course duly sanctioned under the NCTE Act without awaiting for any formal permission from the State Government. A copy of the order was also sent to the Secretary, H.E. The Governor of Uttar Pradesh, who is also the Chancellor of the University, for being placed before the His Excellency.

### **Case No. 773 of 2008**

#### **Approval of appointment of teaching and non-teaching staff.**

**Petitioner :** Maulana Azad Inter College, Sakhawatganj, Quadirabad, Siddarth Nagar, Uttar Pradesh.

**Respondent :** The District Inspector of Schools, District Siddharth Nagar, Uttar Pradesh.

The petitioner Maulana Azad Inter College, Siddarth Nagar, Uttar Pradesh sought a direction to the respondent to approve the appointment of the teaching and non-teaching staff of the petitioner College which is a minority educational institution covered under Article 30(1) of the Constitution.

The respondent resisted the petition on the ground that by the Memo No. 2417-18/2008-09 dated 23.9.2008, permission was granted to the petitioner college to fill up the post of Principal and 3 vacant posts of Assistant Teachers subject to the condition that the vacancies are advertised in two widely circulated newspapers and selections are made in accordance with the provisions of the Intermediate Education Act 1921. It is also alleged that the requisite details pertaining to the appointments made by the petitioner College have not been supplied to the respondent as a result whereof these appointments could not be ratified.

It needs to be highlighted that on 17.12.2008 Mrs. Sandhya Srivastava, District Inspector of School, Siddharth Nagar appeared before the Commission and fairly conceded that the petitioner College being a minority educational institution, has the right to fill up the posts of its teaching and non-teaching staff. She also conceded that if the appointments have been made in a fair and transparent manner, then on receipt of the relevant documents the recommendation for ratification of these appointments shall be made to the competent authority of the State Government. Needless to add here that it has been held by the Eleven Judges Bench of the Supreme Court in T.M.A. Pai Foundatiuon vs. State of Karnataka (2002) 8 SCC 481 that an educational institution covered under Article 30(1) of the Constitution enjoys the complete autonomy in respect of selection and appointment of teaching and non-teaching staff. The only limited scope available to the authorities to examine the selection and appointment of teaching and non-teaching staff by the committee of management of a minority educational institution is to the extent of the eligibility of a candidate. In the Committee of Management, Shri Kundu Kund, Jain Inter College, Muzaffarnagar vs. State of Uttar Pradesh and Others [2006(4)ADJ 663(All)], it has been held by the Allahabad High Court that the District Inspector of Schools has no right to exercise any power of prior approval as contemplated in the relevant provisions in Section 16 G (3) (A) of U.P. Intermediate Education Act. The Allahabad High Court has further held that Inspector of Schools does not have any right to either approve or disapprove any such selection and appointment on its own under the powers in the U.P. Intermediate Education Act. In N.B. Lal vs. District Inspector of Schools and Others in Writ Petition 9776 of 1984 decided on 31 August 1984, the Allahabad High Court has further held that the mere fact that the procedure prescribed in the U.P. Intermediate Education Act is the same or similar to that applicable to other institutions cannot automatically bring in Regulation 5 of Chapter II. It is significant to mention that Legislature was conscious of the rights of the minority seeking protection and, therefore, in its wisdom only made a provision as contained in Section 16 FF of the U.P. Intermediate Education Act. Thus, a minority educational institution enjoys complete autonomy in respect of selection and appointment of teachers except to the extent specially restricted by the decision by the Supreme Court rendered in T.M.A. Pai Foundation case (supra).

However, in view of the aforesaid admissions made by the District Inspector of Schools read alongwith the proposition of law enunciated by their Lordships of the Supreme Court in case of T.M.A. Pai (supra), Commission held that the petitioner

College has a right to select and appoint the staff (teaching and non-teaching) subject to the rider that the controlling/regulatory authorities have the right to scrutinize and find out whether the person selected by the selection committee is eligible and suitable to be appointed as such keeping in view of the minimum qualification of the eligibility prescribed therefor.

**Case No. 518 of 2008**

**Request for grant of recognition to school and appointment of teachers.**

**Petitioner :** Madrasha Ghausia Primary School, 24 Parganas(N), West Bengal.

- Respondent :**
1. The Secretary, Department of School Education, Government of West Bengal, Bikas Bhavan, Salt Lake City, Kolkata, West Bengal.
  2. The Director, School Education (Primary Branch), Government of West Bengal, Bikas Bhavan, Salt Lake City, Kolkata, West Bengal.
  3. The District Inspector of Schools (P.E.), 24, Paraganas, Barasat, West Bengal.

The petitioner Madhrasha Ghausia Primary School, Dawarik Jungle Board (Nelson Road) P.O. Harinagar, Dist. 24 Parganes (N) sought a direction to the competent authorities of the State of West Bengal to grant recognition to the petitioner school, which has been functioning for the last 35 years and to sanction the appointment of four teachers.

The petitioner has stated that the petitioner school is the only Urdu medium school in the area of Bijapur Constituency, Halishar Municipality catering to the needs of about 20,000/- Urdu speaking people of the locality. The petitioner has complied with all the requirements for the grant of No Objection Certificate (N.O.C.) and three inspections have been conducted in regard to this. In the third inspection report, the Additional District Inspector of Schools (P.E.), North 24-Parganas has observed that the petitioner school requires recognition along with the appointment of four teachers.

The D.S.E. (PE), West Bengal has mentioned in their letter Memo No.918/SCP dated 11-5-94 addressed to Secretary, Government of West Bengal, Primary Branch, Bikash Bhawan, Salt Lake, Calcutta-91 that he doesn't at present, have "quota" for setting up additional Primary Schools in the district.

Article 30 (1) of the Constitution gives minorities a fundamental right to establish and administer educational institutions of their choice. In Ahmadabad St. Zavier's



College vs. State of Gujrat AIR 1974 SC 1389, it was held by the Supreme Court that minorities are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. In Re: Kerala Education Bill AIR 1958 SC 985 it has been held that minority educational institutions have a right to Government recognition or even an affiliation to a university. To deny recognition to the educational institutions except on terms amounts to the surrender of their constitutional right of administration of the educational institution of their choice, which is in truth and in effect, to deprive them of their right under article 30 (1) of the Constitution. The State Government cannot deny recognition to minority institution on the ground that the State already has more such institutions than required and, therefore, the policy of the government not to permit the starting of any more institution would infringe the substance of the right guaranteed under Article 30. Moreover such a factor is irrelevant so far as a minority institution is concerned. It has been held by 11 judges bench of the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka 2002 (8) SCC 481 that affiliation and recognition has to be available to other institution, that fulfills the conditions for grant of such affiliation and recognition to the private institutions. The State authorities should not impose terms of any scheme as a condition of affiliation or recognition as this completely destroys the institutional autonomy and the very objective of establishment of the institution.

From the perusal of the records it is understood that authorities at the District level have recognized the needs for a school and they have strongly recommended the case of petitioner school. It is also understood that the Respondent has not rebutted any of the claims made by the petitioner.

In the case of appointment of teachers it has been held by the Apex Court in TMA Pai Foundation vs. State of Karnataka [2002 (8) SCC 481] that the right to appoint teaching and non-teaching staff is the most important facet of minority's right to administer educational institutions under Article 30 (1) of the Constitution. It was also held that a minority educational institution does not cease to be so, merely on receipt of aid from the State or its agencies. In other words, receipt of aid does not alter the nature or character of the minority educational institutions receiving aid.

It has been held by the Apex Court in a recent judgment in The Secretary, Malankara Syrian Catholic College vs. T. Jose & Ors. (Civil Appeal No. 8599 of 2003 – decided on 27.11.2006 that “Article 30 (1) clearly implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it which will in any way dilute or abridge the rights of the minorities to establish and administer educational institutions.” The State which gives aid to an educational institution can certainly impose such conditions as are necessary for the proper maintenance of the high-standards of education as the financial burden is shared by the State. In other words, the conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they

indirectly impinge upon some facet of administration. Obviously, all conditions that have relevance to the proper utilization of the aid by an educational institution can be imposed. That is why, it has been held in T.M.A. Pai Foundation (supra) that there can be regulatory measures for ensuring educational character and standards and maintaining academic excellence, as such regulations do not in any manner interfere with the right guaranteed under Article 30 (1) of the Constitution. Reference may, in this connection be made to the following observations of the Supreme Court in T.M.A. Pai (Supra)

“This means that the right under Article 30(1) implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution. The conditions that can normally be permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and fulfillment of the objectives of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority status of the educational institutions. Such conditions would be valid if they are also imposed on their educational institutions receiving the grant.”

In The Secretary, Malankara Syrian Catholic College (supra), while interpreting the judgment rendered by the Supreme Court in T.M.A. Pai Foundation (supra), it was held that the State can prescribe: -

- (i) the minimum qualifications, experience and other criteria bearing on merit, for making appointments,
- (ii) the service conditions of employees without interfering with the overall administrative control by the Management over the staff.
- (iii) a mechanism for redressal of the grievances of the employees.
- (iv) the conditions for the proper utilisation of the aid by the educational institutions, without abridging or diluting the right to establish and administer educational institutions.

It was also held that if any regulation interferes with the overall administrative control by the management over the staff or abridges/ dilutes, in any other manner, the right to establish and administer educational institutions, such a regulation, to that extent, will be inapplicable to minority institutions.

Thus, it is well settled that the right to appoint the teaching and non-teaching staff for a minority educational institution is perhaps the most important facet of the right to administer an educational institution. The imposition of any trammel thereon,

except to the extent of prescribing the requisite qualifications and experience or otherwise fostering the interests of the institution itself, cannot but be considered as a violation of the right guaranteed by Article 30(1) of the constitution. [State of Kerala vs. Very Revs. Mother Provincial, 1970 (2) SCC 417, The Ahmedabad St. Xavier's College Society vs. State of Gujarat. 1974 (1) SCC 717, Frank Anthony Public School Employees' Association vs. Union of India, 1986 (4) SCC 707, D.A.VS. College vs. State of Punjab, 1971 (2) SCC 269, All saints High School vs. Government of A.P., 1980 (2) SCC 478, St. Stephen's College vs. University of Delhi, 1992 (1) SCC 558, Board of Secondary Education & Teaching Training vs. Joint Director of Public Instructions, Sagar, 1998 (8) SCC 555].

Thus, the Management's right of a minority educational institution to choose a qualified person as the teacher/ lecturer of such institution is well insulated by the protective cover of Article 30(1) of the Constitution and it cannot be whittled down by any legislative act or executive fiat except for prescribing the qualifications and conditions of service for the post. Article 13 of the Constitution injuncts the State from making any act, rules or regulations that is violative of any of the fundamental rights guaranteed under Chapter III of the Constitution. It is thus clear that the freedom to appoint teaching and non-teaching staff of a minority educational institution has always been recognized as a vital facet of the right to administer the educational institutions within the meaning of Article 30 (1) of the Constitution.

It has also been observed by their lordships of the Supreme Court in T.M.A. Pai Foundation case (supra) as under:

**123.** “ While it was permissible for the State and its educational authorities to prescribe the qualifications of teachers, it was held that once the teachers possessing the requisite qualifications were selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution was regarded as one of the essential ingredients under Article 30 (1). The court's attention was drawn to the fact that in Kerala Education Bill, 1957 case this Court had opined that clauses 11 and 12 made it obligatory for all aided schools to select teachers from a panel selected from each district by the Public Service Commission and that no teacher of an aided school could be dismissed, removed or reduced in rank without the previous sanction of the authorized officer. At SCR p. 245, Khanna, J., observed that in cases subsequent to the opinion in Kerala Education Bill, 1957 case this Court had held similar provisions as clause 11 and clause 12 to be violative of Article 30 (1) of the minority institution.”

In view of the above, the State Government was directed to sanction recognition to the petitioner school and appointment of four teachers. The petition is disposed of accordingly.

**Case No. 1931 of 2006**

**Request to start additional English medium in school.**

**Petitioner :** Anjuman Azad English Medium Higher Primary School, Bhatkal, Karnataka.

**Respondent :**

1. The Director, Primary Education, Commission Office, Public Instruction Department, New Public Office, Nrupaturnga Road, Bangalore – 01.
2. The Deputy Director (Admn.), Department of Public Instruction, U.K. Karwar, Karnataka.
3. The Block Education Officer, Department of Public Instruction, Bhatkal Taluk/Block, Uttar Karnataka Distt.

**Case No. 2017 of 2006**

**Petitioner :** Anjuman English Medium Higher Primary School, Bhatkal, Karnataka.

**Respondent :**

1. The Director, Primary Education, Commission Office, Public Instruction Department, New Public Office, Nrupaturnga Road, Bangalore – 01.
2. The Deputy Director (Admn.), Department of Public Instruction, U.K. Karwar, Karnataka.
3. The Block Education Officer, Department of Public Instruction, Bhatkal Taluk/Block, Uttar Karnataka Distt.

These petitions involving common questions of law and fact were taken up for hearing together and are being disposed of by this common order. We would, however, note the factual matrix of the Case No. 1931/2006.

The petitioner school is a minority educational institution covered by Article 30(1) of the Constitution. By the order dated 8.2.2006 the Block Education Officer, Bhatkal accorded sanction for establishment of the Urdu Medium from Standard 1st to Vth. In order to cater the needs of the local people, the petitioner school decided to start standard 6th and 7th with English Medium. On 7.11.05, the petitioner submitted an application before the competent authority seeking permission to start standard 6th and 7th with English medium as advised by the Block Education Officer, Bhatkal. On 13.1.2006, the Block Education Officer, Bhatkal forwarded the proposal to the Dy.

Director (Administration) Department of Public Instruction, Dharward. By the order dated 24.3.2006, Deputy Director returned the proposal with a direction to the petitioner to resubmit the proposal alongwith the requisite documents in triplicate. Thereafter on 29.4.2006, the petitioner re-submitted the proposal in the prescribed format. The said proposal underwent a lengthy correspondence between the petitioner school and the concerned authorities of the State Government. On 27.7.2006, the Block Education Officer served a show cause notice on the Head Mistress Anjuman Azad Higher Primary School, Bhatkal calling upon her to show cause as to why the petitioner school should not be derecognized for unauthorized admission of students in 6th standard of English medium without obtaining prior permission of the competent authority of the State Government. By the letter dated 19.10.2006, the Block Education Officer directed the petitioner to close the English Medium Primary School. According to the petitioner, the impugned action of the State Government is violative of the educational rights enshrined in Article 30(1) of the Constitution.

The petition has been resisted by Respondent No. 2 on the ground that the permission was granted to the petitioner school to run Urdu Primary School from 1st standard to 7th standard. On the contrary, the petitioner school started English Medium School without obtaining prior permission of the Government. Consequently, the petitioner school was directed to close its standards English medium with immediate effect. It is alleged that since the petitioner school has unauthorisedly started school in English Medium, the impugned action of the competent authority does not amount to violation of the educational rights of the minorities guaranteed under Article 30(1) of the Constitution.

Commission opined that the factual matrix of the case is squarely covered by decision rendered by the Full Bench of the Karnataka High Court in Associated Management of Primary and Secondary Schools in Karnataka versus State of Karnataka and Ors. 2008 K.L.J1. The Full Bench has held that the imposition of official language of State Government as the sole medium of instruction cannot be said to be in the interest of general public and has no nexus to public interest. The medium of instruction is one aspect of freedom of speech and expression guaranteed under Article 19 of the Constitution and the State cannot enact a law or frame a rule commanding that a student should express himself in a particular regional language. It was also held that their right to choose medium of instruction of their choice is a fundamental right guaranteed under Articles 19(1) (g), 26 and Article 30(1) of the Constitution and the police power of the State to determine the medium of instruction must yield to the fundamental right of the parent and the child.

For the reasons described above the respondents were directed to implement the decision rendered by the Full Bench of the Karnataka High Court in Associated Management of Primary and Secondary Schools in Karnataka (supra).

**Case No. 906 of 2007**

**Permission to select and appoint teaching and non-teaching staff.**

**Petitioner :** Mary Immaculate High School, Chapra, Bangalijhi, District Nadia, West Bengal.

**Respondent :** The Principal Secretary, School Education Department, Govt. of West Bengal, Bikas Bhawan, 6th floor, Salt Lake, Kolkata, West Bengal.

The petitioner, Mary Immaculate High School, Nadia, West Bengal is a minority educational institution within the meaning of Section 2(g) of the National Commission for Minority Educational Institutions Act. The petitioner sought direction to the State Government to grant permission to select and appoint its teaching and non-teaching staff.

Despite service of notice none has entered appearance on behalf of the State Government and as such the case proceeded ex-parte against the respondent.

It has been held by the Eleven Judges Bench of the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 that the right to appoint teaching and non-teaching staff for a minority educational institution is perhaps the most important facet of the right to administer educational institutions. The imposition of any trammel thereon, except to the extent of prescribing the requisite qualifications and experience or otherwise fostering the interests of the institution itself, cannot but be considered as a violation of the right guaranteed under Article 30(1) of the Constitution. Thus, an educational institution covered under Article 30(1) of the Constitution enjoys complete autonomy in respect of selection and appointment of competent teaching and non-teaching staff. The only limited scope available to the authorities of the State Government to examine the selection and appointment of teaching and non-teaching staff by committee of management of institutions of such educational institution is to the extent of the qualification and otherwise the eligibility of a candidate. Thus, the right to choose a teacher falls exclusively within the powers of the management committee of minority educational institution and which is neither regulated nor could be regulated by the authorities as that would amount clear inroad into the fundamental rights enshrined in Article 30(1) of the Constitution.

It is mentioned in the GO N. 942-MD dated 30th June 2008 issued by the Government of West Bengal that the minority educational institution shall follow the criteria for establishment, admission, fee structure, appointment of teaching and non-teaching staff and salaries etc. as prescribed by the Government or the regulatory authorities. The impact of the impugned guidelines shall have to be tested on the touchstone of educational rights of the minorities enshrined under Article 30(1) of the Constitution. It needs to be highlighted that the fundamental rights enshrined in Part III

of the Constitution were added to the Constitution as a check on the state powers, particularly the legislative powers. Article 13 of the Constitution declares that the State cannot make any law that is contrary to the fundamental rights guaranteed in Part III of the Constitution. The framers of the Constitution have built a wall around certain parts of the fundamental rights, which have to remain forever, limiting availability of majority to intrude upon them. That wall is a basic structure doctrine. It is necessary to always bear in mind that fundamental rights have been considered to be heart and soul of the Constitution. The Constitution is a living document, its interpretation may change as the time and circumstances change to keep pace with it. This is the ratio of the decision in Indira Gandhi's case AIR 1975 SC 229. The Supreme Court has held in T.M.A.Pai Foundation (supra) that the right of minorities to establish and administer educational institution of their choice comprises the following rights:

- (a) To choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution.
- (b) To appoint teaching and non-teaching staff and take action if there is dereliction of duty on the part of any of its employees.
- (c) To admit the eligible students of their choice and to set a reasonable fee structure.
- (d) To use its properties and assets for the benefit of the institution.

The impugned guidelines provides that minority educational institutions shall follow the criteria for establishment, admission, fee structure, appointment of teaching and non-teaching staff as prescribed by the Government or the regulatory authorities. Thus the decision rendered by the Supreme Court in T.M.A. Pai Foundation (supra) directly stares in the face of impugned guidelines. That being so that the constitutional autonomy conferred on an educational institution covered under Article 30(1) of the Constitution cannot be set at naught by the executive fiat.

For the foregoing reasons Commission held that impugned guidelines or any part thereof, which infringes the fundamental rights enshrined in Article 30(1) of the Constitution in respect of establishment, appointment, fee structure and appointment of teaching and non-teaching staff of an educational institution covered under Article 30(1) of the Constitution as interpreted by the Supreme Court in T.M.A. Pai Foundation case (supra) cannot be made applicable to a minority educational institution. The petitioner institution have right to select and appoint its teaching and non-teaching staff in accordance with the qualification and otherwise of the eligibility of a candidate prescribed by the State Government.

The petitioner institution is free to select and appoint its teaching and non-teaching staff in accordance with the condition and eligibility of a candidate prescribed by the State Government or regulatory authorities. The only limited scope available to the authorities to examine the selection and appointment of teaching and non-teaching staff by the committee of management of a minority educational institution is to the extent of the eligibility of a candidate. Consequently Commission held that the petitioner institution has a right to select and appoint its teaching and non-teaching staff subject to the rider that the controlling/regulatory authorities have the right to scrutinize and find out whether the person selected by the selection committee is eligible and suitable to be appointed as such keeping in view of the minimum qualification of the eligibility prescribed therefor.

### **Case No. 310 of 2008**

#### **Approval of appointment of teachers.**

**Petitioner :** Falah-e-Darain Punjabi Inter College, Moradabad, Uttar Pradesh.

**Respondent :** The Secretary, Higher Education Department, Government of Uttar Pradesh Secretariat, Lucknow, Uttar Pradesh & Ors.

The petitioner Falah-e-Darain Inter College, Moradabad is a minority educational institution covered under Article 30(1) of the Constitution. The Management of the petitioner college duly selected and appointed 3 teachers namely Sarva Shri Sahnawaz Ahamed, Kamruddin and Azahad Hussain vide appointment order dated 18.11.2007. Pursuant to these appointment orders, the teachers joined their duties on 19.11.2007. Thereafter, the proposal was submitted to the respondent District Inspector of Schools, Moradabad for approval of the aforesaid appointments. By the order No. Ma-1/8879-80/2007-08 dated 06-02-2008 these appointments were approved by the respondent. The petitioner's grievance is that the respondent is not accepting the date of joining of the aforesaid teachers i.e. 19.11.2007 for payment of their salaries. The petitioner's representation for payment of salaries of these teachers from the date of joining their duties was rejected by the respondent holding that they are not entitled to draw their salaries from the date of their joining the duties but from the date of submission of the proposal seeking the approval of their appointments vide order 16.08.2008 passed by the respondent. According to the petitioner, the impugned order dated 16.08.2008 is violative of the fundamental rights of the minorities guaranteed under Article 30(1) of the Constitution.

The resistance to the petition is primarily on the ground that the petitioner college had submitted the proposal seeking approval of appointments of the teachers to the respondent on 18.01.2008, which was approved on 06.02.2008 and as such these teachers are entitled to get their salaries from 18.1.2008 and not from the date of joining their duties.



In view of the rival contentions of the parties the question which arises for consideration is as to whether the impugned order dated 16.1.2008 passed by the respondent rejecting the petitioner's representation for payment of salaries of the teachers from the date of their joining the duties is violative of the rights of the minorities guaranteed under Article 30(1) of the Constitution.

It is beyond pale of controversy, that the petitioner is an aided minority educational institution covered under Article 30(1) of the Constitution. It has been held by the Eleven Judges Bench of the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 that management of an educational institution covered under Article 30(1) of the Constitution enjoys complete autonomy in respect of selection and appointments of its teaching and non-teaching staff. The state or any regulatory authority cannot regulate the method or procedure for appointments of teaching and non-teaching staff of such an institution. The limited power vested with them is to prescribe the qualifications for these posts. The afore- cited decision is also an authority for the proposition of law that mere receipt of financial aid from the state does not annihilate the right guaranteed to minority communities under Article 30(1) of the Constitution to manage their own educational institutions.

In the instant case, validity of appointments of the teachers has not been challenged by the District Inspector of Schools. The impugned orders dated 18.01.2008 shows that since the proposal seeking approval of these appointments was received in the Office of the District Inspector of Schools on 18.01.2008, salaries of these teachers can not be sanctioned before that date. The order also commands the management of the petitioner college to pay salaries of these teachers for the period between 19.11.2007 to 18.01.2008 from its own resources. At this juncture, the question which arises for consideration is as to whether a teacher duly selected and appointed by the management of an educational institution covered under Article 30(1) of the Constitution is entitled to receive his salary from the date of joining the duties or from the date of approval of his appointment by the District Inspector of Schools. It has been held by the Allahabad High Court in Committee of Management Sri Kund Kund Jain Inter College, Muzaffar Nagar vs. State of U.P. & Ors. (2006 (4) ADJ 663 (All) ) that the educational authority has no control over the actual management of the minority institution including hiring or termination of services of teachers. That being so, the appointments of the teachers shall take effect from the date of their joining the duties and not from any other date to be specified by the respondent. The District Inspector of Schools has no authority to ratify the appointments made by the management of the minority educational institution. That being so, appointments made by the management of the petitioner college are well protected under Section 16-FF of the U.P. Intermediate Education Act 1921 and no power can be read into the hands of the District Inspector of Schools under Section 16-FF *ibid* to ratify the appointments made by the management of the petitioner college from the date other than the date of appointment notified by the management. The only limited scope available to the educational authorities is to scrutinize the relevant documents and find out whether the person

selected and appointed by the management is eligible and suitable to be appointed as such keeping in view the conditions of eligibility prescribed by the Government. The District Inspector of Schools was absolutely bereft of any authority to disallow payment of salaries of these teachers from the date of their joining the duties i.e. from 19.11.2007. Thus, the impugned order dated 18.01.08 clearly infringes Article 30(1) of the Constitution.

For the foregoing reasons, Commission was constrained to observe that the impugned order dt. 18.01.08 passed by the respondent District Inspector of Schools is hit by Article 30(1) of the Constitution. Consequently, the District Inspector of Schools is directed to implement the findings of the Commission in terms of Section 11(b) of the National Commission for Minority Educational Institutions Act by releasing salaries of the teachers duly appointed by management of the petitioner college from the date of their joining the duties i.e. from 19.11.2007.

### **Case No. 46 of 2007**

#### **Request to start a new school.**

**Petitioner :** Shaheed Abdul Hameed Education Society, Yavatmal, Maharashtra.

**Respondent :**

1. The Secretary, School Education Department, Government of Maharashtra, Mantralaya, Mumbai.
2. The Director of Education, Department of Secondary & Higher Secondary Education, Cental Building, Pune, Maharashtra – 411 001.
3. The Deputy Director of Education, Amaravati Devison, Amravati, Teh.& Distt. Amarawati, Maharashtra.
4. The Education Officer (Primary), Zilla parishad, Yavatmal, Tq. & Distt. Yavatmal, Maharashtra.

**Intervener :** Sh. Muhammas Ilyas, President, Millit Education Society, Talegaon, Darwha, Distt. Yavatmal, Maharashtra.

The petitioner Shaheed Abdul Hameed Education Society, Darwha, Distt. Yavatmal, Maharashtra sought a direction to the competent authority of the State Government to sanction one additional class of first standard of Urdu medium on permanent non grant-in-aid basis. It is alleged that the petitioner Society Shaheed Abdul Hameed Education Society, Darwha, Distt. Yavatmal was constituted by Muslim community and has been registered under the Society Registration Act 1860. By the Order No. SMC 1003/(83/2003) dated 16/6/2003 passed by the State Government,

the said Society has been recognized as a society constituted by the Muslim community. The said Society is running a school Parmanand Veerji Gherwara Urdu Primary School at Bhurekhan Nagar, Darwha, Distt. Yavatmal. It is also alleged that the petitioner Society has started a branch of the said school in Urdu medium in the Railway Station area. In the year 2001 the petitioner had submitted a proposal in the prescribed format to the Education Officer, Zila Parishad, Yavatmal for grant of permission to start the said branch which was not approved by the competent authority of the State Government. It is further alleged that the Railway Station area has about 3000 Muslim population and there is a need to have a separate Urdu medium school in the area. According to the petitioner Society, the impugned action of the respondent in not granting the permission to start a branch of the school as sought by the petitioner is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

The respondent resisted the petition on the ground that the petitioner has illegally started a branch of the petitioner school, namely, Parmanand Veerji Gherwara Urdu Primary School in the Railway Station area without permission from the State Government. It is alleged that in 1990-91 the State Government had taken a policy decision regarding non-sanctioning of branch schools in the State vide GR dated 20th July 1990. In view of the said policy decision, the branch school started by the petitioner Society, cannot be sanctioned. According to the respondent, instead of starting a branch school, the petitioner Society may apply for a new primary school on permanent non-grant-in-aid basis whenever the State Government invites applications for opening of new primary schools.

The petitioner has admitted in the rejoinder that the Nagar Parishad, Darwha has established a school in Railway Station area but the premises of the said school are not sufficient to cater to the needs of the children of minority community of that area. According to the petitioner, the total strength of the school run by the Nagar Parishad is only 64 and as such there is a need for another school in that area.

The intervener Millit Education Society, Darwha has opposed the petition on the ground that the Parmanand Veerji Gherwara Urdu Primary School run by the petitioner Society is only one kilometer away from the Railway Station area and there are already eight primary schools in that area. It is alleged that out of the eight schools, two primary schools are in the Railway Station area. One of the Urdu schools in the Railway Station area is being run by the Millit Education Society, Darwha and as such there is no need for setting up of an additional school in the area. It is further alleged that due to paucity of Muslim students the petitioner could not start the branch of the school in the Railway Station area. On these premise, it is alleged that the impugned action of the State Government in not granting sanction as sought by the petitioner is not violative of educational rights of the minorities enshrined in Article 30(1) of the Constitution.

On the basis of the rival contentions of the parties the question which arises for determination is as to whether impugned action of the State Government in not granting the sanction as sought by the petitioner is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. It is beyond pale of controversy that by the GR dated 29/7/90, the State Government had taken a policy decision regarding non-sanctioning of branch schools in the State. It is contended by the respondent that in view of the said policy decision, the permission as sought by the petitioner Society for starting a branch school in Urdu medium in Railway Station area cannot be sanctioned. There is nothing on record to show or suggest that the said policy decision of the State Government suffers from any legal infirmity and as such the Commission cannot intervene in the policy decision taken by the State Government.

It needs to be highlighted that the intervener Millit Education Society, Darwha has specifically alleged that there are eight primary schools in the area and out of these, two primary schools are in the Railway Station area. It is also alleged that the main school of the petitioner Society is only one kilometer away from the Railway Station area and as such there is no need of starting a branch school in the Railway Station area as alleged by the petitioner Society. It is relevant to mention that in the decision rendered by the Supreme Court in Superstar Education Society vs. State of Maharashtra and Others, Appeal (Civil) 1105 of 2008, the Supreme court has held that before granting permission for new private schools, the following facts are required to be taken into consideration:

1. To ensure that they have the requisite infrastructure;
2. To avoid unhealthy competition among educational institutions;
3. To subject the private institutions seeking entry in the field of education to such restrictions and regulatory requirements, so as to maintain standards of education;
4. To promote and safeguard the interests of students, teachers and education; and
5. To provide access to basic education to all sections of society, in particular the poorer and weaker sections; and
6. To avoid concentration of schools only in certain areas and to ensure that they are evenly spread so as to cater to the requirements of different areas and regions and to all section of society.

(emphasis supplied)

As stated earlier that there are already eight primary schools in the area and if any additional school is set up in the area it will give rise to unhealthy competition among educational institutions. Consequently, there is no justification for starting a branch of the Parmanand Veerji Gherwara Urdu Primary School in the Railway Station Area of Darwha, Distt. Yavatmal. Consequently, the petition is dismissed.

**Case No. 908 of 2007**

**Permission for establishment of English medium lower primary school.**

**Petitioner :** People's Educational and Social Trust, Sheikh Campus, Nehru Nagar, Belgaum – 590010.

**Respondent :**

1. The Secretary, Education Department, Government of Karnataka, Vidhan Soudha, Bangalore, Karnataka-1.
2. The Director of Primary Education, New Building Offices, Commissioner's Office, Nurputung Road, Bangalore, Karnataka.
3. The Commissioner of Public Instructions, Dharwar, Karnataka.
4. The Deputy Director of Public Instructions, Belgaum South, Club Road, Belgaum, Karnataka.

By this petition, the petitioner People's Educational and Social Trust, Sheikh Campus, Nehru Nagar, Belgaum, seeks a direction to the State Government to accord permission to the petitioner for establishment of an English medium lower primary school, near Vidhyagiri, Bauxite Road, Belgaum. According to the petitioner, on 30th August 2006, the petitioner submitted an application before the competent authority seeking permission to start the said school which was rejected by the competent authority of the State Government on the ground, of the policy decision taken by the State Government to the effect that the mode of instruction at the primary level of the school shall be either in the mother tongue of the child or the Kannad language. It is alleged that the said policy of the State Government is violative of the educational rights of the minority enshrined in Article 30(1) of the Constitution.

The petition has been resisted by the respondent on the ground that as per the Government Order No.ED28 PGC94, dated 29.04.1994 and the Order No.ED44 PGC 2002, dated 30.05.2002, the medium of instruction in the primary schools of the State shall be either in the mother tongue of the child or in Kannad language and as such the permission as sought by the petitioner can not be granted. It is also alleged that both the Orders of the State Government are under challenge before the High Court of Karnataka.

It needs to be highlighted that in Associated Management of Primary and Secondary Schools vs. State of Karnataka and Others W.P.No. 14363/1994 decided on 2nd July of 2008, the Full Bench has struck down the impugned orders holding that the Government policy, compelling children studying in schools have primary education only in their mother tongue or in their regional language is violative of Article 19 (1), (g), 26 and 30(1) of the Constitution. That being so, the issue raised by the petitioner is squarely covered by the aforecited decision of the Full Bench.

That being so, the impugned action of the respondent in denying permission as sought by the petitioner is violative of the educational rights of the minority enshrined under Article 30 (1) of the Constitution. Accordingly, it was recommended to the State Government to reconsider the petitioner's application for grant of permission to establish an English Medium Lower Primary School near Vidyagiri, Bauxite Road, Belgaum in the light of the decision rendered by the Full Bench of the Karnataka High Court in Associated Management of Primary and Secondary Schools Karnataka vs. State of Karnataka (Supra).

### **Case No. 144 of 2007**

#### **Request to fill up vacant posts of teachers.**

**Petitioner :** Secretary, Nasilpore-Bhattai Educational Trust, Bhattai, Tal. & Dist. Navsari, Gujarat.

**Respondent :**

1. Commissioner of Schools, Commissionerate of Mid Day Meals & Schools, Govt. of Gujarat, Dr. Jivaraj Mehta Bhawan, Block No.9, 1st Floor, Old Sachivalaya, Sector-10, Gandhi Nagar, Gujarat.
2. The District Education Officer, Nilgiri Apt. 102, Krishna Society, Navsari, Dist. Nvasari, Gujarat.

By this petition, the petitioner Bhat Tai Vibhag Madhyamik Shala & Primary Section, Bhattai, AT & PO Bhattai, Navsari, Gujarat seeks a direction to the State Government to issue no objection certificate to fill up its vacant posts. It is alleged that the petitioner school has been recognized as a minority educational institution vide Memo No. Ma.K/Minority Branch Pra.Patra./48106-08 dated 30.09.1992 issued by the District Educational Officer, Valsad (Gujarat) and as such it has a right under Article 30(1) of the Constitution to appoint its teaching and non-teaching staff.

The petition has been resisted by the District Education Officer on the ground that the petitioner school is an aided institution and as such it is bound to take prior approval of the competent authority of the State Government to fill up the vacant posts vide Memo No. BMS/1098/2835/G dated 6th October 1998 which interalia commands that no school can fill up vacant posts without obtaining prior approval of the competent authority of the State Government.

In the rejoinder, the petitioner school has stated that the proposition of law laid down in the High Court judgment relied on by the District Educational Officer does not apply to the educational institutions covered under Article 30(1) of the Constitution.

Bearing in mind the rival conventions of the parties, the question which arises for determination, is as to whether impugned order dated 6th October 1998 issued by

the State Government and the Order date 8.8.2001 issued by the Commissioner of Schools, Commissionerate of Mid-day meals and Schools, Gandhi Nagar, restraining the educational institutions to fill up their vacant posts without prior permission from the State Government can be made applicable to educational institutions covered under Article 30(1) of the Constitution.

It has been held by the Apex Court in TMA Pai Foundation vs. State of Karnataka [2002 (8) SCC 481] that the right to appoint teaching and non-teaching staff is the most important facet of minority's right to administer under Article 30 (1) of the Constitution. It was also held that a minority educational institution does not cease to be so, merely on receipt of aid from the State or its agencies. In other words, receipt of aid does not alter the nature or character of the minority educational institutions receiving aid.

It has been held by the Apex Court in a recent judgment in The Secretary, Malankara Syrian Catholic College vs. T. Jose & Ors. (Civil Appeal No. 8599 of 2003 – decided on 27.11.2006 that “Article 30 (1) clearly implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it which will in any way dilute or abridge the rights of the minorities to establish and administer educational institutions.” The State which gives aid to an educational institution can certainly impose such conditions as are necessary for the proper maintenance of the high-standards of education as the financial burden is shared by the State. In other words, the conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some facet of administration. Obviously, all conditions that have relevance to the proper utilization of the aid by an educational institution can be imposed. That is why, it has been held in T.M.A. Pai Foundation (supra) that there can be regulatory measures for ensuring educational character and standards and maintaining academic excellence, as such regulations do not in any manner interfere with the right guaranteed under Article 30 (1) of the Constitution. Reference may, in this connection be made to the following observations of the Supreme Court in T.M.A. Pai (Supra):-

“This means that the right under Article 30(1) implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution. The conditions that can normally be permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and fulfillment of the objectives of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority status of the educational institutions. Such conditions would be valid if they are also imposed on their educational institutions receiving the grant.”

In The Secretary, Malankara Syrian Catholic College (supra), while interpreting the judgment rendered by the Supreme Court in T.M.A. Pai Foundation (supra), it was held that the State can prescribe: -

- (i) the minimum qualifications, experience and other criteria bearing on merit, for making appointments,
- (ii) the service conditions of employees without interfering with the overall administrative control by the Management over the staff.
- (iii) a mechanism for redressal of the grievances of the employees.
- (iv) the conditions for the proper utilisation of the aid by the educational institutions, without abridging or diluting the right to establish and administer educational institutions.

It was also held that if any regulation interferes with the overall administrative control by the management over the staff or abridges/ dilutes, in any other manner, the right to establish and administer educational institutions, such a regulation, to that extent, will be inapplicable to minority institutions.

Thus, it is well settled that the right to appoint the teaching and non-teaching staff for a minority educational institution is perhaps the most important facet of the right to administer an educational institution. The imposition of any trammel thereon, except to the extent of prescribing the requisite qualifications and experience or otherwise fostering the interests of the institution itself, cannot but be considered as a violation of the right guaranteed by Article 30(1) of the constitution. [State of Kerala vs. Very Revs. Mother Provincial, 1970 (2) SCC 417, The Ahmedabad St. Xavier's College Society vs. State of Gujarat. 1974 (1) SCC 717, Frank Anthony Public School Employees' Association vs. Union of India, 1986 (4) SCC 707, D.A.VS. College vs. State of Punjab, 1971 (2) SCC 269, All saints High School vs. Government of A.P., 1980 (2) SCC 478, St. Stephen's College vs. University of Delhi, 1992 (1) SCC 558, Board of Secondary Education & Teaching Training vs. Joint Director of Public Instructions, Sagar, 1998 (8) SCC 555].

Thus, the Management's right of a minority educational institution to choose a qualified person as the teacher/ lecturer of such institution is well insulated by the protective cover of Article 30(1) of the Constitution and it cannot be whittled down by any legislative act or executive fiat except for prescribing the qualifications and conditions of service for the post. Article 13 of the Constitution injuncts the State from making any act, rules or regulations that is violative of any of the fundamental rights guaranteed under Chapter III of the Constitution. It is thus clear that the freedom to appoint teaching and non-teaching staff of a minority educational institution has always been recognized as a vital facet of the right to administer the educational institutions within the meaning of Article 30 (1) of the Constitution.



For the foregoing reasons, the Commission was of the opinion that the impugned orders dated 6th October 1998 and 8.8.2001 of the State Government restraining the educational institutions from filling up their vacant posts without prior approval of the competent authority of the State Government cannot be made applicable to an educational institution covered under Article 30 (1) of the Constitution. As has been held by the Eleven Judges Bench of the Supreme Court in TMA Pai Foundation Case (Supra) that mere receipt of financial aid from the State Government does not annihilate the right guaranteed to minority communities under Article 30(1) of the Constitution to manage their own educational institutions. Consequently the petitioner has right to fill up its vacant posts subject to the rider that the controlling/regulatory authorities have the right to scrutinize and find out whether the person selected by the selection committee is eligible and suitable to be appointed as such keeping in view of the minimum qualification of the eligibility prescribed therefor.

**Case No. 857 of 2008**

**Request for approval of panel of Group 'D' employees.**

**Petitioner :** Nirmala Girls High School, P.O. Alipurduar Junction, Dist. Jalpaiguri (W.B.).

**Respondent :**

1. The Principal Secretary, School Education Department, Government of West Bengal, 6th Floor, Bikas Bhawan, Salt Lake, Kolkata, West Bengal- 700 091.
2. The Director, School Education Department, 7th Floor, Bikas Bhawan, Kolkata, West Bengal -700 091.
3. Shri S. Pal, Additional Inspector of Schools, Secondary Branch, P.O. Alipurduar, Jalpaiguri, West Bengal -736 121.
4. Shri B.B. Bera, District Inspector of Schools, Secondary Branch, Jalpaiguri, West Bengal -735 101.

By this petition, the petitioner institution seeks a direction to the respondent No. 2, Director of School Education (SE), West Bengal to approve the Panel of Group "D" employee, prepared by the Selection Committee of the Petitioner school.

The petitioner schools is a minority educational institution covered under Article 30(1) of the Constitution vide notification No. (641)Edn(S)8B-3-69 Pt. VII dated 23.5.1974. On 10.1.2005, the petitioner school sought permission from the respondent No. 1, Additional District Inspector of Schools to fill up the vacant post of Group "D" staff. By the Memo No. 72 dated 31.1.2005, the approval was granted by the Respondent No. 3, ADI as sought by the petitioner. Thereafter, the post was advertised

in Uttar Banga Sambad newspaper on 30th July 2005. The management committee of the petitioner school duly constituted a selection committee and selected one person for the said post and sent the proceedings of selection to the respondent No. 3 ADI for approval of the said selection. By the order dated 21.06.2006, respondent No. 3 ADI cancelled the selection on the ground that the selection was not made in accordance with the Government Memo bearing No. 1314(50)/1(80)-SE(S)/4A-35/2002 dated 17.9.2006 issued by the Special Secretary of the School, Government of West Bengal in terms of Govt. Order No.641-Edn(S) dated 23.5.1974. Objection was also raised for selecting the candidate not sponsored by employment exchange. It is alleged that the impugned action of the Respondent No. 3 and the Government Memo No. 1314(50)/1(80)-SE(S)/4A-35/2002 dated 17.9.2006 are violative of the educational rights of minorities enshrined in Article 30(1) of the Constitution.

The petition has been resisted on the ground that the selection of the candidate by the management committee is hit by Government order No. 1314(50)/1(80)-SE(S)/4A-35/2002 dated 17.9.2006 which prescribed procedure for recruitment of teaching and non-teaching staff of a school. According to the said memo the candidate to be selected by the management of school has to be sponsored by employment exchange. Clause 2(b) of the said memo envisages that in case of receipt of non-availability certificate from the employment exchange, the school may advertise in a daily newspaper of the state. Since the candidate selected by the management of the petitioner school has not been sponsored by employment exchange, his selection cannot be approved.

The point which arises for consideration is whether the impugned action of respondent No. 3 in rejecting the selection of the employee of the petitioner school is violative of Article 30(1) of the Constitution.

It has been held by the Apex Court in TMA Pai Foundation vs. State of Karnataka [2002 (8) SCC 481] that the right to appoint teaching and non-teaching staff is the most important facet of minority's right to administer under Article 30 (1) of the Constitution. It was also held that a minority educational institution does not cease to be so, merely on receipt of aid from the State or its agencies. In other words, receipt of aid does not alter the nature or character of the minority educational institutions receiving aid.

It has been held by the Apex Court in a recent judgment in The Secretary, Malankara Syrian Catholic College vs. T. Jose & Ors. (Civil Appeal No. 8599 of 2003 – decided on 27.11.2006 that “Article 30 (1) clearly implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it which will in any way dilute or abridge the rights of the minorities to establish and administer educational institutions.” The State which gives aid to an educational institution can certainly impose such conditions as are necessary for the proper maintenance of the high-standards of education as the financial burden is shared by the State. In other

words, the conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some facet of administration. Obviously, all conditions that have relevance to the proper utilization of the aid by an educational institution can be imposed. That is why, it has been held in T.M.A. Pai Foundation (supra) that there can be regulatory measures for ensuring educational character and standards and maintaining academic excellence, as such regulations do not in any manner interfere with the right guaranteed under Article 30 (1) of the Constitution. Reference may, in this connection be made to the following observations of the Supreme Court in T.M.A. Pai (Supra)

“This means that the right under Article 30(1) implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution. The conditions that can normally be permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and fulfillment of the objectives of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority status of the educational institutions. Such conditions would be valid if they are also imposed on their educational institutions receiving the grant.”

In The Secretary, Malankara Syrian Catholic College (supra), while interpreting the judgment rendered by the Supreme Court in T.M.A. Pai Foundation (supra), it was held that the State can prescribe: -

- (i) the minimum qualifications, experience and other criteria bearing on merit, for making appointments,
- (ii) the service conditions of employees without interfering with the overall administrative control by the Management over the staff.
- (iii) a mechanism for redressal of the grievances of the employees.
- (iv) the conditions for the proper utilization of the aid by the educational institutions, without abridging or diluting the right to establish and administer educational institutions.

It was also held that if any regulation interferes with the overall administrative control by the management over the staff or abridges/ dilutes, in any other manner, the right to establish and administer educational institutions, such a regulation, to that extent, will be inapplicable to minority institutions.

Thus, it is well settled that the right to appoint the teaching and non-teaching staff for a minority educational institution is perhaps the most important facet of the right to administer an educational institution. The imposition of any trammel thereon, except to the extent of prescribing the requisite qualifications and experience or otherwise fostering the interests of the institution itself, cannot but be considered as a violation of the right guaranteed by Article 30(1) of the constitution. [State of Kerala vs. Very Revs. Mother Provincial, 1970 (2) SCC 417, The Ahmedabad St. Xavier's College Society vs. State of Gujarat. 1974 (1) SCC 717, Frank Anthony Public School Employees' Association vs. Union of India, 1986 (4) SCC 707, D.A.VS. College vs. State of Punjab, 1971 (2) SCC 269, All saints High School vs. Government of A.P., 1980 (2) SCC 478, St. Stephen's College vs. University of Delhi, 1992 (1) SCC 558, Board of Secondary Education & Teaching Training vs. Joint Director of Public Instructions, Sagar, 1998 (8) SCC 555].

Thus, the Management's right of a minority educational institution to choose a qualified person as the teacher/ lecturer of such institution is well insulated by the protective cover of Article 30(1) of the Constitution and it cannot be whittled down by any legislative act or executive fiat except for prescribing the qualifications and conditions of service for the post. Article 13 of the Constitution injuncts the State from making any act, rules or regulations that is violative of any of the fundamental rights guaranteed under Chapter III of the Constitution. It is thus clear that the freedom to appoint teaching and non-teaching staff of a minority educational institution has always been recognized as a vital facet of the right to administer the educational institutions within the meaning of Article 30 (1) of the Constitution.

In the instant case, the selection of candidate selected by the management of petitioner schools was not cancelled on account of non-fulfillment of eligibility criteria prescribed by the State Government. On the contrary, selection was rejected by respondent No. 3 on the sole ground that his name was not sponsored by employment exchange. It has to be borne in mind that admittedly the post was advertised in the newspaper 'Uttar Banga Sambad' dated 11.6.2005. There is nothing on the record to show or suggest that selection of the person by the management committee was not fair or transparent thus there appears to be no justification for respondent No. 3 to reject the selection of the Group "D" employee selected by the management of the petitioner school. The right to choose a member of the teaching and non teaching staff falls exclusively within the powers of the committee of management of a minority educational institution and which power is neither regulated nor can be regulated by the authorities as that would amount to clear inroad into the fundamental rights enshrined under Article 30 of the Constitution. P.A. Inamdar vs. State of Maharashtra (2005) 6SCC 537 this power of choice cannot be interfered with by the respondent No. 3. the management of the petitioner school has a right to fill up its vacant post subject to the rider that the controlling/regulatory authorities have a right to scrutinize and find out whether the person selected by the selection committee is eligible and suitable to be appointed as such keeping in view of the minimum qualification of the eligibility

prescribed therefor. The management's right of minority educational institution to choose a person of its choice for teaching or non-teaching staff is well insulated by the protective cover of the Article 30(1) of the Constitution and it cannot be whittled down by any legislative act or executive fiat except for prescribing the qualification and conditions of service for the post. Article 13 of the Constitution injuncts the State Government from making any Act, rules or regulations that is violative of any of the fundamental rights guaranteed under Chapter III of the Constitution.

For the foregoing reasons, Commission was constrained to observe that the impugned action of the respondent No. 3 in rejecting the selection of a Group "D" employee made by the management of the petitioner school is violative of the fundamental rights enshrined under Article 30(1) of the Constitution. Consequently the respondent No. 3, Additional District Inspector of Schools was directed to implement the findings of the Commission by granting approval of the selection of Group "D" employee made by the petitioner school.

## CHAPTER 8 – REFERENCES FROM CENTRAL GOVERNMENT AND STATE GOVERNMENTS AND COMMISSION’S RECOMMENDATIONS

Commission has received few references from the Central Government and State Governments. Most of the references from the State Government related to clarification regarding the right of the minority educational institutions. References were also received regarding the indicia to be followed for grant of minority status certificate. Replies have been sent to the concerned States in such cases. One or two references received from the State Government related to clarification on specific cases. Such matters were not registered as cases by the Commission and clarificatory advise has been given on them. Details of reference received from the Central Government and order passed by the Commission is given below: -

### Case No. 1687 of 2006

#### **Request to amend guidelines issued by AICTE**

Petitioner : Anjuman Hami-e-Muslimeen, Bhatkal, Karnatak

Respondent : 1. The Chairman, All India Council of Technical Education (AICTE),  
Indira Gandhi Sports Complex, Indraprastha Estate, ITO,  
New Delhi – 110 002.

2. Shri Kaushik Mukherjee, Principal Secretary, Education  
Department (Higher Education), Government of Karnataka,  
M.S. Building, Bangalore, Karnataka – 560 001.

The Ministry of Human Resource Development has forwarded the petition of the General Secretary, Anjuman Hami-e-Muslimeen, Bhatkal, Karnataka challenging Clause (4) of the Guidelines dated 03.11.2003 framed by the All India Council for Technical Education. According to the impugned Clause (4) of the Guidelines, states have been permitted to conduct a common entrance test(s) for admission to institutions conducting Degree in Engineering, Architecture/ Planning and Pharmacy Programmes within their states or join the AIEEE. State level tests shall however be restricted to fill up seats from the students of their own states only. According to the petitioner when the required number of students of the minority community is not available in a particular State, the minority educational institutions should be allowed to admit the students from outside the state also. Therefore, the petitioner wants that the impugned Clause (4) of the said Guidelines be suitably amended to cater the educational needs of the minority community.

Despite service of notice, none entered appearance on behalf of the respondents. The point for consideration is as to whether the command of the impugned Clause (4) of the Guidelines issued by the AICTE that “**STATE LEVEL TESTS SHALL**

**HOWEVER BE RESTRICTED TO FILL UP SEATS FROM THE STUDENTS OF THEIR OWN CHOICE ONLY”** is inconsonance with the law declared by the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 and P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537. It has been held by a Constitutional Bench of the Supreme Court in the clarificatory judgment of P.A. Inamdar (supra) that the predominance of religious/ linguistic minority students hailing from the State in which the minority educational institution is established should be present. The management bodies of such institutions cannot resort to the device of admitting the religious/ linguistic students of the adjoining State in which they are in a majority, under the façade of the protection given under Article 30(1) of the Constitution. Their Lordships have further clarified that religious/ linguistic minorities can admit students of their community of the adjoining states also, in which they are not in majority. Reference may, in this connection, be made to the following observations of their Lordships of the Supreme Court: -

“It necessarily follows from the law laid down in Pai Foundation 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 is lost. However, to borrow the words of Chief Justice S.R. Das in Kerala Education Bill a “sprinkling” of that minority from the other State on the same footing as a sprinkling of non-minority students, would be permissible and would not deprive the institution of its essential character of being a minority institution determined by reference to that State as a unit.”

(emphasis supplied)

It has been held in the case of Brahmo Samaj Education Society vs. State of West Bengal (2004) 6 SCC 224 that the state governments and their instrumentalities are obliged to take note of the declarations of the law made by the Supreme Court and amend their laws, rules and regulations to bring them in conformity with the principles set out therein.

For the foregoing reasons, Commission recommended to the Central Government to issue suitable directions to the All India Council for Technical Education, New Delhi to suitably amend Clause (4) of the Guidelines dated 03.11.2003 allowing the educational institutions covered under Article 30 (1) of the Constitution to admit a sprinkling of that minority from the adjoining states in which it is not in a majority.

## CHAPTER 9 – STUDIES UNDERTAKEN BY THE COMMISSION

The provisions of the NCMEI Act include mandate to the Commission to take up specific issues and make appropriate recommendations to the concerned authorities. The following Sub Sections (d) and (g) of Section 11 of NCMEI Act are relevant:

“(d) review the safeguards provided by or under the Constitution, or any law for the time being in force, for the protection of educational rights of the minorities and recommend measures for their effective implementation;

(g) Make recommendations to the appropriate Government for the effective implementation of programmes and schemes relating to the Minority Educational Institutions.”

Commission could take up only very few issues as per the above mandate due to lack of staff. The Commission has requested the Government to provide additional staff and projects would be undertaken after additional staff is in position. With the present staff available, Commission has made analysis of the complaints/petitions received and on the basis of studies made of various rules and regulations notified by various State Governments, Commission has formulated guidelines for the determination of minority status, recognition, affiliation and related matters in respect of minority educational institutions under the Constitution of India. These guidelines have been printed in the form of a booklet and has been sent to all the State Governments and the concerned authorities for their use/ guidance.

During the period, Commission has concentrated on disposing of cases of previous years. Large number of applications were received for grant of minority status certificate. On the basis of the clarifications given by the Commission, many State Governments have established appropriate mechanism for dealing with the grant of minority status certificate. Commission would take up issues and undertake studies on the identified subjects determined on the basis of interactions held with State Governments at various places. Some State specific subjects have also been identified. All these subjects would be taken up for case study in the next year after additional staff is made available.

Commission has constituted a Committee to study inadequacies in girls' education especially girls belonging to the Muslim community. This issue has become quite relevant in the light of the Sachhar Committee recommendations. During the interactions the Commission had at various places, it was found that education of girl child continues to suffer neglect even though in many instances girls have proved themselves to be no less capable and talented than boys. The dismal state of affairs of educational facilities available to the poorer sections of the minority communities has to be addressed properly. Commission found that education of girl child has been



given least priority especially with the backwardness and social taboos attached. The girl child in the muslim community is the worst sufferer. The Commission constituted a Committee of eminent women educationists for recommending ways and means to ameliorate the bleak situation. The Committee consists of the following members:-

<b>S. No.</b>	<b>Name</b>	<b>Designation</b>
1.	Smt. Ipsita Roy Chakraberty	Chairperson
2.	Sr. Jessy Kurian	Alternate Chairperson
3.	Smt. Neelam Romila Singh	Member
4.	Dr. Seema Wahab	Member
5.	Miss Bhupinder Jit Kaur	Member
6.	Ms. Annie Koshi	Member
7.	Smt. Sadia Dehlvi	Member
8.	Smt. Daljit Kaur	Member
9.	Smt. Abeda P. Inamdar	Member
10.	Ms. Atiya Mushtaque	Member
11.	Dr. Shabistan Gaffar	Member
12.	Mrs. Najma Nazim Kazi	Member
13.	Ms. Fauzia Khan	Member
14.	Ms. Rahmathunisa Abdul Azeez	Member
15.	Dr. S. Sumayaa Dawood	Member
16.	Ms. Noushaba Parveen	Member
17.	Mrs. Uzma Naheed Ghazi	Member
18.	Mrs. Rajni Sharon	Member

The Committee has been asked to study the subject thoroughly and submit its report at the earliest. Education of women is far more crucial for the progress, health and dynamism of a society and Commission hopes that with the recommendations of the committee, this neglected field can be addressed properly.

## CHAPTER 10 – RECOMMENDATION FOR THE INTEGRATED DEVELOPMENT OF EDUCATION OF THE MINORITIES

The competitive world today requires professionally educated students. Everyone is aware of the advantages of modern education and even the uneducated aspire for better standards of living. India today is a country poised for fast economic growth moving gradually to centre stage in the comity of nations. The Sachhar Committee Report has quite clearly brought out that the muslim community is lagging far behind others in education. They are literally scratching the bottom of the barrel of education. The indices to the educational backwardness of muslims in India are alarming. They are much below in education compared with others including SC/ ST. It is worrisome to find that the drop out rate in muslim community is rising steeply as they move up the pyramid of education. The muslim community has to be brought on par with the rest of the society educationally. If the current state of affairs continues, a large proportion of muslims would find it difficult to enter into the army of India's workforce and enlightened and inclusive democracy envisages that all sections and classes of people are well educated and intellectually equipped to shoulder the responsibility of a free nation.

Commission, to its dismay has found that the muslim minority community do not have enough educational institutions unlike the Christian community which has, for a long period of time, been in the forefront of establishing educational institutions. Unfortunately not many persons have come forward from Muslim community to establish educational institutions. This is particularly relevant in some States. While madaras have been set up in many States, they do not provide formal education. In the field of higher education very few educational institutions have been set up by the muslim community. This is a sorry state of affairs. While the minority institutions have the obligation to preserve and promote the culture and tradition of the particular community or religion they represent, such institutions should ensure that maximum admission is given to the children from the minority community. The quality of a minority institution is to be measured not only by what is achieved to promote the interest of the particular community but also by the contributions made by the institution towards improving academic excellence and the quality of life and social harmony of all people in the locality.

One of the major hurdles for establishing educational institutions is the non-availability of land and also the high prices of land in urban areas. The members of the minority community especially from the muslim community in many places have complained that they are not able to afford purchase of land for establishing educational institutions. Requirement of land for the educational institution in many States has not been changed for a long period of time, resulting in the requirement of highly priced land out of reach of the minority community. Commission feels that a review of the land requirement is urgently required taking into account the high prices of urban land. Commission would also suggest that State Governments should come forward to allot

land to enterprising individuals / societies at concessional/ affordable rates for establishment of educational institutions especially for the muslim community.

The existing minority educational institutions are absolutely inadequate to meet the admission requirements of minority children and youth at various levels of education. It should be the constant endeavour to see that students from minority communities are welcomed into all institutions and helped to grow academically and overcome their learning disabilities and achieve success in personality development, self-confidence, high academic achievement and employability in later life. They should also be assisted to acquire entrepreneurial skills and competence and capacity for self employment.

The index of the educational development of a community is, perhaps, the most significant factor in shaping public perceptions about its participation in nation building which, in turn, defines its image and respectability in public life. The obverse of participation is alienation. To fail to promote integration and empowerment is to invite albeit unwittingly, developmental paralysis and emotional alienation. Education has been widely recognized as a powerful tool for integration, especially in a religiously, culturally and linguistically plural society like ours. The current educational backwardness of Muslim portends a double loss. Members of the community lose out in terms of the emerging, unprecedented opportunities of a globalizing world. The country loses in terms of the inability of a substantial segment of its population to participate gainfully in its forward march to greater prosperity and quality of life.

Even though madarsas are centers of free education, the system of education followed in the madarsas is outdated and out of tune with the present day environment. There is an urgent need for bringing in modern education in the madarsas. The system of education in madarsas should be standardized to make it suitable to the emerging global scenario without compromising with the basic principles of madarsa education.

It is possible for Madarsas to provide the basic modern education and yet retain their essential character. They may safeguard their autonomy and may remain free from interference by the Government. Standardization of Madarsa System and mainstreaming of the Madarsa education has its relevance in our country which is fast emerging as a super power of the 21st century. The educational institutions are the instruments for the conversion of knowledge, for the discovery of the knowledge, for the distribution of knowledge and for the creation of knowledge makers. These Madarsas can create an inclusive environment to promote the concept of social justice as a step towards a fair and just society respecting non-discrimination. Every educational institution irrespective of community to which it belongs to is a melting pot in our national life. Secularism is one of the basic features of our constitution which obligates us to design a sound system of education for an inclusive society in which all religious values are reflected. India, with its multi-religious and multi-cultural society needs secularism for its sustenance. This is essential for survival of inclusive

democracy. Inclusion is a junction of equity, human rights and socio-economic justice. There is a need to sensitize managers of Madarsas about the role of education in resolving conflicts and evolving a peaceful society. There is also a need to inculcate a spirit of inquiry among the students, going beyond theoretical education that enables them to understand the issues of peace and justice in the proper perspective. In this context, the Madarsa education must promote an awareness and celebration of variety, diversity and plurality. It must reflect the reality of an emerging subaltern ferment in the national context and promote a positive attitude towards it and allocate due curricular space for it. Gandhiji has said, "If we are to teach real peace in the world, we shall have to begin with children".

Commission has already recommended to the Central Government to establish a Central Madarsa Board as an autonomous body through an Act of Parliament, duly insulated against Governmental interference. The recommendations of the Commission for the establishment of a Central Madarsa Board include provisions and safeguards against any governmental interference guaranteeing the autonomy of the Central Madarsa Board. Affiliation of the madarsas to the Central Madarsa Board is purely voluntary. The Central Madarsa Board will not have the power to dictate the theological contents of madarsa education. Commission recommends that the statutory Central Madarsa Board should be set up at the earliest.

## CHAPTER 11 – INSTANCES OF VIOLATION OR DEPRIVATION OF EDUCATIONAL RIGHTS OF THE MINORITIES

Article 30 (1) encapsulates an array of educational rights meant to ensure that the minorities are empowered to preserve the uniqueness and distinctiveness of their identity and culture as harmonious with the ethos of the “socialist, secular democracy” mentioned in the Preamble of the Constitution. The educational rights envisioned for the minorities are intelligible and invaluable only to the extent of being committed to the realization of this vision. It is universally acknowledged dictum that the feel-good factor of the minorities- the extent of security, empowerment and involvement they experience- is a significant index to the health and wholeness of a secular democracy.

The Acts and Rules passed by State Legislatures and the rules notified thereunder tend to be increasingly at variance from the spirit and scope of the law declared by the Supreme Court in respect of Article 30 (1). Instances have come to the notice of the Commission that Government orders in some States are whittling down the ambit of minority rights beyond the scope of the legislation that correspond to them. The widening gap between the law and the regulations evolved thereon is a matter of serious concern. Even after the apex court in its various judgments has clearly pronounced the rights enshrined under Article 30 (1) of the Constitution, there still exists many laws, rules and regulations which are not in conformity with the law declared by the Supreme Court. It is high time that all State Governments have a relook at all the existing Acts, laws, rules and regulations to ensure that all such Acts, etc. are amended/ modified to be in line with the law declared by the Supreme Court. It is well settled that any law/ executive direction which infringes the substance of the right guaranteed under Article 30 (1) of the Constitution is void to the extent of infringement. The fundamental right guaranteed under Article 30 (1) is intended to be effective and should not be whittled down by any administrative exigency. No inconvenience or difficulties, administrative, financial and political, can justify infringement of the fundamental right.

Some State Governments have assured the Commission to rectify the defects but we have found to our dismay that there is inordinate delay in this matter. One of the fundamental right bestowed by Article 30 is to get recognition as a minority educational institution. After prompting from the Commission many State Governments have established systems and procedures for the grant of minority status certificate. However, some States are still to set up any machinery in this regard.

The right under Article 30 (1) cannot be exercised in vacua nor it would be right to refer to grant of permission to open an educational institution or recognition as privileges granted by the State. In a democratic system of Government with emphasis on education and enlightenment of citizens, there must be elements which give protection to them. The meaningful exercise of the right under Article 30 (1) would and must necessarily involve grant of permission to establish an educational institution and recognition without which the right will be a mere husk.

It is necessary that there has to be uniformity of guidelines for grant of minority status certificate. In some States, various departments dealing with education have shown the tendency to work in isolation which has resulted in lack of coordination. Different criteria are applied by different departments for grant of minority status certificate which has confused the stake-holders who are made to run from pillar to post. This is relevant when same society establishes various types of institutions and has to deal with different departments of the Government. Commission has emphasized the need to have one nodal officer in each State Government/ Union Territory to handle such matters. Commission has also told State Governments to have a single guideline and a single authority to decide the issue regarding grant of minority status certificate. Taking into account the contents of complaints/ petitions received, Commission has issued guidelines for determination of minority status, recognition, affiliation and related matter in respect of minority educational institutions under the Constitution of India. These guidelines have been sent to all the State Government authorities and Commission hopes that these guidelines will be taken as a model by all the State Governments. A copy of the guidelines is at Annexure to this report.

Some of the State Governments are granting minority status certificate for a temporary period of one to three years. The minority educational institutions are forced to approach the authorities again and again to get the minority status certificate renewed for further period. The grant of minority status certificate for a temporary period is not acceptable. It has been held by the Supreme Court in N. Ammad vs. Manager, Emjay High School AIR 1999 SC50 that when the Government declared an institution as minority educational institution it has recognized a factual position that the institution was established and is being administered by a minority community. The declaration is only an open acceptance of a legal character which should necessarily have existed antecedent to such declaration.

It has been held by the Madras High Court in T.K. VS.T.S.S. Medical Educational & Charitable Trust vs. State of Tamil Nadu AIR 2002 Madras 42 that a minority status can not be conferred on a minority educational institution for particular period to be renewed periodically like a driving licence. It is not open for the State Government to review its earlier order conferring minority status on a minority educational institution unless it is shown that the institution concerned has suppressed any material fact while passing the order of conferral of minority status or there is fundamental change of circumstances warranting cancellation of the earlier order. Reference may, in this connection, be made to the following observations of their lordships: -

“..... In conclusion, we hold that if any entity is once declared as minority entitling to the rights envisaged under Article 30 (1) of the Constitution of India, unless there is fundamental change of circumstances or suppression of facts the Government has no power to take away that cherished constitutional right which is a fundamental right

and that too, by an ordinary letter without being preceded by a fair hearing in conformity with the principles of natural justice. “

Thus, a minority status certificate can't be granted for a short duration. The certificate once granted can be withdrawn on losing the minority status by such an institution or it can be withdrawn on contravention of any of the condition mentioned in Sec. 12C of the NCMEI Act.

The Hon'ble Supreme Court of India in TMA Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 and P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537 has clearly identified the basic ingredients of the right to administer conferred on minority educational institutions envisaged in Article 30 (1), which are the right:

- a) to admit students;
- b) to set up a reasonable fee structure;
- c) to constitute a governing body;
- d) to appoint staff (teaching and non teaching); and
- e) to take action if there is dereliction of duty on the part of any of the employees;
- f) Additionally the Apex Court has also clarified that the right to administer includes also the right to appoint the Head of the Institution, who has to serve as the chief executive arm of the Management.

Further, Article 15 of the Constitution has also been amended recently by inclusion of a sub-clause viz. Article 15 (5), which is as under: -

“(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.”

Freedom of choosing a qualified person as teaching staff by a minority institution has also been recognized by a stream of Supreme Court rulings as a vital facet of the right to administer an educational institution. It is well settled that a minority management is free to choose a qualified person as Principal/ teacher. The State or University cannot regulate the method or procedure for appointment of teaching and non-teaching staff. The role of the State or the University should be limited to the extent of ensuring

that Principal/ teacher selected by the minority management of their affiliated college fulfill the qualifications laid down by it. However, to our dismay, the Commission has noted that many of the rules and regulation still in force under various Acts of Universities and Government orders are contrary to the rights declared by the Apex court under Article 30 (1) of the Constitution. It is high time that the concerned authorities in the State Government take urgent action to rectify these mistakes as Commission has been receiving many petitions in this matter pointing out instances of violation and deprivation of the educational rights of the minorities.

In TMA Pai Foundation versus State of Karnataka (2002) 8 SCC 481, Supreme Court has ruled that the management of educational institutions covered under Article 30 (1) of the Constitution enjoys complete autonomy in respect of selection and appointment of teaching and non-teaching staff. The State of any regulatory authority cannot regulate the method or procedure for appointment of teaching and non-teaching staff of such institutions. The limited power vested with them is to prescribe the qualifications for these posts. The aforesaid decision is also an authority for the proposition of law that mere receipt of financial aid does not annihilate the right guaranteed to minority communities under Article 30 (1) to manage their own educational institutions.

The requirement of land for setting up institution has proved to be the biggest stumbling block for members of minority community who are not economically well off. There is a need to re-examine the requirement of land for establishing educational institutions in urban areas especially in metropolitan cities. In many metropolitan cities the prospective minority management cannot afford to meet, even on concessional rates, the land requirements. This is obviously so in respect of prescriptions that pertain to playgrounds and other sporting facilities. The time has come for the State to consider seriously the ideal of creating common sporting facilities for a cluster of schools in such cities and amending the regulations in this respect vis-à-vis individual institutions. There is also a need to consider making available land at concessional rates to social service oriented and philanthropic organizations desirous of establishing minority educational institutions.



## CHAPTER 12 – CONCLUSION

Commission has made certain recommendations in the previous chapters. In this chapter all the recommendations are being consolidated. Some amendments to the NCMEI Act were suggested by the Commission to the Government as, during its functioning, certain bottlenecks were found in the proper implementation of the Act which required to be removed. Some provisions which were not clear and ambiguous were to be re-worded to insulate them from interpretation. Therefore, Commission, after careful consideration, made the following recommendations for amending the NCMEI Act.

### **Amendment to Section 2 (g)**

**Section 2 (g)** of the Act defines a minority educational institution as under:

“(g) Minority Educational Institution” means a college or institution (other than a University) established or maintained by a person or group of persons from amongst the minorities;”

### **Justification for amendment**

A bare reading of the section makes it clear that a University has been excluded from the definition of a minority educational institution. The exclusion of a University from the definition of a minority educational institution runs counter to the dictum of law laid down by the two constitutional Benches of the Supreme Court. In Syed Azeez Basha vs. Union of India (AIR 1968 SC 662) the Supreme Court has held that the words “educational institution” employed in Article 30 (1) of the Constitution are of wide import and would include a university also. In TMA Pai Foundation vs. State of Karnataka 2002 [(8) SCC 481] it has been held by the Supreme Court that the expression “education” in Article 30 (1) of the Constitution means and includes education at all levels, from the primary school level upto the postgraduate level and it also includes professional education. The Supreme Court has further held that the expression “educational institutions” means institutions that impart education. It has been held by the Supreme Court in Brahmo Samaj vs. State of West Bengal (2004) (6 SCC 224) that it is the duty of the State to take note of the law declared by the Supreme Court and amend its Acts and statutes so as to bring them in consonance with the law declared by the Apex Court. Consequently, the words “other than a University” occurring in Section 2 (g) of the Act have to be deleted.

It is also pertinent to point out that the Central Educational Institutions (Reservation in Admission) Act, 2006 passed by the Parliament defines minority educational institutions as under: -

## **Section 2(f)**

“Minority Educational Institutions” means an institution established and administered by the minorities under clause (1) of article 30 of the Constitution and so declared by an Act of Parliament or by the Central Government or declared as a Minority Educational Institution under the National Commission for Minority Educational Institutions Act, 2004.

In the above definition, University has not been excluded. Therefore, the exclusion of University in the definition of ‘minority educational institution’ in Section 2(g) of NCMEI Act, 2004 would not be in consonance with the above-mentioned definition.

Similarly, the word “or” employed in Section 2(g) of the Act has to be substituted by the word “and”.

It has been held by the Supreme Court in Azeez Basha’s case (supra) that the words “establish” and “administer” in Article 30 (1) of the Constitution must be read conjunctively so that minorities will have the right to administer educational institutions of their choice provided they have established them. The Article can not be read to mean that even if the institution has been established by somebody else, a religious or linguistic minority can claim the right to administer it, even though it might have been administering it from sometime before the Constitution came into force. Even if it is established by a single member on behalf of the minority community, it is entitled to be administered in accordance with Article 30 (1).

After incorporating the said amendments, the amended Section 2 (g) will be read as under; -

“Minority Educational Institution” means a college or an educational institution established and administered by a person or group of persons from amongst the minorities”.

## **Section 10 (1)**

Sub-section 1 of Section 10 the NCMEI Act is as under:

**“10. Right to establish a Minority Educational Institution.–** (1) Any person who desires to establish a Minority Educational Institution may apply to the competent authority for the grant of no objection certificate for the said purpose”.

## **Justification for amendment**

A bare reading of the above provision gives an impression that ‘No Objection Certificate’ is required for establishment of a minority educational institution in all cases.

As per the provisions of various laws regulating the establishment of minority educational institutions, especially relating to technical and professional colleges, it is not mandatory to get the 'No Objection Certificate' from the competent authority under the State Government. The competent authority in the NCMEI Act has been defined as follows:

“Competent authority” means the authority appointed by the appropriate Government to grant no objection certificate for the establishment of any educational institution of their choice by the minorities.

In certain Central enactments relating to establishment of professional colleges, no 'No Objection Certificate'/ Essentiality Certificate for establishment of such professional institutions is required from the State Government, as these institutions are covered by Entry 66 of List I of Schedule VII to the Constitution. In the case of State of Maharashtra vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors. (JT 2006 (4) SC 201), it has been held by the Supreme Court that so far as coordination and determination of standards for higher education or research in scientific and technical institutions are concerned, the subject is exclusively covered by Entry 66 of List I of Schedule VII to the Constitution and the State has no power to encroach upon the legislative power of the Parliament. That being so, in such cases, 'No Objection Certificate'/ Essentiality Certificate from the State Government is not required for establishment of an educational institution.

Therefore it is proposed that the following expression may be added before the words “any person” employed in Sub-section (1) of Section 10: -

“Subject to such law, as may be made by the appropriate Government,”

After amendment, Sub-section (1) *ibid* shall be read as under: -

“Subject to such law, as may be made by the appropriate Government, any person who desires to establish a Minority Educational Institution may apply to the competent authority for the grant of no objection certificate for the said purpose.”

### **Section 12 B**

Section 12 B of the Act provides right to appeal against the order of rejection of the application for grant of minority status certificate to a minority educational institution. Sub-section (4) lays down the procedure for disposal of the appeal filed before the Commission.

Sub-section (4) is as under:

“(4) On receipt of the appeal under sub-section (3), the Commission may, after giving the parties to the appeal an opportunity of being heard, and in consultation with the State Government, decide on the minority status of the educational institution and shall proceed to give such directions as it may deem fit and, all such directions shall be binding on the parties”.

### **Justification for amendment**

The requirement of consultation with the State Government for deciding an appeal is against the principles of natural justice. It is well settled that statutory enactments must ordinarily be construed according to their plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unworkable or totally irreconcilable with the rest of the statute. If an appeal provided under Section 12B is to be decided with the consent or concurrence of the State Government, then that procedure will be offending the principles of natural justice. It virtually takes away the substantive right of appeal created in favour of an aggrieved party, as the result of the appeal will depend not on the merits of the case, but on the consent of the respondent and that would result in gross injustice to the appellant. It is hardly likely that that was the intention of the Legislature, as such an interpretation would lead to absurdity or injustice to one of the parties in the proceedings.

The aforesaid expression also leads to an inference that what the Parliament had given with one hand is taken away with the other. The expression “**and in consultation with the State Government**” completely destroys the right of appeal created in favour of the aggrieved party.

Therefore, it is recommended that the expression “**and in consultation with the State Government**” in sub-section 4 of Section 12B of the NCMEI Act may be deleted.

Commission recommends that the above-mentioned amendments are carried out urgently.

Commission has made recommendations to the Government for establishment of a statutory Central Madarsa Board. Such a Board is required for coordinating and standardizing the Madarsa system of education and also would facilitate integrated development of Madaras and its mainstreaming. The Board to be established as an autonomous body, should be through an Act of Parliament, which would be duly insulated from Government interference, given the extreme sensitivities and anxieties that lurk in this domain. In view of the endemic anxieties that pertain to the reform of Madarsa education, the proposed scheme recommended by the Commission for the Central Madarsa Board incorporates adequate provisions and safeguards against governmental interference in the Madaras and guarantees the autonomy of the Central

Madarsa Board. This leaves no margin whatsoever for any reasonable anxiety on the part of the clerics and the self-styled custodian of Islam in India. Affiliation to the Central Madarsa Board is purely voluntary and an affiliated Madarsa can pull out of affiliation at any time. The Central Madarsa Board will not have the power to dictate the theological content of Madarsa education.

The Commission is glad to know that Government has accepted the proposal in-principle and hopes that the legislation is passed at the earliest.

In the earlier chapters, Commission has mentioned about the problems faced by the minority educational institutions in getting minority status certificate. Even though the primary responsibility of recognizing the educational institutions and grant of minority status lies with the authorities of the State Governments, many State Governments are yet to establish proper infrastructure for dealing with this matter. In some States, which have set up the machinery, minority status certificate is being issued for a temporary period. In chapter 11, Commission has clearly pointed out that minority status certificate cannot be granted for a short duration. For facilitating the State Government authorities, Commission has brought out guidelines which inter alia brings out the criteria for grant of minority status certificate. Commission recommends that all State Governments should set up proper mechanism for grant of minority status certificate and should follow the guidelines issued by the Commission. Minority status certificate should be granted on a permanent basis which can be withdrawn or cancelled after following due process of law.

Commission has found that the rules and regulations made by the State Governments are inconsistent with the provisions of Article 30(1). The Apex court in its various judgements have clearly pointed out the rights enshrined under Article 30(1). If any provision of a law made by the legislature of a State is repugnant to any provision of the law made by the Parliament which the Parliament is competent to enact or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List then, subject to the provisions of Article 254, the law made by Parliament shall prevail and the law made by the Legislature shall to the extent of repugnancy be void. Commission during its visits to various States has advised the State Government authorities to amend / modify the laws and rules so that they are in consonance with the rights enshrined under Article 30. Commission recommends that the Central Government should also impress upon the State Governments and Union Territories to immediately look into all the concerned laws, rules and regulations to see that amendments are carried out, if necessary, to bring them in consonance with the rights given under Article 30 of the Constitution.

The Central Government has initiated various programmes for the upliftment of the educationally backward minority communities. The madarsas have also been brought under the ambit of Sarva Shiksha Abhiyan in addition to the financial assistance programme for modernization of the madarsas. Commission has been getting a large

number of complaints wherein it is alleged that the madarsas are not getting due recognition from the State Government for availing of the benefits of the Central Schemes. In order that more madarsas are able to impart modern education, it is recommended that Central Government take up the matter with the State Governments for ensuring that benefits of central schemes reach more madarsas.

Many universities are yet to modify their statutes, rules and regulations to make them in consonance with the law declared by the Supreme Court under Article 30. Many universities have cited that they are following the guidelines of the regulatory authorities. Commission therefore request the Central Government to look into the rules and regulations made by the Central regulatory authorities in education like U.G.C., AICTE, NCTE, MCI, DCI, CBSE, etc. to see that they are in consonance with the law declared by the Supreme Court under Article 30. Reference in this connection is made to the decision of the Supreme Court in Bramho Samaj vs. State of West Bengal (2004) 6 SSC 224.

There is an urgent need for giving better facilities for the education of students from minority community for which extra efforts like special coaching is required. Commission requests that the Government should bring out schemes which would benefit the minority communities in getting access to tuition/ coaching classes which would afford them better opportunities in education and employment.

Without financial aid from the State Government, it will be difficult for the educational institutions which are located in rural, remote and tribal areas to sustain themselves and provide reasonable standards of education. Educational institutions which are located in such areas mainly cater to the poorer and downtrodden section of the society, which are not able to contribute in the form of fee. In such cases, the State had a duty to encourage private entrepreneurs to establish and run educational institutions of reasonable standard. In many remote and under-developed areas educational institutions run by the minority communities are raising hope for the poor people.

Commission has been receiving many complaints regarding the reluctance of the State Governments to grant recognition to new educational institutions established by the minority community. With the Government's decision to make education compulsory for all children between the age group of 6-14 years, it becomes all the more necessary that more educational institutions especially at school level are established. Commission has found that the reluctance of the State Governments to grant recognition to schools is primarily based on reluctance to provide grant-in-aid. There have been instances where State Governments wanted to withdraw from its role to provide grant-in-aid. While grant-in-aid is not a constitutional imperative, in many cases minority educational institutions located in rural/ remote and tribal areas find it difficult to fend for themselves as it becomes impossible to collect fees from the poorer sections of the society. For such educational institutions it will be difficult to

sustain themselves and provide reasonable standards of education without financial aid from the State Government. Needless to mention here that teachers at least should be paid a basic minimum salary to sustain themselves. In many remote and under-developed areas educational institutions run by the minority communities are the only rays of hope for the poor people. The State has a duty to support and strengthen such institutions especially with reference to the constitutional mandate to provide free and universal education for all children in the age group of 6-14 years enshrined under Article 21 A. States should not shy away from this constitutional responsibility. Commission therefore recommends that State Governments should be directed to provide grant-in-aid to minority educational institutions located in far-flung, remote, tribal and under-developed areas.





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# **ANNEXURE**

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

Guidelines for determination of Minority Status, Recognition,  
Affiliation and related matters in respect of Minority Educational  
Institutions under the Constitution of India.

Article 30(1) of the Constitution of India gives linguistic and religious minorities a fundamental right to establish and administer educational institutions of their choice. These rights are protected by a prohibition against their violation. The prohibition is contained in Article 13 of the Constitution which declares that any law in breach of the fundamental rights would be void to the extent of such violation. It is well-settled that Article 30(1) can not be read in a narrow and pedantic sense and being a fundamental right, it should be given its widest amplitude. The width of Article 30(1) cannot be cut down by introducing in it considerations which are destructive to the substance of the right enshrined therein.

The National Commission for Minority Educational Institutions Act (for short the 'Act') has been enacted to safeguard the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

It has been held by the Eleven Judges Bench of the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 that a minority, whether linguistic or religious, is determinable only by reference to demography of the State and not by taking into consideration the population of the country as a whole. The application of numerical test with reference to religion in states like Punjab, Jammu & Kashmir and Nagaland makes Sikhism, Islam and Christianity, the majority religions in those states respectively. (See D.A.V. College vs. State of Punjab AIR 1971 SC 1731).

As regards the indicia to be prescribed for grant of minority status certificate, a reference to Section 2(g) of the Act has become inevitable as it defines a Minority Educational Institution. Section 2 (g) is as under : -

“Minority Educational Institution” means a college or institution (other than a University) established or maintained by a person or group of persons from amongst the minorities”

In Section 2(g), the expressions 'established' or 'maintained' have been used by the legislature. The word 'or' is normally disjunctive and the word 'and' is normally conjunctive (See Hyderabad Asbestos Cement Product vs. Union of India 2000 (1) SCC 426), but at times they are read as vice versa to give effect to the manifest intention of the legislature as disclosed from the context. (See Ishwar Singh Bindra vs.

State of Uttar Pradesh AIR 1968 SC 140; MCD of Delhi vs. Tek Chand Bhatia AIR 1980 SC 360)

In Azeez Basha vs. Union of India AIR 1968 SC 662, a Constitutional Bench of the Supreme Court has held that the expression “establish and administer” used in Article 30(1) was to be read conjunctively that is to say, two requirements have to be fulfilled under Article 30(1), namely, that the institution was established by the community and its administration was vested in the community. In S.P. Mittal vs. Union of India AIR 1983 SC 1, the Supreme Court has held that in order to claim the benefit of article 30(1), the community must show; (a) that it is a religious/linguistic minority, (b) that the institution was established by it. Without specifying these two conditions it cannot claim the guaranteed rights to administer it. Thus the word ‘or’ occurring in the definition of minority educational institution in Section 2(g) of the National Commission for Minority Educational Institutions Act has to be read conjunctively as the context showed that it was the intention of the legislature.

In St. Stephen’s College vs. University of Delhi (1992) SCC 558, the Supreme Court has declared the St. Stephen’s College as a minority educational institution on the ground that it was established and administered by members of the Christian Community. Thus, these were the indicia laid down by the Supreme Court for determining the status of a minority educational institution and they have also been incorporated in Section 2(g) of the Act. Article 30(1) of the Constitution postulates that members of religious or linguistic minority has the right to establish and administer educational institutions of their choice. It is a matter of proof through production of satisfactory evidence that the institution in question was established by the minority community claiming to administer it. The proof of the fact of the establishment of the institution is a condition precedent for claiming the right to administer the institution. The onus lies on one who asserts that an institution is a minority institution. It has been held by a Division Bench of the Madras High Court in T.K.V.T.S.S. Medical Educational and Charitable Trust vs. State of Tamil Nadu AIR 2002 Madras 42 that “once it is established that the institution has been established by a linguistic minority, and is administered by that minority, that would be sufficient for claiming the fundamental right guaranteed under Article 30(1) of the Constitution.” The same principle applies to religious minority also. In Andhra Pradesh Christian Medical Association vs. Government of Andhra Pradesh, AIR 1986 SC 1490, the Supreme Court has held that the Government, the University and ultimately the Court can go behind the claim that the institution in question is a minority institution and “to investigate and satisfy itself whether the claim is well founded or ill founded.” A minority educational institution continues to be so whether the Government declares it as such or not. When the Government declares an educational institution as a minority institution, it merely recognizes a factual position that the institution was established and is being administered by a minority community. The declaration is merely an open acceptance of the legal character of the institution which must necessarily have existed antecedent to such declaration (N. Ammad vs. Emjay High School (1998) 6 SCC 674).

A Society or Trust consisting of members of a minority community, or even a single member of a minority community, may establish an institution. The position has been clarified by the Supreme Court in State of Kerala vs. Mother Provincial AIR 1970 SC 2079, the Supreme Court has observed:

“Establishment means bringing into being of an institution and it must be by a minority community. It matters not if a single philanthropic individual with his own means, institution or the community at large founds the institution or the community at large contributes the funds. **The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by a member of that community.** It is equally irrelevant to this right that in addition to the minority community, others from other minority communities or even from the majority community can take advantage of these institutions.”

(emphasis supplied)

In Christian Medical Association (supra) the Supreme Court has also held 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.” Needless to add here that the right enshrined in Article 30(1) of the Constitution is meant to benefit the minority by protecting and promoting its interests. There should be a nexus between the institution and the particular minority to which it claims to belong. The right claimed by a minority community to administer the educational institutions depends upon the proof of establishment of the institution. In P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537, following questions arose for consideration:

- i) Whether a minority educational institution, though established by a minority, can cater to the needs of that minority only?
- ii) Can there be an inquiry to identify the person or persons who have really established the institution?
- iii) Can a minority institution provide cross border or inter state educational facilities and yet retain the character of minority educational institution?

It has been held in Inamdar’s case (supra) “the minority institutions are free to admit students of their own choice including students of non-minority community and also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational status is lost. If they do so, they lose the protection of Article 30(1) of the Constitution”.

It has been held in Kerala Education Bill AIR 1958 SC 956 that “Articles 29(2) and 30(1), read together, clearly contemplate a minority institution with a ‘sprinkling’ of

outsiders” admitted in it. By admitting a member of non minority into the minority institution it does not shed its character and cease to be a minority institution”.

It has to be borne in mind the right guaranteed under Article 30(1) is a right not conferred on individuals but on religious denomination or section of such denomination. It is also universally recognised that it is the parental right to have education of their children in the educational institutions of their choice. It has been held by a Full Bench of the Karnataka High Court in Associated Managements of Primary and Secondary Schools in Karnataka vs. State of Karnataka and Ors. 2008 K.L.J 1 (Full Bench) that the words of “their choice” which qualify “educational institutions” shows the vast discretion and option which minorities have in selecting the type of the institution which they want to establish.”

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 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.

Mere receipt of state aid does not annihilate the right guaranteed under Article 30(1). It has been held in the case of P.A. Inamdar (Supra) that “a minority institution does not cease to be so, the moment grant-in-aid is received by the institution. An 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 under Article 29(2) are not infringed. What would be a reasonable extent, would vary from the types of institution, the courses of education for which admission is being sought and other factors like educational needs. **The State Government concerned has to notify the percentage of the minority students to be admitted in the light of the above observations.**”

Their Lordships of the Supreme Court has further observed in the case of P.A. Inamdar (Supra) that “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 to conserve its religion and language, and (ii) to give a thorough good general education to the children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the aforesaid two objectives, the institution would remain a minority institution.”

In St. Stephen’s case the Supreme Court had ruled that Article 30(1) is a protective measure only for the benefit of the religious and linguistic minorities and “no ill fit or camouflaged institution can get away with a constitutional protection.”

Emphasising 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. The management of a minority institution cannot resort to the device of admitting the minority students of the adjoining state in which they are in majority to preserve minority status of the institution. Reference may, in this connection be made to the following observations made in the case of T.M.A. Pai (Supra): -

“.....If so, such an institution is under an obligation to admit the bulk of the students fitting into the description of the minority community. Therefore the students of that group residing in the State in which the institution is located have to be necessarily admitted in a larger measure because they constitute the linguistic minority group as far as that State is concerned. In other words the pre-dominance of linguistic minority students hailing from the State in which the minority educational institution, is established should be present. The Management bodies of such institutions cannot resort to the device of admitting the linguistic students of the adjoining states in which they are in a majority, under the facade of the protection given under Article 30(1)”.

In Inamdar’s case (supra) the said proposition of law has been applied to religious minority. According to their Lordships, “if any other view was to be taken the very objective of conferring the preferential right of admission by harmoniously construing Article 30(1) and 29(2) may be distorted”. It was further observed in Inamdar’s case that “it necessarily follows from the law laid down in T.M.A Pai Foundation 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 is lost. However, to borrow the words of Chief Justice S.R. Dass in Kerala Education Bill, “a sprinkling of that majority from the other States on the same footing as a sprinkling of non minority students would be permissible and would not deprive the institution of its essential character of being a minority institution, determined by reference to that State as a unit”.

As regards the prescription of a percentage governing admissions in a minority educational institution, it would be useful to excerpt the following observations of their

lordships of the Supreme Court in T.M.A. Pai foundation Case vs. State of Karnataka (2002) 8 SCC 481.

“.....The situation would vary according to the type of 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 the students of the minority group, at the 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. However, even if it is possible to fill up all the seats with students of the minority group, the moment the institution is granted aid; the institution will have to admit students of the non minority group to a reasonable extent, whereby the character of the institution is not annihilated, and at the same time, the rights of the citizen engrafted under Article 29(2) are not subverted.”

**The State Government can prescribe percentage of the minority community to be admitted in a minority educational institution taking into account the population and educational needs of the area in which the institution is located. There cannot be a common rule or regulation or order in respect of 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.** Thus a balance has to be kept between two objectives — preserving the right of the minorities to admit students of their own community and that of admitting “sprinkling of outsiders” in their institutions subject to the condition that the manner and number of such admissions should not be violative of the minority character of the institution. It is significant to mention here that Section 12C (b) of the Act **also empowers the State Government to prescribe percentage governing admissions in a minority educational institution.** Thus the State Government has to prescribe percentage governing admissions of students in the minority educational institutions in accordance with the aforesaid principles of law enunciated by their lordships of the Supreme Court in the cases of T.M.A. Pai Foundation and P.A. Inamdar (supra).

The emphatic point in the P.A. Inamdar (Supra) reasoning is that the minority educational institution is primarily for the benefit of minority. Sprinkling of the non-minority students in the student population of minority educational institution is expected to be only peripheral either for generating additional financial source or for cultural courtesy. Thus, a substantive section of student population in minority educational institution should belong to the minority. In the context of commercialisation of education, an enquiry about composition of student population of minority educational institution will reveal whether the substantive peripheral formula that can be gathered from P.A. Inamdar is adequately complied with or whether minority educational institution is only a facade for money making.

It needs to be highlighted that Sec. 2 (f) of the Central Educational Institutions (Reservation in Admission) Act, 2006, defines a minority educational institution as under: -



“Minority Educational Institution” means an institution established and administered by the minorities under clause (1) of article 30 of the Constitution **and so declared by an Act of Parliament or by the Central Government or declared as a minority educational institution under the National Commission for Minority Educational Institutions Act, 2004;**

(emphasis supplied)

On a reading of Article 30(1) of the Constitution read with several authoritative pronouncements of the Supreme Court and the definitions of Minority Educational Institution in Section 2(g) of the Act and Section 2(f) of the Central Educational Institutions (Reservation in Admission) Act, 2006, the following facts should 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.

The aforesaid facts may be proved either by direct or circumstantial evidence. There must be some positive index to enable the educational institution to be identified with religious minorities. There should be nexus between the means employed and the ends desired. If the minority educational institution concerned is being run by a trust or a registered society, then majority of the trustees of the trust or members of the society, as the case may be, must be from the minority community and the trust deed/ Articles of Association or any other document duly executed in this regard must reflect the objective of sub-serving the interest of the minority community. In the absence of any documentary evidence some clear or cogent evidence must be produced to prove the aforesaid facts. There is no bar to the members of other communities to extend their help to the member of a minority community to establish an educational institution of its choice. (See S.K. Patro vs. State of Bihar AIR 1970 SC 259).

As has been held by the Madras High Court in T.K.V.T.S.S. Medical Educational & Charitable Trust vs. State of Tamil Nadu AIR 2002 Madras 42 **that a minority status can not be conferred on a minority educational institution for particular period to be renewed periodically like a driving license. It is not open for the State Government to review its earlier order conferring minority status on a minority educational institution unless it is shown that the institution concerned has suppressed any material fact while passing the order of conferral of minority status or there is fundamental change of circumstances warranting cancellation of the earlier order.** Reference may, in this connection, be made to the following observations of their lordships :-

“.....In conclusion, we hold that **if any entity is once declared as minority entitling to the rights envisaged under Article 30(1) of the Constitution of India, unless there is fundamental change of circumstances or suppression of facts the Government has no power to take away that cherished constitutional right which is a fundamental right and that too, by an ordinary letter without being preceded by a fair hearing in conformity with the principles of natural justice.**”

(emphasis supplied)

It is now well settled that any administrative order involving civil consequences has to be passed strictly in conformity with the principles of natural justice (See AIR 1978 S.C. 851). If any order relating to cancellation of minority status granted to a minority educational institution has been passed without affording an opportunity of being heard to such educational institution, it gets vitiated.

If a minority status certificate has been obtained by practicing fraud or if there is any suppression of any material fact or any fundamental change of circumstances warranting cancellation of the earlier order, the authority concerned would be within its powers to cancel the minority status certificate after affording an opportunity of being heard to the management of the institution concerned, in conformity with the principles of natural justice.

It is also relevant to note that the minority status certificate granted by this Commission or **by any authority** can be cancelled under Section 12C of the Act on violation of any of the conditions enumerated therein. Section 12C is as under: -

**“12C. Power to cancel.-**The Commission may, after giving a reasonable opportunity of being heard to a Minority Educational Institution to **which minority status has been granted by an authority or Commission, as the case may be**, cancel such status under the following circumstances, namely: -

- (a) if the constitution, aims and objects of the educational institution, which has enabled it to obtain minority status has subsequently been amended in such a way that it no longer reflects the purpose, or character of a Minority Educational Institution;
- b) if, on verification of the records during the inspection or investigation, it is found that the Minority Educational Institution has failed to admit students belonging to the minority community in the institution as per rules and prescribed percentage governing admissions during any academic year.”

(emphasis supplied)

The parliamentary paramountcy has been provided for by Articles 246 and 254 of the Constitution. In view of the mandate of these Articles of the Constitution, the National Commission for Minority Educational Institutions Act, 2004, being a Central law shall prevail over the State law. The State Government cannot add, alter or amend any provision of the Act by issuing executive instructions. (See Greater Bombay Co-op. Bank Ltd. Vs. M/s. United Yarn Tex. Pvt. Ltd & Ors. JT 2007 (5) SC 201).

### **Affiliation And Recognition**

Although Article 30(1) of the Constitution does not speak of the conditions under which the minority educational institution can be affiliated to a university yet the Article by its very nature implies that where an affiliation is asked for, the university concerned cannot refuse the same without sufficient reasons or try to impose such conditions as would completely destroy the autonomous administration of the educational institution.

Section 10A of the Act confers a right on a minority educational institution to seek affiliation to any university of its choice. Section 10A is as under : -

**“10A. Right of a Minority Educational Institution to seek affiliation.-**

(1) A Minority Educational Institution may seek affiliation to any University of its choice subject to such affiliation being permissible within the Act under which the said University is established.

(2) Any person who is authorised in this behalf by the Minority Educational Institution, may file an application for affiliation under sub-section (1) to a University in the manner prescribed by the Statute, Ordinance, rules or regulations, of the University:

Provided that such authorised person shall have right to know the status of such application after the expiry of sixty days from the date of filing of such application.”

Recognition is a facility, which the State grants to an educational institution. No educational institution can survive without recognition by the State Government. Without recognition the educational institutions can not avail any benefit flowing out of various beneficial schemes implemented by the Central Government. Affiliation is also a facility which a university grants to an educational institution. In Managing Board of the Milli Talimi Mission Bihar & ors. vs. State of Bihar & ors. 1984 (4) SCC 500, the Supreme Court has clearly recognized that running a minority institution is also as fundamental and important as other rights conferred on the citizens of the country. If the State Government declines to grant recognition or a university refuses to grant affiliation to a minority educational institution without just and sufficient grounds, the direct consequence would be to destroy the very existence of the institution itself. Thus, refusal

to grant recognition or affiliation by the statutory authorities without just and sufficient grounds amounts to violation of the right guaranteed under Article 30(1) of the Constitution.

The right of the minorities to establish educational institutions of their choice will be without any meaning if affiliation or recognition is denied. It has been held by a Constitutional Bench of the Supreme Court in St. Xavier's College, Ahmedabad vs. State of Gujarat 1974 (1) SCC 717 that "affiliation must be a real and meaningful exercise of right for minority institutions in the matter of imparting general secular education. Any law which provides for affiliation on terms which will involve abridgment of the right of linguistic and religious minorities to administer and establish educational institutions of their choice will offend Article 30(1): The educational institutions set up by minorities will be robbed of their utility if boys and girls cannot be trained in such institutions for university degrees. Minorities will virtually lose their right to equip their children for ordinary careers if affiliation be on terms which would make them surrender and lose their rights to establish and administer educational institutions of their choice under Article 30. The primary purpose of affiliation is that the students reading in the minority institutions will have qualifications in the shape of degrees necessary for a useful career in life. The establishment of a minority institution is not only ineffective but also unreal unless such institution is affiliated to a University for the purpose of conferment of degrees on students." It has been held in T.M.A. Pai Foundation (supra) that affiliation and recognition has to be available to every institution that fulfills the conditions for grant of such affiliation and recognition.

The right of the minorities to establish and administer educational institutions of their choice under Article 30(1) of the Constitution is subject to the regulatory power of the State for maintaining and facilitating the excellence of the standard of education. Reference may, in this connection be made to following observations of their lordships in the clarificatory judgement rendered by a Constitutional Bench of the Supreme Court in PA. Inamdar vs. State of Maharashtra.

**"121. Affiliation or recognition by the State or the Board or the university competent to do so, cannot be denied solely on the ground that the institution is a minority educational institution. However, the urge or need for affiliation or recognition brings in the concept of regulation by way of laying down conditions consistent with the requirement of ensuring merit, excellence of education and preventing maladministration. For example, provisions can be made indicating the quality of the teachers by prescribing the minimum qualifications that they must possess and the courses of studies and curricula. The existence of infrastructure sufficient for its growth can be stipulated as a prerequisite to the grant of recognition or affiliation. However, there cannot be interference in the day-to-day administration. The essential ingredients of the management, including admission of students, recruiting of staff and the quantum of fee to be charged, cannot be regulated.**

**122.** Apart from the generalised position of law that the right to administer does not include the right to maladminister, an additional source of power to regulate by enacting conditions accompanying affiliation or recognition exists. A balance has to be struck between the two objectives: (i) that of ensuring the standard of excellence of the institution, and (ii) that of preserving the right of the minority to establish and administer its educational institution. **Subject to a reconciliation of the two objectives, any regulation accompanying affiliation or recognition must satisfy the triple tests: (i) the test of reasonableness and rationality, (ii) the test that the regulation would be conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it, and (iii) that there is no inroad into the protection conferred by Article 30(1) of the Constitution, that is by framing the regulation the essential character of the institution being a minority educational institution, is not taken away.**

(emphasis supplied)

A minority educational institution seeking recognition/ affiliation must fulfill the statutory requirements concerning the academic excellence, the minimum qualifications of eligibility prescribed by the statutory authorities for Head Master/ Principal/ teachers/ lecturers and the courses of studies and curriculum. It must have sufficient infrastructural and instructional facilities as well as financial resources for its growth. No condition should be imposed for grant of recognition or affiliation, which would, in truth and in effect, infringe the right guaranteed under Article 30(1) of the Constitution or impinge upon the minority character of the institution concerned. If an abject surrender of the right guaranteed under Article 30(1) is made a condition of recognition or affiliation, the denial of recognition or affiliation would be violative of Article 30(1).

### **Conclusion**

A stream of Supreme Court decisions commencing with the Kerala Education Bill case and climaxed by the Eleven Judges Bench case in T.M.A. Pai Foundation (Supra) has settled the law for the present. The proposition of law enunciated in T.M.A. Pai Foundation is reiterated in the clarificatory judgement rendered by another Constitutional Bench of the Supreme Court in PA. Inamdar vs. State of Maharashtra [2005 (6) SCC 537]. The general principles relating to establishment and administration of educational institution by minorities may be summarized thus:

- (i) The right of minorities to establish and administer educational institutions of their choice guaranteed under Article 30(1) is subject to the regulatory power of the State for maintaining and facilitating the excellence of educational standard. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions,

or under the guise of exclusive right of management, to decline to follow the general pattern. The essential ingredients of the management, including admission of students, recruitment of staff and the quantum of fee to be charged cannot be regulated.

- (ii) The regulations made by the statutory authorities should not impinge upon the minority character of the institution. The regulations must satisfy a dual test—that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it. Regulations that embraced and reconciled the two objectives could be considered reasonable.
- (iii) All laws made by the State to regulate the administration of educational institutions, and grant-in-aid, will apply to minority educational institutions also. But if any such law or regulations interfere with the overall administrative control by the management over the staff, or abridges/dilutes in any other manner, the right to establish and administer educational institutions, such law or regulations, to that extent, would be inapplicable to minority institutions.
- (iv) The general laws of the land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation etc. applicable to all, will equally apply to minority educational institutions also.
- (v) The fundamental right guaranteed under Article 30(1) is intended to be effective and should not be whittled down by any administrative exigency. No inconvenience or difficulties, administrative and financial, can justify infringement of the fundamental right.
- (vi) Receipt of aid does not alter the nature or character of the minority educational institution receiving aid. Article 30(1) clearly implies that any grant that is given by the State to the minority educational institution cannot have such conditions attached to it which will in any way dilute or abridge the rights of the minorities to establish and administer educational institutions. But the State can lay down reasonable conditions for obtaining grant-in-aid and for its proper utilisation.
- (vii) The State can regulate the service conditions of the employees of the minority educational institutions to ensure quality of education. Any law intended to regulate service conditions of employees of educational institutions will apply to minority educational institutions also, provided that such law does not interfere with the overall administrative control of

the managements over the staff. The State can introduce a mechanism for redressal of the grievances of the employees.

(viii) The right of minorities to establish and administer educational institutions of their choice comprises the following rights:

(a) **to choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution.**

The freedom to choose the persons to be nominated as members of the governing body has always been recognized as a vital facet of the right to administer the educational institution. Any rule which takes away this right of the management has been held to be interfering with the right guaranteed by Article 30(1) of the Constitution. The management can induct eminent or competent persons from other communities in the managing Committees/ Governing Bodies. The management can induct a sprinkling of non-minority members in the managing Committees/ Governing Bodies. By inducting a non-minority member into the Managing Committee/ Governing Body of the minority educational institution does not shed its character and cease to be a minority institution. The minority character of a minority educational institution is not impaired so long as the Constitution of the Managing Committee/ Governing Body provides for an effective majority to the members of the minority community.

The State Government/ Statutory authorities cannot induct their nominees in the Managing Committee/ Governing Body of a minority educational institution. The introduction of an outside authority, however high it may be, either directly or through its nominees in the Managing Committee/ Governing Body of the minority educational institution to conduct the affairs of the institution would be completely destructive of the fundamental right guaranteed by Article 30(1) of the Constitution and would reduce the management to a helpless entity having no real say in the matter and thus destroy the very personality and individuality of the institution which is fully protected by Article 30 of the Constitution.

(b) **to appoint teaching staff (Teachers/ Lecturers and Head Masters/ Principals) also non-teaching staff; and to take action if there is dereliction of duty on the part of any of its employees.**

Autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institution. The State or any University/ Statutory authority can not under the cover or garb of adopting regulatory measures destroy the administrative autonomy of a minority educational institution or start interfering with the administration of the management of the institution so as to render the right of the administration of the institution concerned nugatory or illusory. The State Government or a University cannot regulate the method or procedure for appointment of Teachers/ Lecturers/ Headmasters/ Principals of a minority educational institution. Once a Teacher/ Lecturer/ Headmaster/ Principal possessing the requisite qualifications prescribed by the State or the University has been selected by the management of the minority educational institution by adopting any rational procedure of selection, the State Government or the University would have no right to veto the selection of those teachers etc.

The State Government or the University cannot apply rules/ regulations/ ordinances to a minority educational institution, which would have the effect of transferring control over selection of staff from the institution concerned to the State Government or the University, and thus, in effect allow the State Government or the University to select the staff for the institution, directly interfering with the right of the minorities guaranteed under Article 30(1). **Composition of the Selection Committee for appointment of teaching staff of a minority educational institution should not be such as would reduce the management to a helpless entity having no real say in the matter of selection/ appointment of staff and thus destroy the very personality and individuality of the institution which is fully protected by Article 30(1) of the Constitution.**

**The State Government or the University is not empowered to require a minority educational institution to seek its approval in the matter of selection/ appointment or initiation of disciplinary action against any member of its teaching or non-teaching staff.** The role of the State Government or the University is limited to the extent of ensuring that teachers/ lecturers/ Headmasters/ Principals selected by management of a minority educational institution fulfill the requisite qualifications of eligibility prescribed therefor.

In Lily Kurian vs. Sr. Lewina (1979) 2 SC 124, a provision enabling an aggrieved member of the staff of a college to make an appeal to the Vice-Chancellor against an order of suspension and other penalties was held to be violative of Article 30(1). Again in All Saints High School, Hyderabad vs. State of Andhra Pradesh 1980 (2) SCC 478, a provision contained in Andhra Pradesh Private Educational institution Control Act, 1995 requiring prior approval of the competent authority of all orders of dismissal, removal or reduction in rank passed against a teacher by management of the college was held to be inapplicable to a minority institution.



It has been brought to the notice of the Commission that by the memorandum no. 3-1/78/CP dated 12.10.1981, the University Grants Commission has directed all universities that while framing their statutes/ ordinances/ regulations, they should ensure that these do not infringe with Article 30(1) of the Constitution relating to administration of minority educational institutions.

It has been held by the Supreme Court in State of Himachal Pradesh vs. Parasram AIR 2008 SCW 373, that declaration of law made by the Supreme Court cannot be forsaken, under any pretext by any authority. In Brahmo Samaj Education Society vs. State of West Bengal (2004) 6 SCC 224, the Supreme Court has held that “the State Government shall take note of the declarations of law made by this Court in this regard and make suitable amendments to their laws, rules and regulations to bring them in conformity with the principles set out therein.

The importance of the right to appoint Teachers/ Lecturers/ Head Masters/ Principals of their choice by the minorities, as an important part of their fundamental right under Article 30 was highlighted in St. Xavier (Supra) thus:

“It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution..... **So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management.** That is part of the fundamental right of the minorities to administer the educational institution established by them.”

(emphasis supplied)

The aforesaid proposition of law enunciated in St. Xavier (Supra) has been approved by the Supreme Court in T.M.A. Pai Foundation (Supra). The State has the power to regulate the affairs of the minority educational institution also in the interest of discipline and academic excellence. But in that process the aforesaid right of the management cannot be taken away even if the Government is giving hundred percent grant. **The fact that the post of the Teacher/ Headmaster/ Principal is also covered by the State aid, will make no difference. It has been held by the Supreme Court in Secretary, Malankara Syrian Catholic College vs. T. Jose 2007 AIR SCW 132 that even if the institution is aided, there can be no interference with the said right. Subject to the eligibility conditions/ qualifications prescribed by the State or Regulating Authority being met, the minority educational institution will have the freedom to appoint Teachers/ Lecturers/ Headmasters/ Principals by adopting any rational procedure of selection. The imposing of**

**any trammel thereon except to the extent of prescribing the requisite qualifications and experience or otherwise fostering the interests of the institution itself cannot but be considered as a violation of the right guaranteed under Article 30(1) of the Constitution.**

- (c) **to admit the eligible students of their choice and to setup a reasonable fee structure.**

It has been held in the case of P.A. Inamdar (Supra) that “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.” Reference may, in this connection, be made to the following observations made in the case of P.A. Inamdar (Supra):

“**131.** Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indians (“**NRI**” for short) or **NRI** seats. It is common knowledge that some of the institutions grant admissions to a certain number of students under such quota by charging a higher amount of fee. In fact, the term “**NRI**” in relation to admissions is a misnomer. By and large, we have noticed in cases after cases coming to this Court, neither the students who get admissions under this category nor their parents are **NRIs**. In effect and reality, under this category, less meritorious students, but who can afford to bring more money, get admission. During the courses of hearing, it was pointed out that a limited number of such seats should be made available as the money brought by such students admitted against **NRI** quota enables the educational institutions to strengthen their level of education and also to enlarge their educational activities. It was also pointed out that people of Indian origin, who have migrated to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with the Indian cultural ethos by virtue of being here. They also wish the money which they would be spending elsewhere on education of their children should rather reach their own motherland. A limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to **NRIs** depending on the discretion of the management subject to two conditions. First, such seats should be utilised bona fide by **NRIs** only and for their children or wards. Secondly, within this quota, merit should not be given a complete go-by. The amount of money, in whatever form collected from such **NRIs**, should be utilised for benefiting students such as from economically weaker sections of the society, whom, on well-defined criteria, the educational institution

may admit on subsidised payment of their fee. To prevent misutilisation of such quota or any malpractice referable to **NRI** quota seats, suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be for the Committees constituted pursuant to the direction in Islamic Academy to regulate.

**132.** Our answer to the first question is that neither the **policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or non-minority unaided educational institution.** Minority institutions are free to admit students of their own choice including students of non-minority community as also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational institution status is lost. If they do so, they lose the protection of Article 30(1).”

(emphasis supplied)

In the case of P.A. Inamdar (Supra) one of the questions framed for being answered was whether private unaided professional colleges are entitled to admit students by evolving their own matter of admission procedure. While answering the question their Lordships have observed as under : -

“**133.** So far as the minority unaided institutions are concerned to admit students being one of the components of “the right to establish and administer an institution”, the State cannot interfere therewith. Up to the level of undergraduate education, the minority unaided educational institutions enjoy total freedom.

**134.** However, different considerations would apply for graduate and postgraduate level of education, as also for technical and professional educational institutions. Such education cannot be imparted by any institution unless recognised by or affiliated with any competent authority created by law, such as a university, Board, Central or State Government or the like. Excellence in education and maintenance of high standards at this level are a must. To fulfil these objectives, the State can and rather must, in national interest, step in. The education, knowledge and learning at this level possessed by individuals collectively constitutes national wealth.

**135.** Pai Foundation has already held that the minority status of educational institutions is to be determined by treating the States as units. **Students of that community residing in other States where they are not in minority, shall not be considered to be minority in**

that particular State and hence their admission would be at par with other non-minority students of that State. Such admissions will be only to a limited extent that is like a “sprinkling” of such admissions, the term we have used earlier borrowing from Kerala Education Bill, 1957. In minority educational institutions, aided or unaided, admissions shall be at the State level. Transparency and merit shall have to be assured.

**136.** Whether minority or non-minority institutions, there may be more than one similarly situated institutions imparting education in anyone discipline, in any State. The same aspirant seeking admission to take education in any one discipline of education shall have to purchase admission forms from several institutions and appear at several admission tests conducted at different places on the same or different dates and there may be a clash of dates. If the same candidate is required to appear in several tests, he would be subjected to unnecessary and avoidable expenditure and inconvenience. **There is nothing wrong in an entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding of such test.** Out of such common merit list the successful candidates can be identified and chosen for being allotted to different institutions depending on the courses of study offered, the number of seats, the kind of minority to which the institution belongs and other relevant factors. Such an agency conducting the common entrance test (“CET” for short) must be one enjoying utmost credibility and expertise in the matter. This would better ensure the fulfilment of twin objects of transparency and merit. CET is necessary in the interest of achieving the said objectives and also for saving the student community from harassment and exploitation. Holding of such common entrance test followed by centralised counselling or, in other words, single-window system regulating admissions does not cause any dent in the right of minority unaided educational institutions to admit students of their choice. **Such choice can be exercised from out of the list of successful candidates prepared at CET without altering the order of merit inter se of the students so chosen.**

**137.** 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 applies to non-minority unaided institutions. **There may 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 abovesaid 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 all or any of the triple tests, indicated hereinabove, can be taken over by the State substituting its own procedure. The second question is answered accordingly.

138. It needs to be specifically stated that having regard to the larger interest and welfare of the student community to promote merit, achieve excellence and curb malpractices, it would be permissible to regulate admissions by providing a centralised and single-window procedure. Such a procedure, to a large extent, can secure grant of merit-based admissions on a transparent basis. Till regulations are framed, the Admission Committees can oversee admissions so as to ensure that merit is not the casualty.”

(emphasis supplied)

- (d) **To use its properties and assets for the benefit of the institution.** The management of a minority educational institution can use properties and assets of an educational institution for its future development as also its expansion.

#### **Mode of instruction**

A particular State can validly take a policy decision to compulsorily teach its regional language. (See English Medium Students Parent Association vs. State of Karnataka (1994) 1 SCC 550). The State Government takes the policy decision keeping in view the larger interest of the State, because the official and common business are carried on in that State in the regional language. A proper understanding of the regional language is necessary for easily carrying out the day to day affairs of the people living in that particular State and also for proper carrying out of daily administration. The learning of the regional language of the State would bridge the cultural barriers and will positively contribute for national integration. Hence a regulation imposed by the State upon the religious/ linguistic minorities to teach its regional language is a reasonable one, which is conducive to the needs and larger interest of the State and it does not in any manner interfere with the right under Article 30(1) of the Constitution.

**The imposition of official language of a State as the sole medium of instruction cannot be said to be in the interest of general public and has no**

**nexus to public interest.** The medium of instruction is one aspect of freedom of speech and expression guaranteed under Article 19 of the Constitution and the State cannot enact a law or frame a rule commanding that a student should express himself in a particular regional language. In view of the clear mandate of Article 13 of the Constitution, the State cannot enact any law or frame a regulation to make the said fundamental right a mere illusion. Moreover, Article 30(1) of the Constitution gives vast discretion and option to the minorities in selecting the type of the institution which they want to establish. The said type of institution includes the type of medium of instruction in which they want to impart education. The question whether the right to choose medium of instruction is a fundamental right and the religious or linguistic minority has a right to choose medium of instruction of their choice has been clinched down by the Supreme Court in T.M.A. Pai's case (Supra). The Supreme Court has declared that the right to establish and administer educational institutions of their choice under Article 30(1) read with Article 29(1) would include the right to have choice of medium of instruction in imparting education. The medium of instruction is entirely choice of the management of the minority institution.

In **Associated Management of Primary and Secondary Schools in Karnataka (Supra)** a Full Bench of the Karnataka High Court has declared that the right to choose medium of instruction of their choice is a fundamental right guaranteed under Articles 19(1) (a) (g), 21, 26, 29(1) and 30(1) of the Constitution. The Full Bench has also held that "(i) it is a fundamental right of the parent and child to choose the medium of instruction even in primary school. The police power of the State to determine the medium of instruction must yield to the fundamental right of the parent and the child and that (ii) the Government policy compelling children studying in Government recognised schools to have primary education in the mother tongue or the regional language is violative of Articles 19(1) (g), 26 and 30 (1) of the Constitution.

### **Fee regulation**

Among the law declared in the case of T.M.A. Pai Foundation (Supra) every institution is free to devise its own fee structure subject to the limitation that there can be no profiteering and no capitation fee can be charged directly or indirectly. Reference may, in this connection be also made to the following observations of their Lordships in the case of P.A. Inamdar (Supra): -

**“144.** The two Committees for monitoring admission procedure and determining fee structure in the judgment of Islamic Academy are in our view, permissible as regulatory measures aimed at protecting the interest of the student community as a whole as also the minorities themselves, in maintaining required standards of professional education on non-exploitative terms in their institutions. **Legal provisions made by the State Legislatures or the scheme evolved by the Court for monitoring admission procedure and fee fixation do not violate**

**the right of minorities under Article 30(1) or the right of minorities and non-minorities under Article 19(1) (g).** They are reasonable restrictions in the interest of minority institutions permissible under Article 30(1) and in the interest of general public under Article 19(6) of the Constitution.”

(emphasis supplied)

### **Policy of Reservation in admission**

Article 15(5) of the Constitution of India exempts an educational institution covered under Article 30(1) from the policy of reservation in admission. That being so, provisions of the Central Educational Institutions (Reservation in Admission) Act, 2006 cannot be made applicable to an educational institution covered under Article 30(1). Moreover, RA. Inamdar (Supra) is an authority on proposition of law that neither can the policy of reservation be enforced by the State nor can any quota or percentage of admission be carved out to be appropriated by the State in a minority educational institution. The State cannot regulate or control admissions in minority educational institutions so as to compel them to give up a share of the available seats to candidates chosen by the State. This would amount to nationalisation of seats which has been specifically disapproved in T.M.A. Pai (Supra). Such imposition of quota of state seats or enforcing reservation policy of the State on available seats in minority educational institutions are acts constituting a serious encroachment on the right enshrined in Article 30(1). Such appropriation of seats can also not be held to be a regulatory measure or a reasonable restriction within the meaning of Article 30(1) of the Constitution.

