



ANNUAL REPORT

2007-2008



NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS
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CHAPTER 1 – INTRODUCTION

The National Commission for Minority Educational Institutions was brought into existence through an ordinance dated 11th November, 2004 promulgated by the Government. This was later replaced by National Commission for Minority Educational Institutions Act passed by Parliament in December, 2004. The Commission was constituted by the Ministry of H.R.D. 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 Members of the Commission. Shri Valson Thampu resigned as the Member of the Commission with effect from the forenoon of 11th September, 2007. In the resultant vacancy Smt. Vasanthi Stanley was appointed as the Member and she joined the Commission on 3rd December, 2007. She resigned on 5th March, 2008 from the post after filing her nomination as a Member of the Rajya Sabha. Sr. Jessy Kurian was appointed as the Member of the Commission by the Government and she joined the Commission on 27th March, 2008. 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 and the key functions and powers of the Commission given in the Act were 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 which was for promotion of the 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. Earlier the Act covered only Scheduled Universities notified by the Government and the Government notified six Universities which consisted of one each in the North (Delhi University) and South (Pondicherry University) and the rest were in the North East. New Sections have been incorporated in the amendment to enhance the efficacy of the Commission and to amplify its power 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 has been vested with original as well as appellate jurisdiction to decide on questions relating to conferring minority status on educational institutions as also to cancel the same in the event of any proven abuse, in respect of the grounds laid down in the NCMEI Act. A deeming provision with reference to obtaining of NOC from the State Governments by minority Educational Societies intending to establish educational institutions has also been incorporated, which empowers the concerned Societies/Trusts to proceed further with the establishment of educational institutions, if State Governments do not process their applications and communicate their decisions to them within 90 days. The Commission is now vested with appellate jurisdiction in matters of refusal of State Governments to grant NOC for establishing a minority educational institution.

Section 12F of NCMEI Act describes 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 Chapter.

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 includes, 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 describes as under:

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

- (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.
- (4) The Commission shall publish its inquiry report and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

The Commission initially started functioning from 2 rooms which were allotted in Shastri Bhawan, New Delhi. It 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:-

S. No.	Name of Post	Number
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
	Total	33

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 – CONSTITUTION 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 present composition of the Commission is as follows:

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

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 for the purposes of discharging its functions under the Act has the powers of a Civil Court trying a suit. The powers of the Commission include adjudication in matters of affiliation to a university. If any dispute arises between a university and a minority educational institution relating to its affiliation to that university, the decision of the Commission thereon shall be final.

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.

Commission has been empowered to investigate into complaints relating to deprivation of the educational rights of minorities. For the purpose of conducting any investigation the Commission can utilize the services of any officer of the Central Government or the State Government with the concurrence of the concerned Government. For the purpose of such investigation, the officer whose services are utilized may, subject to the direction and control of the Commission: -

- (a) Summon and enforce the attendance of any person and examine him;
- (b) Require the discovery and production of any document; and
- (c) Requisition any public record or copy thereof from any office.

The officer shall investigate any matter entrusted to him by the Commission and submit a report thereon within the period specified by the Commission.

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 – MEETINGS OF THE COMMISSION

The NCMEI Act gives the powers of a Civil Court to the Commission. Being a quasi-judicial body Commission conducts formal court sittings. A formal Court Room is part of the premises of the Commission. During the year Commission has conducted 73 sittings as a Court. Details of the dates of the sittings and number of cases taken up on those days are as follows:

Sl. No.	Date of Meeting	No. of Cases
1.	03.04.2007	78
2.	10.04.2007	67
3.	17.04.2007	66
4.	18.04.2007	16
5.	24.04.2007	96
6.	01.05.2007	64
7.	03.05.2007	69
8.	08.05.2007	76
9.	14.05.2007	03
10.	15.05.2007	65
11.	22.05.2007	85
12.	23.05.2007	01
13.	24.05.2007	63
14.	05.06.2007	60
15.	06.06.2007	05
16.	12.06.2007	54
17.	19.06.2007	36
18.	26.06.2007	48
19.	04.07.2007	45
20.	05.07.2007	13
21.	06.07.2007	01
22.	11.07.2007	57
23.	17.07.2007	46
24.	24.07.2007	46
25.	02.08.2007	67
26.	09.08.2007	76
27.	16.08.2007	72

28.	23.08.2007	45
29.	24.08.2007	01
30.	03.09.2007	02
31.	05.09.2007	61
32.	11.09.2007	43
33.	17.09.2007	01
34.	18.09.2007	39
35.	25.09.2007	37
36.	03.10.2007	50
37.	09.10.2007	43
38.	11.10.2007	02
39.	16.10.2007	42
40.	23.10.2007	39
41.	06.11.2007	59
42.	13.11.2007	46
43.	20.11.2007	40
44.	22.11.2007	06
45.	23.11.2007	01
46.	26.11.2007	01
47.	27.11.2007	40
48.	04.12.2007	51
49.	11.12.2007	55
50.	12.12.2007	14
51.	17.12.2007	46
52.	20.12.2007	49
53.	02.01.2008	38
54.	08.01.2008	52
55.	15.01.2008	58
56.	16.01.2008	01
57.	22.01.2008	41
58.	24.01.2008	02
59.	29.01.2008	06
60.	31.01.2008	35

61.	05.02.2008	05
62.	06.02.2008	49
63.	07.02.2008	01
64.	13.02.2008	51
65.	19.02.2008	02
66.	20.02.2008	42
67.	27.02.2008	45
68.	04.03.2008	69
69.	05.03.2008	27
70.	11.03.2008	50
71.	13.03.2008	57
72.	18.03.2008	44
73.	25.03.2008	53
	TOTAL	2916

From the above, it may be seen that Court meetings were held by the Commission at least once a week. The above denotes formal Court sittings. In addition to the above mentioned court sittings Commission used to consider fresh petitions which do not require presence of any party. In the formal Court sittings cases where notices have been issued were taken up.

The maximum of 8 sittings were held in the months of May and January. In November and February 7 sittings were held. 6 sittings were held in July, September and March and in other months 5 sittings were held. The total number of cases taken up in the formal sittings is 2916. Even with inadequate staff position, the Commission has tried to list as many cases as possible in each sitting to ensure their expeditious disposal. Whenever there was any urgent and time-bound matter, additional days of Court sittings were convened. Wherever request was made by petitioner early dates of hearings were given by the Commission on justifiable grounds.

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, 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 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.

In addition to the formal meetings of the Commission as a Court, unscheduled and urgent meetings were also held during the year to dispose off urgent matters. New petitions are considered almost on a daily basis by the Commission and orders are passed for issuing notices to the concerned parties. For Court hearings, days are fixed in advance and notices are issued to the parties to give them adequate opportunity for preparation and presentation of their cases before the Commission.

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 place as the Chairperson may think fit. This provision empowers the Commission to hold its meeting outside Delhi also. However, during the year the Commission's meetings were held only at Delhi. Some requests were received for holding 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 has 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 priority was given to streamlining of the work. Since all rules and regulations have been notified, the Commission took steps to streamline the procedures. Majority of the petitions were for minority status certificates and therefore, Commission devised a proforma to enable the applicants to submit all necessary information and documents for consideration of the issue.

Analysis of complaints/petitions was made and in the interactions held with members of the minority communities in many places, emphasis was given in making them aware of the fundamentals of drafting a petition. Many petitions received by the Commission were not properly drafted which resulted in delay in finalizing the issue.

Commission decided to consider larger number of cases in each sitting and despite shortage of staff, had made extra effort by arranging extra sittings of the Court/Commission to ensure expeditious consideration of the petitions.

CHAPTER 5 – TOURS AND VISITS

During the year, the Commission has undertaken tours to various places. Details of the tours undertaken by the Commission are as follows:

Sr. No.	Dates of Tour	Stations Visited
1.	09.04.2007	Karnal
2.	26.04.2007-28.04.2007	Chennai
3.	09.05.2007-12.05.2007	Siliguri
4.	12.05.2007-18.05.2007	Trivandrum
5.	17.05.2007	Gwalior
6.	24.05.2007	Meerut
7.	23.06.2007-24.06.2007	Kanpur
8.	27.06.2007-28.06.2007	Mumbai
9.	29.06.2007-01.07.2007	Dehradun
10.	14.10.2007-18.10.2007	Jabalpur
11.	03.11.2007-04.11.2007	Amroha
12.	09.11.2007-12.11.2007	Surat
13.	15.11.2007-17.11.2007	Allahabad
14.	30.11.2007	Sarhind
15.	04.12.2007-07.12.2007	Bhopal
16.	27.11.2007-28.11.2007	Patna
17.	14.12.2007-16.12.2007	Chennai
18.	20.12.2007-26.12.2007	Coimbatore, Ooty & Thirunelveli
19.	05.01.2008-08.01.2008	Moradabad
20.	10.01.2008-16.01.2008	Chennai
21.	25.01.2008-29.01.2008	Kolkata
22.	05.02.2008-24.02.2008	Chennai (Member)
23.	13.02.2008-24.02.2008	Chennai (Chairman)
24.	19.03.2008-20.03.2008	Bhubneshwar
25.	28.03.2008-30.03.2008	Siliguri

The tours were undertaken with the intension to interact with members of the minority communities. The Chairman and Members have visited some places together and in other places separately as per their convenience. The meetings with the members of the minority communities help in understanding the difficulties faced by them and provide forum for discussing the grievances. It also enables 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). 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.

Brief resume of some of the visits undertaken by the Commission are as follows:

Tour of the Chairman to Siliguri(West Bengal) and Gangtok(Sikkim) on 9-12 May, 2007

The Chairman of the Commission accompanied by the Secretary visited Siliguri on 9th May and had a meeting with the representatives of the minority educational institutions. The Secretary of the Bangiya Christiya Pariseba mentioned about the problems being faced by minority educational institutions. Other representatives also brought out the details of their problems. The issues raised by the members included problems relating to denial of recognition of Madarsas and schools by the West Bengal Board, denial of grant of NOC for establishing new schools, problems relating to refusal of upgradation from junior to secondary schools and from secondary to higher

secondary schools, delay in getting permission for appointment of heads of educational institutions and teaching staff, insistence of the State authorities in application of reservation rules in the appointment of teachers, delay in permission for appointment of non-teaching and group 'D' staff, problems relating to grant of minority status certificate, non-approval of inclusion in Sarva Shiksha Abhiyan scheme, inadequate availability of books in Urdu, problems relating to Madarsas etc.

Addressing the gathering the Chairman, while appreciating the tremendous contributions made by the Christian community in the field of education, cautioned them from commercialization of education. Even though a large number of educational institutions are run by the members of the minority community, equal number of children from minority community are not getting admissions to the schools. He emphasized the management to give quality education. He also pointed out the lack of educational opportunity for large number of children from the Muslim community and expressed concern about the high rate of drop out of Muslim students. The Secretary explained about the details and scope of the objectives of the NCMEI Act and explained the method of submitting petitions to the Commission. He explained to the members how to draft a petition so that all details would be available in the petition along with supporting documents.

At Gangtok, interaction was held with the members of the minority communities. The Chairman explained the details of the NCMEI Act and also mentioned about the specific rights brought out in judgements of the Apex Court in T.M.A. Pai Foundation case and other cases. Interacting with the members, it was explained to them that the minority educational institutions are exempt from the purview of reservation. All educational institutions need recognition and affiliation and in case any problem is faced by the educational institution, they can utilize the Commission's forum for grievance redressal. The issues discussed included the difficulties faced relating to registration of land for establishment of schools, delay in getting NOC for affiliation to Central institutions like, CBSE, ICSE, lack of finance for making better infrastructure facilities etc.

On 11th May, Commission met the senior State Government officers and the problems of the minority educational institutions were discussed. The State Government officers assured the Commission that they would immediately initiate action to redress the grievances. Wherever required appropriate law would be made or existing laws would be amended suitably.

Tour of the Chairman to Chennai (Tamil Nadu) on 22-24-February, 2008

The Chairman of the Commission Justice M.S.A. Siddiqui, Mrs. Vasanthi Stanley, Member and the Secretary of the Commission met Shri Thangam Thennarasu, Minister for School Education, Government of Tamil Nadu in his Chamber at the

Secretariat at Chennai on 23rd morning. The Chairman informed the Minister about the details of the Supreme Court judgements, explaining the rights guaranteed under Article 30 of the Constitution. He urged the Government of Tamil Nadu to grant minority status certificates on a permanent basis and also to have uniform criteria to be followed by different departments. The State Government can fix percentage of student population - depending on the local conditions and all rules and regulations should be reasonable and should be aimed at promoting academic excellence. The issues discussed included grant in aid, extension of mid day meal schemes to more schools etc. The Hon'ble Minister agreed to look into the issues and take appropriate action at the earliest.

In the afternoon, a meeting of the minority educational institutions was held at Rajajee Hall. Addressing the meeting the Chairman mentioned about the details of the various Supreme Court judgements on Article 30. He also explained about the duties and powers of the Commission under the NCMEI Act and asked the members of the minority communities to avail of the facilities. The Member, Smt. Vasanthi Stanley and the Secretary to the Commission explained about the details of the cases handled by the Commission. In the evening a meeting was held at Parpia School at Triplicane where interaction was held with representatives of Madrasas. Chairman explained about the details of the recommendations made by the Commission for establishing a Central Madrasa Board. He gave the details of the proposals made and also the finances required by the proposed Board. He explained the idea behind the concept and also gave clarifications on the queries raised.

On 24th morning, a meeting was held at the Collectorate. The Secretary, Backward Classes, Most Backward Classes & Minorities Welfare Department, Government of Tamil Nadu welcomed the Commission. The assembled members raised various issues including the delay in filling up of posts in educational institutions, delay in issue of MSC, refusal to give grant-in-aid, delay in getting deemed University status to a minority educational institution, problems relating to Urdu schools, lack of Urdu teachers and Urdu books being not available etc. The Chairman gave clarification on all the points raised and requested the members to sent proper petitions to the Commission for following up the issues with the State Government authorities.

Later a meeting was held with the Chief Secretary and other Secretaries of the Government dealing with Departments of Education. Chairman urged the officers to see that the problems of minority educational institutions are addressed at the earliest and there is no undue delay. Officers should be sensitized to deal with the matters regarding the rights enshrined under Article 30. He requested the State Government to nominate a Nodal Officer so that he would be able to coordinate with the various departments of the Government. He also requested the State Government to ensure that replies are sent to the Commission promptly. Chief Secretary assured the Chairman that specific instructions would be issued in all the matters.

Tour of the Chairman to Bhubaneswar (Orissa) on 18-20 March, 2008

The Chairman accompanied by the Secretary of the Commission had a meeting on 19th March 2008 with the representatives of the minority educational institutions at the Auditorium of Stewart School, Bhubaneswar. The organizers, in the welcome address, mentioned about the problems being faced by the educational institutions in Orissa and especially those run by the Christian community. The problems included super-session of the Governing bodies of some of the minority colleges by the Government. Even though Orissa High Court has given favourable judgement in the matter, the State Government has not so far implemented the orders of the Court. They raised the problems about ban on filling up of sanctioned posts which has affected the functioning of some of the colleges. They raised the problems relating to grant-in-aid, pensionary benefits, non-availability of text books, non-inclusion under Sarva Shiksha Abhiyan, delay in recognition of educational institutions, non-issue of minority status certificate, interference in day-to-day administration, lack of Urdu knowing teachers and Urdu text books etc. Chairman in his address praised the contributions made by the Christian community in the educational field. He gave details of the rights guaranteed under Article 30 and mentioned about the various judgements passed by the Apex Court in this regard. He clarified on the remedies available regarding the problems faced by the members of the minority community and assured them that the issues would be taken up with the State Government. He pointed out the provisions of the NCMEI Act and asked the members to approach the Commission through petitions. The Secretary gave details of the genesis of the Commission and elaborated on the specific powers conferred by the NCMEI Act. He mentioned about the adjudicatory powers in addition to the recommendatory and advisory functions of the Commission. He explained the details of drafting a proper petition and urged the members to give full details in the petition.

In the afternoon a meeting was organized where representatives of the Madrasas were present. The meeting was also attended by senior officers of the Government who explained the details of action taken by Government regarding development of Madarsas and Urdu education in Orissa. Chairman of the Commission explained the need for providing proper and modern education to the children of the Muslim community. He elucidated on the proposals made by the Commission regarding establishment of a Central Madarsa Board. The details of the proposed Central Madarsa Board were discussed and he asked the members to send their suggestions to the Commission.

On 20th morning, the Chairman and Secretary of the Commission met the Minister for School and Mass Education. The senior officers of the Department were also present. The Minister mentioned about the various activities initiated by his Department. Chairman mentioned about the legal rights enshrined under Article 30 and also mentioned about the provisions of NCMEI Act and the functions of the Commission. The problems faced by the minority educational institutions were

discussed. The officers of the Education Department mentioned about the various measures taken by the State Government. After detailed discussion, the Minister assured that he will look into each and every issue and appropriate action would be taken.

The Chief Secretary and other secretaries met the Chairman in the afternoon and the issues were discussed. The Chairman mentioned about the details of the Commission and urged the State Government officials to sensitize officers regarding the rights guaranteed under Article 30 of the Constitution. He also urged the State Government to nominate a Nodal Officer who could coordinate the replies to be sent to the Commission. The outstanding issues were discussed and the Chief Secretary assured that action would be initiated and a report would be sent to the Commission at the earliest.

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

As in the previous year the cases were registered on Calendar-year basis. During the year 2007, there was lesser number of applications/ petitions compared with the previous year. During the year 2007, 1097 number of cases was registered. It was found that some of the petitions / applications requesting for grant of minority status were not submitted in the format prescribed by the Commission and such petitioners were asked to send their application in the prescribed format. Some of the petitions were not properly drafted and some petitions did not give full details of the issues involved. Some of the petitions were general in nature and did not mention the specific relief sought. In such cases the Commission wrote back to the petitioners concerned asking them to send revised petition giving full details of the issues involved with supporting documents and mention the specific relief sought.

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.

During the period of the report Commission passed several orders. Some of the orders passed were of the cases registered in 2005 and 2006. The orders included in this report pertain to the period from 1st April, 2007 to 31st March 2008. All the orders passed during this period are not covered or mentioned in this report and only some of the orders are mentioned in this Chapter and the next Chapter for want of space. Details of all the orders passed by the Commission are being 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.

Gist of orders passed by the Commission are given below and in the next Chapter.

Case No. 40 of 2006

Levy of Municipal Corporation Taxes at concessional rates on educational institutions

Petitioner/s Chairman, Gyan Ganga Institution Of Technology & Sciences, Jabalpur

Respondent/s Commissioner, Jabalpur Municipal Corporation & Ors

The Gyan Ganga Institution of Technology & Sciences, Jabalpur complained to the Commission about the exorbitant taxes being charged by the Jabalpur Municipal Corporation. Water tax, electricity tax, education tax and development tax was made applicable to the educational institutions on commercial basis. The petitioner wanted concessional rates to be made applicable for minority educational institutions.

The petition was resisted by the Municipal Corporation of Jabalpur on the ground that the said institution is a commercial institution as donations are being received from the students at the time of their admissions. The institution is not doing any service to the backward classes or minorities. According to the Municipal Corporation the petition has been preferred before the Commission only to avoid payment of taxes to the municipal corporation. It is further alleged that the taxes are being recovered from the petitioner institution in accordance with the provisions of the Madhya Pradesh Nagar Palika Adhiniyam 1956 and as such it is not possible to relax any relevant provision contained therein to give any concession to the petitioner institution.

The petitioner in the rejoinder refuted the contention of the Municipal Corporation that the petitioner institution is not doing any service to the minorities. It was contended that the petitioner institution is a minority institution and can not be considered at par with a commercial institution. According to the petitioner, recovery of taxes at the rates applicable to the commercial institutions is against the dictum of law laid down by the Supreme Court in the case of T.M.A. Pai Foundation Vs. State of Karnataka (2002) 8 SCC 481. It was further alleged that the fees levied from the students is in accordance with the fees fixed by the appropriate authorities of the State.

In view of the rival contentions of the parties the point for consideration is, as to whether the petitioner institution is a commercial institution and as such the municipal corporation Jabalpur is entitled to recover taxes from the petitioner institution at the rates applicable to the commercial institutions.

Commission observed that Jain community has been notified by the State of Madhya Pradesh as minority community and is entitled to claim the protection of Article 30 of the Constitution. The Commission found that education will fall within the meaning of the expression “occupation” under Article 19(1)(g) of the Constitution. In T.M.A. Pai Foundation case it has been stated that Article 19(1)(g) employs four expressions viz. profession, occupation, trade and business. Their fields may overlap, but each of them does have a content of its own. Education is per se regarded as an activity that is charitable in nature (see State of Bombay Vs R.M.D. Chamarbaugwala 1957 SC 699). Education has so far not been regarded as a trade or business where profit is the motive. Even if there is any doubt about whether education is a profession or not, it does appear that education will fall within the meaning of the expression “occupation”. Article 19(1)(g) uses the four expressions so as to cover all activities of a citizen in respect of which income or profit is generated, and which can consequently be regulated under Article 19(6). In Webster’s Third New International Dictionary, at P.1650, “occupation” is, inter alia, defined as “an activity in which one engages” or “a craft, trade, profession or other means of earning a living”.

Commission also cited the court rulings of other judgements relating to educational institutions vis-à-vis the provision. Commission found that education has never been commerce in this country. Education is essentially a charitable object and imparting education is a kind of service to the community and therefore, it cannot be brought under the trade or business. Commission found that the action of the Jabalpur Municipal Corporation in recovering taxes from the petitioner college at the rates applicable to the commercial concern is violative of the Article 30(1) of the Constitution. The concerned department of the State Government was directed to issue suitable directions to the Municipal Corporation of Jabalpur in consonance with the law declared by the Supreme Court in T.M.A. Pai Foundation case. (The full text of the judgement is in the appendix).

Case No.1323 of 2006

Non-payment of salary of the teacher

Petitioner/s	Mohd. Naseem, Teacher of Madrasa, Ziyaul Islam, Noorpur, Mahmoodabad, Distt. Sitapur, Uttar Pradesh
Respondent/s	The Manager, Anjuman Madrasa Ziyaul Islam, Noorpur, Mahmoodabad, Distt. Sitapur Uttar Pradesh

Mr. Mohd. Naseem filed a petition complaining about non payment of his salary as a teacher of Madrasa Siyaul Islam, Noorpur Mahmoodabad, Distt. Sitapur, UP which is an aided Madrasa. It is alleged that by the order dated 1.3.2001 he was appointed as a teacher in the said Madrasa at monthly salary of Rs.3000/- but he is not getting his salary since 1.4.2001. Pursuant to the notice issued to the Ministry of

HRD, Government of India, Deputy Director, Mr. Parmanand Gupta filed reply stating therein that the said Madrasa was not included in the list of grant-in-aid Madrasas. The District Welfare Officer Sitapur has addressed a letter dated 12.2.07 to the Ministry of Human Resource Development (Minority Cell) Government of India, stating therein that due to a typographical error the said Madrasa could not be included in the list of grant-in-aid Madrasas. A copy of a letter has been sent to this Commission for information. Thus it transpires from the record that the petitioner Mohd. Naseem was validly employed as a teacher in the Madrasa Ziyaul Islam, Noorpur, Mahmoodabad, Distt. Sitapur, UP and he was not getting his salary on account of non inclusion of the said Madrasa in the list of Madarsas eligible for grant-in-aid and this happened due to a typographical error in the list submitted by the District Minority Welfare Officer, Sitapur to the HRD Ministry (Minority Cell) Government of India.

The Commission noted that the errors stand rectified now and consequently directed the Ministry of H.R.D., Government of India to release the grant-in-aid to the said Madrasa for early disbursement of the arrears of pay to the petitioner.

Case No. 1585 of 2006

Filling up the vacant posts of Teaching Staff

Petitioner/s	Karnataka Region Catholic Bishop's Council, Archbishop's House, Karnataka
Respondent/s	Principal Secretary, Higher Education, Principal Secretary Primary & Secondary Education, Govt. of Karnataka

By this petition, the petitioner has challenged the Government order No. ED-196 UPC 2004/Bangalore dated 20.7.04 issued by the Government of Karnataka prescribing the condition of admission of 50% students belonging to the particular minority community for getting minority status certificate from the Government. According to the petitioner, the said condition is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. It is alleged that the Christian population in the state of Karnataka is only 2% and as such it is not possible for every institution to get 50% students belonging to the Christian community and if the impugned circular is allowed to stand it will cause irreparable damage to the Christian community.

The Commission took up the matter with the State Government and the State Government modified the circular and issued the following corrigendum dated 27.12.2006.

GOVERNMENT Order No. ED 380 SEP. 2006, Bangalore, dated 27.12.2006

"The provision relating to the condition that the institutions which have obtained the status of minority institution should have 50% of the students belonging to minority

community (depending on circumstances, they should belong to linguistic or religious minority). As per Sl. No.4 (as extracted at para 1 above) of Annexure -1 of Government order dated 12.4.06 read at (1) above, are partially modified and ordered as follows:

1. If students belonging to minority communities of minimum of 50% are not available in the minority institutions, then the following minimum preference should be given:
 - (i) The preference should be given to the students depending on the percentage wise population of the category of the people in the surrounding feeder schools in the City area/village area of the respective aided private schools or PU colleges.
 - (ii) For the purpose of (1) above the statistical information of 2001 census should be utilized. That means, the exact population of the minority classes and percentage wise population of the feeder villages may be ascertained from the 2001 census.

The action to be taken as per para 5 is subject to the following conditions:

Alongwith considering para 5, the children belonging to SC and ST and other backward classes should be admitted in the following ratio:

SC 15%

ST 3%

Other backward classes – 32%

Total - 50%.

This is subject to the provisions (modified) stipulated, as per the order dated 22.11.2006 read at (3) above. Further, in the areas where feeder schools exist children belonging to ST should be admitted, if children belonging to SC are not available, children belonging to ST are not available, and likewise if children belonging to SC and ST are not available in lieu of them children belonging to other backward classes and minority community should be admitted.

After taking detailed action and on detailed examination of the each case, the condition referred at para 1 may be relaxed depending on each case”.

Thus one of the grievances of the petitioner against fixing of ceiling of 50% is stands satisfied. The other grievance of the petitioner was that the State Government is not allowing the minority education institution to fill up the vacant post of teachers as a result whereof the students are suffering from the lack of educated teaching staff for these years. Commission quoted various Supreme Court rulings and observed that

the management's right as a minority educational institution to choose a qualified person as a teacher of the school is well insulated by the protective cover of Article 30 (1) of the Constitution and it cannot be chiselled out through any legislative act or executive fiat except for prescribing the qualifications and conditions of service for the post. Article 30 (1) 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. This has not been in any way diluted or altered by the decision rendered by the Apex Court in T.M.A. Pai Foundation (supra).

For the foregoing reasons Commission was constrained to hold that the impugned action of the State Government in not allowing the minority educational institutions in the State to fill up the vacant posts of teachers is violative of educational rights of the minorities guaranteed in Article 30(1) of the Constitution. Consequently, Commission recommended to the State Government to allow the minority educational institutions to fill up the vacant posts of the teaching staff in terms of the decision rendered by the Supreme Court in T.M.A. Pai Foundation's case.

Case No. 248 of 2005

Non-allotment of land for Opening new Urdu Schools in Navi Mumbai

Petitioner/s	Secretary, Al-Hasnat Education and Welfare Society, Turbe, Navi Mumbai
Respondent/s	<ol style="list-style-type: none"> 1. Secretary, Urban Development Department Government of Maharashtra, Mumbai. 2. Secretary, School Education, Government of Maharashtra, Mumbai. 3. Chairman, CIDCO LTD., Nariman Point, Mumbai. 4. Commissioner, Navi Mumbai, Municipal Corporation, Belapur CBD, Navi Mumbai.

The petitioner Secretary, Al-Hasnat Education and Welfare Society, Turbe, Navi Mumbai requested the Commission to give a direction to the Government of Maharashtra to allot plot/building to the society for running an Urdu school in Navi Mumbai. The petitioner also wanted a direction to be given to reserve plots in areas of Navi Mumbai for Urdu schools in future. The petitioner is a registered society which wants to promote Urdu language and establish Urdu medium schools. According to the petitioner Navi Mumbai is a vast developing city and at least 10 Urdu medium primary schools are needed in different localities to Navi Mumbai. The petitioner alleged that Government is under constitutional obligation to provide adequate facilities for

instruction in primary education to children belonging to minority groups as envisaged in Article 350-A of the Constitution. The petitioner requested for allotment of land for construction of new Urdu schools and also for construction of few more rooms in schools already established in Turbe Store. The petitioner has also prayed for allotment for Grant in aid for Urdu schools established by it.

The CIDCO Ltd., which is responsible for the planned development of new Town of Navi Mumbai, on behalf of the respondent resisted the petition as all private lands alongwith Government lands within the notified area have been vested with in it for the purpose of its planned development. The respondent had allotted land after taking into consideration several aspects of the planned development including disposal of land for various designated purposes which are absolutely essential for the development of the new Town. Plots have been allotted to the Urdu medium school on the basis of necessity and demand. The petitioner society was running an Urdu medium school unauthorisedly even without meeting the eligibility criteria. The respondent had received 5 applications and allotted land to two applicants who meet the eligibility criteria. One more application for Urdu medium school is being considered.

The Education Officer of Navi Mumbai Municipal Corporation submitted that there are 7 primary schools running within the jurisdiction and Urdu schools are also available within the area. The respondent would be allowing Urdu medium schools on the basis of demand subject to fulfillment of eligibility condition prescribed for the institution.

From the records, it was found that the State Government has taken into account the population of the area and the local needs in providing adequate number of schools. Since this is a matter of policy, Commission do not want to intervene in the decision of the authority, which has taken policy decision for determining the local needs for starting Urdu medium schools in a particular area. There is nothing on record to show or suggest that the policy decision taken by the respondent is arbitrary and would be hit by Article 30(1) of the Constitution. As regards, the question of grant-in-aid, Commission observed that this is not a constitutional imperative. Having regard to the facts and circumstances of the case, the Commission recommended to the State Government to consider the request of the petitioner along with others while according permission to open new Urdu schools in Navi Mumbai.

Case No. 1349 of 2006

Complaints about the exploitation and violation of rights by the State Govt. officials of Department of Minority Welfare, U.P.

Petitioner/s	Eram Educational Society, C-Block, Indra Nagar, Lucknow, Uttar Pradesh
Respondent/s	Secretary, Ministry of Minority Welfare, Government of Uttar Pradesh

By this petition, the Manager of Eram Educational Society, Indiranagar, Lucknow has brought to the notice of the Commission about the exploitation and violation of rights of Arabic Madaris of U.P. The petitioner has mentioned that the Madarsa committees used to appoint teachers earlier. However, presently approval is required from the District Minority Welfare Officer and confirmation by the Arabic and Farsi Board as a result whereof the appointments are inordinately delayed. It is alleged that the financial assistance provided to the Madarsas for construction of building, hostel etc. is also not distributed properly. The Department of Minority Welfare is interfering with the affairs of the Madarsas and even though Central Government has not prescribed any condition on the distribution of grant, the State Government has been harassing the Madarsas by imposing illegal conditions.

In his reply, the respondent, Dr. Shoib Ahmed, Director, Arbi Madarsa U.P. has informed the Commission that the affairs of the Madarsas are regulated as per the recognition and service conditions regulations of Arbi and Farsi Madarsa Board published by the Education Department of UP Government on 22nd August 1987. The appointment of teachers in Madarsas has to be as per the provisions of the abovesaid regulations, which also prohibits appointment of immediate relations of the Managers or Principals of the Madarsas. The vacancies have to be notified, applications invited and thereafter proper selection has to be made according to the regulations. If the appointments are made according to 1987 regulations such appointments are approved and grant is released for the payment of salaries.

In the rejoinder the petitioner has questioned some of the provisions of the 1987 regulations. He has further alleged that the provisions are being misused by the concerned officials who unnecessarily interfere in the appointments. He has also alleged corruption by the officials. Even in the case of grant sanctioned by the Central Government under the scheme of modernization of Madarsas, the State Government officials intervene and demand of commission is made.

In the rejoinder the petitioner has brought out the case of Islamia Nisvan School, Mailaraiganj, Barabanki, which was sanctioned Rs.1 crore and 52 lakhs. However, the building is not even worth Rs.50 lakhs and the material used is of poor quality. This is a typical example of a corrupt practice.

In view of the issues raised by the petitioner, Commission directed that a copy of the complaint alongwith all the documents be sent to the Secretary, Minority Welfare Department, Government of U.P., for such action as may be deemed proper.

Case No.1055 of 2006

Non-payment of salary of teacher after being promoted and transferred to another District

Petitioner/s Sr. P. Thomasamma through Sr. Ursula Pinto, Nirmala House, Padmaraonagar, Secunderabad.

Respondent/s Principal Secretary, (Education) Government of Andhra Pradesh

Sr. P. Thomasamma has submitted a petition through Sr. Ursula Pinto complaining about the non payment of her salary with effect from 2.9.2002.

It is beyond the pale of controversy that the petitioner was employed as a Teacher in Nirmala P.S. Shantinagar, Karimnagar M.P., which is a minority educational institution. On 26.8.02, the petitioner was promoted and transferred to St. John's High School, Amalapuram, East Godavari District. On 2.9.02, she joined duty at St. John's High School, Amalapuram, East Godavari District. On 30.9.03 proposal for approval of the petitioner's transfer was submitted to the competent authority of the State Government, which was ultimately rejected by the competent authority on 13.05.2005 on the ground that the petitioner's promotion and transfer from Nirmala P.S. Shantinagar, Karimnagar District to St. John's High School, Amalapuram, East Godavari District was against the rules in as much as the transfer of the petitioner was not within the same Management and further, the Management did not obtain prior approval of the competent authority. However, it is admitted that the petitioner has been working without salary with effect from 2.9.02.

The first question which arises for consideration in this case is: whether the transfer of the petitioner from Nirmala P.S.Shantinagar, Karim Nagar to St. John's High School, Amalapuram, East Godavari District was violative of any of the rules or regulations obtaining in the State. At outset Commission made it clear that there is no document to prove that both the schools were under the same Management but it can be gathered from the documents placed on the record that both the schools are under the same ecclesiastical order. Commission quoted the following order no. R.C.No.648/D1-3/Tq-V-2/87 dated 21.11.1987 of the Director of School Education, A.P. Hyderabad, which is as under:

"The attention of the District Educational Officer, Kurnool is invited to the references read above and he is here by informed that the Inter District/Inter State transfer of teachers belonging to any ecclesiastical authority may be permitted and that the department should not interfere with the transfers so made by the appropriate ecclesiastical authority. This is valid only for members of the ecclesiastical order."

There is nothing on the record to show or suggest that at any point of time the said order of the Director of the school education has been withdrawn or cancelled. According to the said, order inter District/ inter State transfer of teachers belonging to

any ecclesiastical order is permissible. In view of the aforesaid order it cannot be held that transfer of the petitioner, P. Thomasamma from Nirmala P.S.Shantinagar, Karim Nagar to St. John's High School, Amalapuram, East Godavari District was violative of any of the rules or regulations obtaining in the State.

The next question arises for consideration is whether prior approval of the competent authority of the Education Department was required for the promotion and transfer of the petitioner from Nirmala P.S.Shantinagar, Karim Nagar to St. John's High School, Amalapuram, East Godavari District. It is beyond the pale of controversy that both the aforesaid schools are minority educational institutions. 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 administer is the right to manage and conduct the affairs of the institution and it also includes the right to appoint, promote and choose teachers. It also includes minority educational institution's power of taking disciplinary action against the errant servant of the institution within the legal parameters and in accordance with the prescribed procedure. The State's power of regulation cannot render these four rights a teasing illusion or a promise of unreality. All these rights together form the integrated concept of right to administer. There is no quarrel that the petitioner P. Thommasamma fulfills all the qualifications of eligibility prescribed by the State Government. That being so, promotion and transfer of Sr. Thommasamma cannot be faulted on any valid ground and the impugned action of the State Government in withholding her salary since 2.9.2002 amounts to flagrant violation of educational rights of the minorities enshrined in Article 30 of the Constitution. Needless to add here that receipt of grant-in-aid from the State Government does not alter or change the status of minority educational institutions.

Bearing in mind the law enunciated by their lordships of the Supreme Court in the case of T.M.A. Pai Foundation (supra), Commission had no hesitation in coming to the conclusion that since the petitioner's transfer from one educational institution to another educational institution, which were under the same ecclesiastical order, prior approval of the competent authority of the State Government was not required at all. The impugned action of the State Government in withholding the salary of the petitioner Sr. P. Thommasamma with effect from 2nd September, 2002 is violative of Article 30(1) of the Constitution as her promotion and transfer can not be faulted on any valid ground. Consequently, the State Government was directed to release the salary of the petitioner P. Thommasamma with effect from 2nd September, 2002 by implementing the findings of this Commission in terms of Section 11 (b) of the NCMEI Act.

Case No. 1022 of 2006

Permission for conversion from 'permanent no grant-in-aid school' to 'no grant-in-aid school'

Petitioner/s Friends Education Society Ner Parsopant

Respondent/s 1. The Secretary, School Education Department, Govt. of Maharashtra Mantralaya, Extension Building Mumbai

2. Dy. Director of Education Amravati Division, Amravati, (Maharashtra)
3. The Education Officer, Department of Education (Secondary), Zila Parishad, Yavatmal, Maharashtra

The petitioner sought a direction to the State Government to convert the permission granted to the petitioner school from permanent no grant-in-aid basis to no grant-in-aid basis.

Pursuant to an advertisement published in daily Hindustan Amravati edition on 18.8.1998, the petitioner Society submitted an application to the State Government for starting a school on no grant-in-aid basis in Yavatmal during 1990-2000. By the order dated 25.6.1999, the State Government granted permission to establish a school on permanent no grant-in-aid. Aggrieved by attachment of the said condition with the permission, the petitioner filed the Writ Petition No. 3651/02 before the High Court of Bombay Bench at Nagpur. The writ petition was disposed of with the direction to the State Government to consider the petitioner's case for conversion of permanent no grant-in-aid to no grant-in-aid basis as and when the State decides as a matter of policy to give grant-in-aid to such schools on par with similarly placed schools. After disposal of the said writ petition, State Government considered the case of one society namely Vidyashakti Shikshan Prasarak Sanstha, Kolsa Tq. Sengaon, District Hingoli and converted the permission from permanent no grant-in-aid to that of no grant-in-aid basis. The petitioner, therefore, applied to the State Government for consideration of its case in terms of the order of the High Court cited above. The State Government did not revise the permission as sought by the petitioner. According to the petitioner, since the State Government has changed the policy on the matter of grant-in-aid to school, the petitioner is entitled for conversion from permanent grant-in-aid to that of grant-in-aid in accordance with the directions of the High Court of Bombay Bench at Nagpur in the writ petition quoted above.

The respondent resisted the petition on the ground that permission was granted to the petitioner to open new secondary school on the specific undertaking given by the petitioner that it could run the school on permanent no grant-in-aid basis and as such the petitioner cannot be allowed to go behind its aforesaid undertaking.

It is beyond the pale of controversy that pursuant to an undertaking given by the petitioner that it would run the proposed school on permanent no grant-in-aid basis, the petitioner was permitted to start a school on permanent no grant-in-aid basis vide orders dated 25.6.99. It is also undisputed that the petitioner had filed the writ petition No.3651/2002 before the High Court of Bombay, Bench at Nagpur which was disposed of vide orders dated 26.6.03. It would be useful to excerpt the following observations of the High Court:

“In view of the specific order dated 25.6.99 passed by the State Government while granting permission and recognition to the School of the petitioners, it was made very clear that they will not get any grant in aid permanently. On that condition only the school was granted permission. Hence the present Writ Petition filed by the petitioners for grant-in-aid is misconceived as there is no right of any nature vested in the petitioners to get such grant in aid from the State. Their application would be considered as and when the State decides as a matter of policy to get grant-in aid to such schools on par with similarly placed schools. We are sure they will not be discriminated from others. There is no merit in the writ petition hence it is rejected.”

Learned counsel for the petitioner submitted that the factum of recognition of the petitioner’s school on permanent no grant-in-aid basis cannot be a ground for treating the petitioner school differently. Strong reliance has been placed of the following observations of the High Court of Bombay in Writ Petition No. 8736/05:

“Having considered the matter, we are of the view that the petitioner cannot be discriminated by the respondents in respect of recognition of Mahatma Phule Vidhyalaya, Nimgaon Ketaki, Taluka Indapur, Distt. Pune. The petitioner has to be treated equally as per the government policy for recognition of secondary schools on non grant basis. Though the respondents have recognized the Mahatma Phule Vidhyalaya, Nimagon, Ketaki, Taluka Indapur, Distt. Pune on a permanent no grant-in-aid basis, we clarify that as and when Government policy is modified or changed, as per the changed policy the petitioner shall be entitled to the consideration of the case as regards the grant and the fact that the petitioner’s school has been recognized on permanent non-grant basis shall not be a ground for treating the petitioner’s school differently. In other words, for all practical purposes, the recognition of petitioner’s school on permanent non grant basis has to be read and understood as recognition of petitioner’s school on non-grant basis.

With the aforesaid clarification this petition is disposed of.”

Learned counsel for the petitioner further submitted that in view of the aforesaid direction of the High Court the petitioner is entitled for conversion from permanent no grant-in-aid basis to no grant-in-aid basis. It needs to be highlighted that the petitioner has specifically pleaded that by the order dated 30.4.02, the State Government had granted permission to 9 educational institutions to run schools from 2000-01 on permanent no grant-in-aid basis. Subsequently, the State Government revised the permission in respect of one society namely Vidyashakti Shikshan Prasarak Sanstha, Kolsa Tq. Sengaon, District Hingoli and converted the permission from permanent no grant-in-aid to that of no grant-in-aid basis. It is also alleged that the State Government had converted some other schools from permanent no grant-in-aid to no grant-in-aid basis. The aforesaid averments made by the petitioner have not been denied by the

respondent. Order 8 Rule 5 CPC embodies the rule which is known as a doctrine of non-traverse which means that where a material averment is passed over without a specific denial, it is taken to be admitted. Consequently, it may be taken to be admitted that after granting permission to the petitioner to run school on permanent no grant-in-aid basis, the State Government had revised its policy and converted some schools including Vidyashakti Shikshan Prasarak Sanstha, Kolsa Tq. Sengaon, District Hingoli from permanent no grant-in-aid basis to no grant-in-aid. In this view of the matter, it is the duty of the State Government to consider the petitioner's request for conversion of permission from permanent no grant-in-aid to that of no grant-in-aid basis in view of the directions given by the High Court of Bombay Bench at Nagpur in Writ Petition No.3651/02. The petitioner cannot be discriminated against by the State Government in respect of recognition as it has to be treated equally as per the government policy of recognition of secondary schools on no grant-in-aid basis. Though the State Government had recognized the petitioner school on a permanent no grant-in-aid but as directed by the High Court in the Writ Petition No. 8736/05, the petitioner is entitled to have its case considered as regards the grant and the fact that the petitioner school had been recognized on permanent no grant-in-aid basis shall not be a ground for treating the petitioner school differently.

For the foregoing reasons the Commission was of the opinion that the petitioner has been discriminated against in the matter of recognition by the State Government which is violative of Article 14 of the Constitution. The petitioner school has to be treated equally as per the Government policy for recognition of secondary schools on no grant-in-aid basis and as ordered by the High Court of Bombay in Writ Petition No. 8736/05 the fact that the petitioner school had been recognized on permanent no grant-in-aid basis shall not be a ground for treating the petitioner school differently. The State Government, therefore, was directed to reconsider the request of the petitioner school in terms of the orders dated 26.6.03 passed by the High Court of Bombay Bench at Nagpur in Writ Petition No.3651/02 and pass appropriate orders at the earliest.

APPEAL No. 6 of 2006

Denial to issue NOC to start a college of Physical Education

Petitioner/s	Ameeruddin Academy of General, Technical and Professional Educational Society, Giddalur, Prakasam District, A.P.
Respondent/s	<ol style="list-style-type: none"> 1. The Regional Director, Southern Regional Committee, National Council for Teacher Education, 1st Floor, CSD Buildings, HMT Post, Jalahalli, Bangalore. 2. The Secretary, Minority Welfare Department, Government of Andhra Pradesh, Hyderabad, Andhra Pradesh.

3. The Secretary, School Education Department, Secretariat Buildings, Hyderabad, Andhra Pradesh.
4. The Commissioner & Director of School Education, Government of Andhra Pradesh, Saifabad, Hyderabad.

A composite appeal has been filed on behalf of the appellant challenging the orders dated 17.3.06 and 25.5.05 passed by the Director School Education, Government of Andhra Pradesh, Hyderabad. By the order dated 17.3.06, the appellant's application for grant of minority status certificate for the proposed college of Physical Education was disallowed. By the order dated 25.5.06, the Director School Education, had declined to issue a 'No objection certificate' to the appellant for starting a college of Physical Education at Giddalur, Prakasam District. As regards, grant of minority status certificate to the proposed college of the appellant, the impugned order cannot be faulted on any valid ground. Article 30(1) of the Constitution postulates that members of religious and linguistic minorities have 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 establishment of the institution is a condition precedent for claiming the right to administer the institution. The onus lies on one to assert that an institution is a minority institution. In S.P. Mittal Vs. Union of India (AIR 1983 SC 1) the Supreme Court has observed:

“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.”

It is undisputed that the proposed college has not been established by the appellant. It needs to be highlighted that a minority status certificate is granted to an educational institution covered by Article 30(1) of the Constitution and as such a minority status certificate cannot be granted to a Society or a Trust formed by a minority community for establishing any educational institution.

As regards the appellant's contention for grant of 'No objection certificate' for the proposed college, it is relevant to note here that as per the NCTE Act, the appellant has to apply to the concerned Regional Committee of NCTE and 'No objection certificate' of State Government is not required for establishment of the proposed college.

For the foregoing reasons, the Commission directed the applicant to apply to the concerned Regional Committee of NCTE in accordance with NCTE Act for establishment of the proposed college.

Case No. 1554 of 2006

Grant of permission to start Urdu secondary school at Satpur

Petitioner/s	Noble Education and Welfare Society, Ashok Nagar, Satpur, Nasik, Maharashtra
Respondent/s	<ol style="list-style-type: none">1. The Principal Secretary, Deptt. Of Secondary & Hr. Secondary Education, Govt. of Maharashtra, Mantralaya Extension Building, Mumbai, Maharashtra2. The Director of Higher Education, Directorate of Education, Government of Maharashtra, Pune3. The Deputy Director of Education, Regional Revenue Commissioner's Office, Campus, Nasik Road, Distt. Nasik (Maharashtra State)4. The Education Officer (Secondary), Z.P. Stadium, Old Agra Road, Nasik, Distt. Nasik, Maharashtra

The petitioner Society has been formed by Muslim Community and it has been registered under the Bombay Public Trust Act vide No.F.7821/Nasik. The Society was formed for the purpose of providing education to the downtrodden segment of the Muslim Community in the area of Satpur, Taluka-Nasik, Maharashtra. There is an Urdu Medium school upto VIIIth standard in Satpur and the students aspiring to take admission in standard IXth have no other option but to go Nasik which is about 11 kms. from Satpur. Due to the financial constraints, most of the students of the Muslim Community cannot afford to take admission in Nasik. Consequently, on 15.7.05, the petitioner applied to the competent authority of the State Government to start Urdu secondary school at Satpur. The petitioner had also deposited the requisite amount of Rs.5,000/- for starting the proposed school. The petitioner's application was duly forwarded by respondent No. 4 but the State Government has not taken any decision thereon.

Despite service of notices the respondents 1 to 3 did not file reply. The respondent No.4 filed reply stating therein that the petitioner's application for permission to start Urdu secondary school Satpur was duly recommended and forwarded to the State level Committee at Pune Vide letter No.Madhya-10-451/2005 dated 19.9.05 for further action in the matter. It appears that the petitioner's application for grant of permission to start Urdu secondary school at Satpur is pending with the State Government.

It is stated in the petition that the petitioner's society was formed to provide education to the downtrodden segment of the Muslim Community of Satpur; that since

there is no Urdu secondary school at Satpur, and the students after passing out from the Urdu Medium School in Satpur are required to go to Nasik city which is about 11 kms. from Satpur. It is also alleged that due to financial constraint, the muslim students cannot afford to take admission in the Higher Secondary School, Nasik city. These averments have not been controverted by the State Government. Order 8 Rule 5 CPC embodies the Rule which is known as doctrine of non traverse which means where a material averment is passed over without a specific denial, it is taken to be admitted. Consequently, it may be taken to be admitted that because of their poor economic conditions, students of the Muslim Community are unable to take their admissions in the higher secondary school at Nasik.

It is universally accepted that education empowers the people for full development of human personality, strengthens the respect for human rights, and helps to overcome exploitation and the traditional inequalities of caste, class and gender. Learning liberates from ignorance, superstition and prejudice that blind the vision of truth. The learning and communicative processes involved in conservation of culture, language and script are animated by the Constitutional policy of mother tongue instruction contemplated in Article 350-A of the Constitution. Art. 30(1) of the Constitution confers a fundamental right on minorities to establish and administer educational institutions of their choice. In re, Kerala Education Bill AIR 1958 SC 956, Chief Justice SR Dass opined that “the minorities evidently desire that education should be imparted to the children of their community in an atmosphere congenial to the growth of their culture. The constitution Makers recognised the validity of their claim and to allay their fears conferred on them, the fundamental rights referred to the Articles 29 and 30”. Thus, the communitarian atmosphere – either religious or linguistic – congenial for imparting education is relevant only so long as the child’s mind requires to feel at home in the learning process. The child at the primary and secondary level of education, in fact, requires such incubation. Education occupies a position of prime importance in the Constitutional scheme of a just and fair Society. Reference may, in this connection be made to the following observations of the High Court of Bombay in Gramvikas Shikshan Prasarak Mandal, Sondoli, Vs. State of Maharashtra (2000-BCR-4-379)

The right to education has received primary importance in the Constitutional set up after independence. The provisions of the Constitution recognise the significance and importance of education. Judicial decisions have elaborated upon the scope and ambit of the right to education. Article 41 of the Constitution which is part of the Directive principles of State Policy enunciates that the State shall, within the limits of its economic capacity and development, make effective provisions for the right to education. Article 45 provides that “the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years”. Article 45 recognises that every child shall, upto the age of fourteen have the right to receive education. The right to education is indeed so basic and so fundamental that it has subject to the

qualification to which we shall presently advert, been construed to be a part of the right to life under Article 21 of the Constitution. The right to life under Article 21, it is well settled, includes all those faculties and means by which life becomes meaningful. Life, for the purposes of Article 21 lies beyond the realm of a bare physical existence. That right, by the process of a creative judicial interpretation encompassed the right to privacy, to a speedy trial, to public health, to information, to the means of communication to inaccessible areas and to a clean environment; these are a few of the areas to which the right to life has extended. In the contemporary society of today, there can be no doubt about the fact that education is the key to meaningful human existence. In one sense, perhaps basic, education is the source of the acquisition of knowledge and the means to secure information about the course of human affairs. In another sense, perhaps even more fundamental, education in its true sense is a means to the development of human personality. In the complex and highly specialised age that modern societies are tending to imbibe, education is a source of opportunity, of work, livelihood and gainful avocation. The Supreme Court recognised the primary importance of education in its landmark judgement in (Unnikrishnan Vs State of Andhra Pradesh), 1993 (1) S.C.C. 645. The Supreme Court held that education until the attainment of the age of fourteen is a fundamental right under Article 21 of the Constitution. Recognising the importance of receiving education in the life of every child in our society, the Supreme Court upheld the fundamental right of every child to receive education until the age of fourteen. The Supreme Court held as follows: the citizens of this Country have a fundamental right to education. The said right flows from Article 21. This right is, however, not an absolute right. Its content and parameters have to be determined in the light of Articles 45 and 41. In other words every child/ citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity and development of the State. "Education has thus a position of prime importance in the Constitutional scheme of a just and fair society. The position of importance that education has in the constitutional set up has found acceptance, affirmation and elaboration in judgements of the Supreme Court. There is a significant need to spread education in a society such as ours where poverty, underdevelopment and social disability have to be overcome by making available the benefit of education to the widest strata of society. In the State of Maharashtra, it has been estimated that nearly 11,000 habitations are without a primary education facility. The levels of literacy in States such as Kerala have been substantially improved with the rapid spread of primary education. The importance of the spread of primary education is hence an intrinsic part of State Policy designed to ensure the reach of education to the population at large. The primary duty to ensure the spread of education is one that the Constitution requires the State to perform. Yet, there is a constitutional recognition on the limitations of the State – both in terms of resources and capacity – in performing this rule. Consequently, the Supreme Court recognised

a fundamental right to receive education until the age of fourteen. In Unnikrishnan's case, the Court recognised that the role of private institutions is important in order to supplement the role of the State in achieving the spread of education. The necessary consequence is that private institutions would, when they seek to enter the field of education, be subject to the same restrictions and regulatory requirements as would apply to the State as dispenser of education. In seeking recognition and in certain cases, financial assistance from the State, private managements of educational institutions are liable to be regulated by the State to ensure that the interests of students, of teachers and the course of education are promoted".

It is also relevant to note here that it has been held in the afore cited judgement that the educational institutions covered by Article 30 of the Constitution will not be required to abide by the master plan. The grant of permission to establish school by religious and linguistic minorities will be in accordance with their rights under Article 30 of the Constitution. In granting permission for setting up a primary, secondary or higher secondary schools, due and proper emphasis has to be given to the existence of requisite infrastructure as has been held by the Bombay High Court in the afore cited decision. According to the said decision the spread of education has to be consistent with the maintenance of basic facilities required in terms of infrastructure, including a properly qualified and equipped teaching staff.

For the foregoing reasons the Commission directed the State Government to take early decision on the recommendation of the respondent No.4 for according permission to the petitioner Society for starting Urdu Secondary school at Satpur District, Nasik, Maharashtra.

Case No. 1162 of 2006

Release of Salary of Science Teacher

Petitioner/s Sayyeda Farhat Varsi, Teacher, Madarsa Misbahul-Uloom, Deva Shariff, Dist. Barabanki, Uttar Pradesh.

Respondent/s District Education Officer, Distt. Barabanki, Uttar Pradesh

By this petition the applicant Ms. Sayyeda Farhat Varsi, a Science teacher appointed in Madrasa Misbahul-Uloom, Deva Shariff, Barabanki, U.P. sought a direction to the State Government for release of her salary. According to the petitioner she has been appointed as a Science Teacher in the said Madrasa with effect from 1.7.2003. She has also filed a copy of the letter dated 27.1.2004 which shows that the District Welfare Minority Officer, Barabanki (U.P.) has intimated to the Director Minority Welfare Lucknow about her appointment.

Even though no reply has been received from the respondent, the District Minority Welfare Officer, Barabanki, has submitted a reply in the connected case No. 1120/06 intimating about the appointment of another teacher Km. Deebea Naaz in the same

madrasa. Commission found that the District Minority Welfare Officer Barabanki had requested the Director Minority Welfare Lucknow to release her salary. Commission was informed by the Ministry of HRD that Government of India has released the grant for the Madarasas vide letters dated 23.2.2007. Commission, therefore, directed to the Director, Minority Welfare Government of U.P. Lucknow to release the salary of the petitioner, Ms. Sayyeda Farhat Varsi, if her appointment as a teacher has been made as per the extent regulations applicable to the Madrasas of U.P.

Case No. 486 of 2007

Permission to allow admission of students under management quota

Petitioner/s Mata Gujri Khalsa College of Education, Sri Ganganagar, Rajasthan

Respondent/s 1. The Registrar, M.D.S. Vishwavidyalaya, Ajmer, Rajasthan.
2. The Secretary, Higher Education, Government of Rajasthan.

The petitioner college sought a direction to the State Government and the M.D.S. University, Ajmer to allow the management to admit students of its own choice in accordance with the decision rendered by the Supreme Court in P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537. It is alleged that the petitioner college is a minority educational institution and as such it has a right to admit students of its choice.

Despite service of notice, the State Government did not contest the proceedings. The respondent university has stated in their reply that since the matter relates to the State Government it will be appropriate to refer it to the State Government for appropriate directions.

It is beyond the pale of controversy that the petitioner college is a minority educational institution covered under Article 30(1) of the Constitution. In T.M.A. Pai Foundation Vs. State of Karnataka 2002(8) SCC 481 it has been held that minority educational institutions should be given greater autonomy in determination of admission procedure and the state regulation should be minimal and only with a view to maintain fairness and transparency in admission procedure. We may in this connection usefully excerpt the following observations of their lordships in the case of PA Inamdar (supra).

“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 therefore 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 above said triple tests. The

State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit based admissions and preventing maladministration. The admission procedure so adopted by a private institution or group of institutions, if it fails to satisfy 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.

There is nothing on record to show or suggest that the admission procedure adopted the petitioner college had failed to satisfy all or any of the triple tests indicated in the case of P.A. Inamdar (Supra). Consequently, the admission procedure for admissions in the minority educational institutions can't be taken over by the State substituting its own procedure.

In Islamic Academic of Education (supra) it has been held by their lordships as under:

“It must be clarified that minority professional colleges can admit, in their management quota, a student of their own community/language in preference to a student of another community even though that other student is more meritorious. However, whilst selecting/admitting students of their community/language the inter se merit of those students cannot be ignored. In other words, whilst selecting/admitting students of their own community/language they cannot ignore the inter se merit amongst students of their community/language, Admission, even of members of their community/language, must strictly be on the basis of merit except that in case of their own students it has to be merit inter se those students only. Further, if the seats cannot be filled up from members of their community/language, then the other students can be admitted only on the basis of merit based on a common entrance test conducted by government agencies.”

In T.M.A. Pai Foundation Vs. State of Karnataka 2002(8) SCC 481 that “the right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30(1) of the Constitution, the State Government or the controlling authority may not be entitled to interfere with that right so long as the admission to the minority educational institution is on transparent basis and the merit is adequately taken care of. The minority educational institution is given the right to admit students belonging to the minority community to ensure that its minority character is preserved and the objective of establishing the institution is not defeated. It needs to be highlighted that in T.M.A. Pai Foundation Vs. State of Karnataka (supra) the following question was formulated by the 11 judges bench of the Supreme Court and it was answered as under:-

“Q.5 (a) Whether the minorities's rights to establish and administer educational institutions of their choice will include the procedure and method of admission and selection of students?”

An. 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.”

It has been held by the Supreme Court in the case of P.A. Inamdar (supra) that neither can the policy of reservation be enforced by the State nor can any quota or percentage of admissions be carved out to be appropriated by the state in a minority educational institution. The State has no power to insist on seat sharing in minority educational institution by fixing a quota of seats between the Management and the State. P.A. Inamdar (supra) is also unanimous on the view that a minority educational institution has a right to admit students of its own choice, it may have its own procedure and method of Management as well as selection of students, but such procedure should be fair and transparent.

For the foregoing reasons, Commission held that the respondents can not restrain the petitioner college from admitting students of its own choice. Consequently, the respondents were directed to allow the petitioner college to admit the students of its own choice in the management quota provided the admission procedure adopted by the college is fair, transparent and non-exploitative.

Case No.1407 of 2006

Grant of permission for establishment of new Urdu Medium Secondary School

Petitioner/s Udgir Education Society, Distt. Latur, Maharashtra.

Respondent/s

1. The Principal Secretary & Special Enquiry Officer – II, General Administration Department, Government of Maharashtra, Mantralaya Ext. Bldg., Mumbai.
2. The Director of Education, Department of Secondary & Higher Secondary Education, Central Building, Pune, Maharashtra – 411 001.

The petitioner society sought a direction to the State Government to grant permission to establish a new Urdu Medium secondary school at Udgir, Distt. Latur, Maharashtra. On 26.8.05, the petitioner society submitted a proposal to the State Government for grant of permission to establish a new Urdu Medium secondary school

at Udgir, Distt. Latur, (Maharashtra) but the said proposal was turned down by the State Government. According to the petitioner an Urdu medium high school at Udgir, Distt. Latur, Maharashtra is required to cater the need of a local people who cannot continue high school education by going to far away schools.

In the reply the Education Officer (Secondary), Zilla Parishad, Latur has stated that the petitioner Society has submitted a proposal for starting a new Urdu medium secondary school at Banshelki Road, Udgir, Latur for the year 2005-06. There are other Urdu medium schools at Udgir and enrollment of students in 7th and 8th standards in the said schools alongwith the distance from the proposed school of the petitioner are as follows:

S. No.	Name of the School	No. of students		Distance from the proposed new school
		Class VII	Class VIII	
1	2	3	4	5
1	Al Hilal Primary Urdu School, Banshelki Road, Udgir.	88	87	2 kms
2	Al Amin Urdu High School, Udgir.	61	147	2.5 kms
3	Jamuhar Urdu High School, Udgir.	124	158	3 kms
4	Dr. Sayyad Mohammad Memorial Primary Urdu School, Banshelki Road, Udgir.	42	-	-
5	Dhakkan Urdu High School, Udgir.	63	46	3.5 kms

It is also stated in the reply that since other schools are available in the locality, establishment of the proposed school will create unhealthy competition between educational institutions at Udgir, Distt. Latur, (Maharashtra). It is further alleged that the financial condition of the petitioner society is not sound as there has been only Rs.50,500/- cash in hand as per the certificate dated 19.8.2005 given by the bank. That being so, the financial condition of the petitioner society is insufficient to provide for payment of salaries to the teaching and non teaching staff of the proposed school and the provision of other infrastructural facilities for the students. Consequently the petitioner's proposal was rejected by the District and State Level Committees.

The reply submitted on behalf of the State Government clearly suggests that there are sufficient numbers of Urdu high School at Udgir, Distt. Latur, (Maharashtra) and if the permission as sought by the petitioner society is granted, it would create an unhealthy competition between educational institutions at Udgir, Distt. Latur, (Maharashtra). It has been held by a Divison Bench of the Bombay High Court in

Gram Vikas Shikshan Prasarak Mandal, Sondoli Vs. State of Maharashtra 2001 Maharashtra Law Journal 1-776 that in determining whether a new school should be permitted, care has to be taken to ensure that unhealthy competition between educational institutions is avoided. It was also held that in granting permissions for setting of schools, due and proper emphasis has to be given to the existence of requisite infrastructure. The spread of education has to be consistent with the maintenance of basics facilities required in terms of infrastructure, including a properly qualified and equipped teaching staff. According to the stand taken by the State Government the financial condition of the petitioner's society is not sound and it is also lacking in basic facilities required in terms of infrastructure, including a properly qualified and equipped teaching staff.

Having regards to the facts and circumstances of the case, Commission was constrained to observe that the petitioner has failed to make out a case for grant of permission to establish an Urdu medium high school at Udgir, Distt. Latur, Maharashtra.

Case No. 1466 of 2006

Dilapidated condition of the Primary Urdu Medium school

Petitioner/s Mr. Mohd. Naseem Taha, (Writer & Journalist)

Respondent/s The Director Education, MCD, Delhi

Sh. Mohd. Naseem Taha, (Writer & Journalist), Pahari Bhojla, Delhi has brought to the notice of the Commission the dilapidated condition of the Primary Urdu Medium school at Phatak Titliya, Turkmangate, Old Delhi. He alleged that the reconstruction work has not been done due to personal animosity between the local MLA and the corporator even though Rs.92 lakhs has been sanctioned for the construction. The school has 700 students and is being run in two shifts. Expeditious reconstruction work is required for the benefit of the students.

In the reply the Director (Education) Department of Education Municipal Corporation of Delhi intimated the Commission that the Engineering Department of the MCD has already started construction of the new building on the site.

The M.C.D. has issued the Work Order no. D/EE/XVIII/2006-07/17 dated 21.12.2006 requesting the Engineering Department to speed up the construction work. The Dy. Education Officer has already inspected the site on 13.04.2007 and has submitted the inspection report in which it has been pointed out that approximately 10% of the construction work has taken place and remaining work is under ongoing process.

Since construction of the new school building has already commenced, the Commission directed the M.C.D. to make concerted efforts to get the construction work completed at the earliest.

Case No. 63 of 2007

Approval of appointment of Scavenger as Class-IV Staff

Petitioner/s	M.S. Junior College, Gooty, Anantapur, Andhra Pradesh.
Respondent/s	<ol style="list-style-type: none">1. The Secretary, School Education Department, Government of Andhra Pradesh, Secretariat, Hyderabad, Andhra Pradesh.2. The Director of School Education, Govt. of A.P., Secretariat Complex, Saifabad, Hyderabad, A.P.3. The Regional Joint Director of School Education, Cuddapah, Andhra Pradesh.4. The Distt. Educational Officer, Deptt. of School Education, Secretariat, Anantapur, Hyderabad, Andhra Pradesh.

In this case, the Secretary of M.S. Junior College, Gooty, Anantapur District, Andhra Pradesh, sought a direction to the State Government for approval of appointment of Sh. M. Abraham as scavenger in Class-IV from the date of his appointment i.e. 1st August, 1992.

It is beyond the pale of controversy that Sh. M. Abraham had filed a Writ Petition No.7944/99 before the High Court of Andhra Pradesh on the issue raised herein and by the order dated 19.1.2005, the said writ petition was disposed of by the High Court with the following directions:

“Having regard to the fact that the proposals have already been sent by the 5th respondent to the concerned authorities, it is not necessary to go in to the merits of the claim of the petitioner and the objection raised by the respondents herein at this stage. It would suffice, in the interest of justice to direct the Respondents 1 & 2 to consider the proposals and pass appropriate orders in accordance with law.

“Accordingly the WP is disposed of. However, it is open for the 5th respondent to file fresh proposals for such approval or for regularization of services as claimed by the petitioner and the respondents 1 & 2 shall dispose of the same on merits within a period of two months from the date of receipt of fresh proposals. No costs.”

Pursuant to the direction of the High Court, the State Government considered the case of Sh. M. Abraham and found that he was not eligible for regularization of his services in terms of G.O.M.S. No.212 dated 22.4.94 as he had not put on five years service as on 25.11.1993. Feeling aggrieved, Sh. Abraham filed a C.C. No.74/05 before the High Court of Andhra Pradesh. On 23.2.06, the District Education Officer, Anantpuram passed a speaking order in terms of the directions of the High Court of Andhra Pradesh holding that Sh. Abraham is not eligible for regularization of his services as per rules. Thereafter contempt proceedings were dropped against the officials.

Since Shri Abraham's case was duly considered and disposed of by the State Government in terms of the orders of the High Court, the Commission felt that it would not be appropriate for the Commission to intervene in the matter. Consequently, the proceedings were dropped.

Case No.1932 of 2006

Changing of school from 'unaided basis' to 'permanent unaided basis'

Petitioner/s Raj Urdu Primary School, Nanded, Maharashtra

Respondent/s The Secretary, School Education & Games Deptt. Government of Maharashtra, Mantralaya Extn. Building, 4th Floor, Bombay, Maharashtra

In this case the Secretary of Hafiz Abdul Khadar Raj Welfare & Education Society, Nanded sought a direction to the State Government to sanction the additional Divisions for Class Ist to IVth for the Raj Urdu Primary School, Nanded on the principle of 'unaided' instead of 'permanent unaided basis'. It is alleged that the Deputy Director of Education, Aurangabad, had recommended the proposal of the sanction of the additional divisions of the petitioner school on 'unaided basis' but due to oversight, the Government sanctioned circular dated 26.4.06 has placed it in the 'permanent unaided category'. It is also alleged that some other schools run by the minority community has been given the benefit for the grant. Reliance has been placed on two decisions of the High Court of Bombay Bench at Aurangabad in Writ Petition No.4413 of 2003 and the Writ Petition No.8736 of 2005 decided by the Principal Bench of the said High Court.

Despite service of notice, the State Government did not contest the proceedings.

By the decision rendered in Writ Petition No. 4413 of 2003 the High Court of Bombay, Bench at Aurangabad had directed the Deputy Director of Education to scrutinize the proposal of the applicants for opening of additional divisions, one each of Standard I to Standard III and forward the same to the Director of Education within 3 months. Secretary, School Education, was directed to pass an appropriate order on

the said recommendations before the commencement of new academic session, in accordance with law. This decision is of no help for the petitioner.

By the decision rendered in Writ Petition No.8736 of 2005, the Principal Bench of the Bombay High Court has directed that **“as and when Government Policy is modified or changed, as per the changed policy the petitioner shall be entitled to the consideration of the case as regards the grant and the fact that the petitioner’s school has been recognized on permanent non-grant basis shall not be a ground for treating the petitioner’s school differently. In other words, for all practical purposes, the recognition of petitioner’s school on permanent non-grant basis has to be read and understood as recognition of petitioner’s school on non-grant basis.”** The petitioner’s case is squarely covered by this decision. It is beyond the pale of controversy that the petitioner school is a minority educational institution within the meaning of Section 2(g) of the NCMEI Act. In view of the decision rendered by the High Court of Bombay in Writ Petition No.8736/05 the petitioner is entitled for consideration of its case relating to sanction of additional divisions of 1st to 4th class on unaided instead of permanent unaided basis.

For the foregoing reasons Commission ordered that a copy of the petition be forwarded to the Secretary, School Education, Government of Maharashtra with a direction to consider it in accordance with the directions given by the High Court of Bombay in Writ No.8736/05 (Nimgaon Ketaki Gramvikas Pratisthan Vs. State of Maharashtra & Ors decided on 25th July, 2006), and as directed by the High Court recognition of petitioner school on “permanent non grant basis” shall not be a ground for treating it differently.

Case No.1210 of 2006

Inclusion and pay parity and grant of triple benefits to non-teaching staff

Petitioner/s Workers Union of the Jharkhand State Minority Educational Colleges, Ranchi, Jharkhand.

Respondent/s The Joint Secretary, Human Resource Development Department, Government of Jharkhand, M.D.I. Building, Telephone Bhavan, Dhurwa, Ranchi, Jharkhand

In this case the General Secretary of Jharkhand State Minority Mahavidalaya Non Teaching Staff Association, Ranchi sought the following directions:

- i) That the Human Resource Development, Department of Government of Jharkhand, be directed to modify its order No. 5/03-02/2002/396 dated 25.4.2006 for inclusion of the non-teaching staff of minority educational institutions in its ambit;

- ii) That the Government of Jharkhand be directed to pay basic pay to the non-teaching staff at par with the teaching staff;
- iii) That the State Government be directed to raise the age of superannuation of non teaching staff at 62 years at par with the teaching staff; and
- iv) That the State Government be directed to grant triple benefit i.e. pension, gratuity and leave encashment etc. to the non teaching staff of minority colleges.

The State Government resisted the petition on the ground that the aforesaid demands cannot be accepted as the same do not fall within the recommendations of the Pay Revision Committee duly approved by the Finance Department and as such it is not possible to modify the Memo No. 396 dated 25.4.06 as demanded by the petitioner Association. However, revision of pay scales of teachers of minority grants-in-aid/grant-in-aid colleges is under active consideration of the State Government. It is also alleged that the State of Jharkhand being a separate State, is not bound by any decision taken by any other State including that of Bihar.

It is stated in the reply filed on behalf of the State Government that grant-in-aid is given to minority colleges for payment of salary of those teachers who are appointed on the posts sanctioned with financial aid. Similarly grants-in-aid is also given to such non-teaching staff appointed against sanctioned posts. D.A., medical allowance and house allowance etc. are being paid to them. The State Government has permitted such colleges to retain 50% of the tuition fees towards payment of basic salary. It is further alleged that a minority college has to generate its own revenue to pay the basic salary of non-teaching staff employed by them. In my opinion the aforesaid policy of the State Government does not suffer from any legal infirmity.

As regard the demand for raising age of superannuation of non teaching staff at par with the teaching staff, it falls within the domain of policy of the State Government and the Commission decided that it cannot interfere with the policy decision of a State unless it is shown that such a policy is either arbitrary or is hit by a doctrine of hostile discrimination. No such case of hostile discrimination has been made by the petitioner.

Minority grants-in-aid colleges come under the category of grants-in-aid colleges and administration of such colleges is under their governing bodies. Therefore, employees of such colleges cannot equate themselves with the staff of constituent colleges and as such they cannot claim pensionary benefits at par with the employees of the State Government. The State Government has not taken any decision to extend post retiral benefits to the employees of minority grants-in-aid colleges and as such the demand of the petitioner association does not merit acceptance. The minority grants-in-aid colleges and constituent colleges of a university are two different entities and as such they cannot be treated alike. Consequently Article 14 of the Constitution is not applicable in such a case.

As regards the demand No.4, it was alleged that the employees of the university and its constituent colleges including minority schools of the Jharkhand State have been enjoying the triple benefits of pension, gratuity, leave encashment, etc and the employees of the minority colleges are being deprived of the said benefits. It has to be borne in mind that the said demand falls within the domain of service conditions and as such it is outside the purview of the NCMEI Act: However, revision of pay of teachers of minority grants-in-aid colleges with effect from 1.1.96 is under active consideration of the State government. Consequently, the representation of the petitioner Association can be forwarded to the State Government for sympathetic consideration.

For the foregoing reasons, it was directed that the representation of the petitioner Association be sent to the State Government for sympathetic consideration.

Case No. 1768 of 2006

Recognition of school on permanent non grant-in-aid basis

Petitioner/s	Shah Babu Education Society, Pune, Maharashtra
Respondent/s	<ol style="list-style-type: none">1. The Secretary (School Education), Government of Maharashtra, Ministry Extension Building, Mumbai, Maharashtra.2. The Director of Education, Department of Secondary & Higher Secondary Education, Central Building, Pune, Maharashtra – 411 001.

The petitioner Shah Babu Education Society, Patur, Distt. Akola, Maharashtra, is a Society formed by members of the Muslim community and the State Government had granted minority status certificate to it vide order No.1005 (9/2005)/Minority dated 17th June, 2005. The petitioner society started a middle school in the year 1957 which was subsequently upgraded to 10+2 level. It is getting 100% aid from the State Government. The Primary school started by the petitioner society in 1995 was sanctioned by the State Government on non-grant in aid basis. The Deputy Director of Education, Amravati Division had sanctioned 40% grant for 2001-02 and 60% grant for 2002-03 vide order No.Pri/C/10939/2003 dated 31.3.2003. In 2001, the petitioner Society applied to the State Government for permission to start additional sections in the said school, which was sanctioned on permanent non-grant basis vide letter No.Prim-C/2192/03 dated 14.7.2003. Aggrieved by the said sanction on permanent non-grant in aid basis, the petitioner Society represented to the State Government. The Education Officer (Primary) vide letter No.ZP/Edn./Priv., Prim Sch/h/31/04 dated 13.1.2004 recommended to the Deputy director of Education Amravati Division for conversion of the said permission on non grant in aid basis on the ground that the school had already been sanctioned on non grant basis. This is on the basis of the

government decision that only those schools which were sanctioned on permanent non grant in aid basis, additional sections should also be granted on permanent non grant basis. The impugned decision of the State Government has been challenged on the ground that since the school was already in existence prior to the formation of the new policy in the year 2003 it cannot be made applicable to the petitioner school. The petitioner has also demanded that grant under Sarva Shiksha Abhiyan should also be made available to the petitioner school.

Despite service of notice, the State Government did not contest the proceedings. Learned counsel for the petitioner has strenuously urged that since the petitioner school was sanctioned on non grant-in-aid basis, additional sections should also be granted on the same basis and that the policy adopted by the State Government in 2003 cannot be applied retrospectively to the petitioner school as the same was in existence prior to the formation of the said policy. In our opinion, the aforesaid contentions of the learned counsel for the petitioner merit acceptance. It is an admitted position that in the year 2003 the State Government had taken a policy decision that only those schools which were sanctioned on permanent non grant-in-aid basis, additional sections should also be granted on permanent non grant-in-aid basis. Thus, it clearly shows that the said policy is applicable to only those schools which were sanctioned on permanent non-grant in aid basis and it cannot be made applicable to those schools which were sanctioned on non grant-in-aid basis and further, the said policy cannot be applied retrospectively. Since the petitioner school was sanctioned on non grant-in-aid basis and it was already in existence prior to the formation of the said policy, additional sections of the said school ought to have been sanctioned on non grant-in-aid basis. It needs to be highlighted that the Education Officer (Primary) Akola had rightly recommended to the Deputy Director of Education Amravati Division that the sanction for additional sections should be given on non grant-in-aid basis since the school had already been sanctioned on non grant-in-aid basis Vide letter No.Z.P./Edn./Priv., Prim Sch/h/31/04 dated 13.1.2004. Unfortunately, the competent authority of the State Government had not accepted the said recommendation of the District Education Officer (Primary) Akola and it had wrongly applied the government policy of 2003 to the petitioner school. However, the petitioner's case is squarely covered by a decision rendered by the High Court of Bombay in Writ Petition No.8736/05 (Nimgaon Ketaki Gramvikas Pratishthan Vs. State of Maharashtra & Ors.) decided on 25th July, 2006, whereunder the State Government was directed to consider a case like this on modification or change in its policy decision.

For the foregoing reasons, Commission held that the policy of the State Government adopted in 2003 cannot be made applicable to the petitioner school as it was already in existence prior to the formation of the said policy. It was, therefore, ordered that a copy of the petition be forwarded to the Secretary, School Education, Government of Maharashtra with a direction to consider it in accordance with the direction given by the High Court of Bombay in Writ Petition No.8736/05 decided on 25.7.06 and as directed by the High Court recognition of petitioner school on permanent non grant in aid basis shall not be a ground for treating it differently.

Case No. 333 of 2005

Permission to start new Urdu Medium Secondary School

Petitioner/s The Secretary, Hamdard Education Society, Kalamb, Maharashtra.

Respondent/s The Principal Secretary & Special Enquiry Officer - II, GAD, Government of Maharashtra

The petitioner is a Society duly registered under Societies Registration Act, 1860 and also registered under Bombay Public Trust Act, 1950. Founding trustees of the petitioner Trust are from Members of the Muslim Community and the Trust was formed for the purpose of upliftment and welfare of the Muslim Community. Pursuant to an advertisement published in a newspaper in the year 1997, the petitioner Society submitted a proposal to the Education Officer (Secondary), Zilla Parishad Wardha, seeking permission to open a new secondary school. The petitioner had also deposited the requisite amount of Rs.5,000/- for starting the proposed school. However, the said petition did not evoke any response from the said Education Officer. Again, in the year 2000, an advertisement was published in the newspaper inviting proposals to open new secondary schools from the academic session 2000-01. The petitioner again submitted fresh proposal to the Education Officer, Zilla Parishad Wardha, but in vain. Feeling aggrieved by the non-response from the competent authority of the State Government, the petitioner has filed the present petition seeking a direction to the State Government to grant permission to the petitioner to open a new Urdu medium secondary school at village Nachangaon, Tq. Deoli, Distt. Wardha with 100% grant-in-aid.

The Education Officer (Secondary), Zilla Parishad, Wardha has admitted in his reply that in 1997-98 proposals were invited to open new secondary schools and the petitioner had submitted a proposal for the proposed new school. The Education Officer has resisted the petition on the ground that the petitioner's proposal could not be recommended as adequate educational facilities are available at and near Nachangaon. It is further alleged that no proposal was accepted by the Government in the subsequent years from 1999 to 2006. It is also alleged that since the petitioner Society had not submitted any fresh proposal supported by the deposit of the requisite amount of Rs. 5,000/-, the question of granting permission to open the proposed school does not arise. According to the District Education Officer, the State Government has constituted district and State levels committees in terms of the directions of the Bombay High Court given in Writ Petition No. 1773/2000. Lastly, it is alleged that the initial proposal submitted by the petitioner society in the year 1997-98 cannot be considered as it has now become outdated.

In the rejoinder, the petitioner has submitted that the distance between the village Nachangaon and the existing secondary Urdu medium school at Pulgaon is 5 k.m. and not 3 k.m. as alleged by the respondent. It is also alleged that in the year 2000-2001, the petitioner had submitted a proposal seeking permission to open secondary Urdu school at village Nachangaon. It is also alleged that under Article 30 (1) of the Constitution, the petitioner is legally entitled to the grant of permission to establish an educational institution.

It is beyond the pale of controversy that the petitioner Society/ Trust has been formed by the members of Muslim Community and the petitioner has a right to establish an educational institution of its choice under Article 30 (1) of the Constitution. It is universally accepted that education empowers the people for full development of human personality, strengthens the respect for human rights, and helps to overcome exploitation and the traditional inequalities of caste, class and gender. Learning liberates from ignorance, superstition and prejudice that blind the vision of truth. The learning and communicative processes involved in conservation of culture, language and script are animated by the Constitutional policy of mother tongue instruction contemplated in Article 350-A of the Constitution. Art. 30(1) of the Constitution confers a fundamental right on minorities to establish and administer educational institutions of their choice. In re, Kerala Education Bill AIR 1958 SC 956, Chief Justice SR Dass opined that “the minorities evidently desire that education should be imparted to the children of their community in an atmosphere congenial to the growth of their culture. The constitution Makers recognised the validity of their claim and to allay their fears conferred on them the fundamental rights referred to the Articles 29 and 30”. Thus, the communitarian atmosphere – either religious or linguistic – congenial for imparting education is relevant only so long as the child’s mind requires to feel at home in the learning process. The child at the primary and secondary level of education, in fact, requires such incubation. Education occupies a position of prime importance in the Constitutional scheme of a just and fair Society. Reference may, in this connection be made to the following observations of the High Court of Bombay in Gramvikas Shikshan Prasarak Mandal, Sondoli, Vs. State of Maharashtra (2000-BCR-4-379)

The right to education has received primary importance in the Constitutional set up after independence. The provisions of the Constitution recognise the significance and importance of education. Judicial decisions have elaborated upon the scope and ambit of the right to education. Article 41 of the Constitution which is part of the Directive principles of State Policy enunciates that the State shall, within the limits of its economic capacity and development, make effective provisions for the right to education. Article 45 provides that “the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years”. Article 45 recognises that every child shall,

upto the age of fourteen have the right to receive education. The right to education is indeed so basic and so fundamental that it has subject to the qualification to which we shall presently advert, been construed to be a part of the right to life under Article 21 of the Constitution. The right to life under Article 21, it is well settled, includes all those faculties and means by which life becomes meaningful. Life, for the purposes of Article 21 lies beyond the realm of a bare physical existence. That right, by the process of a creative judicial interpretation encompassed the right to privacy, to a speedy trial, to public health, to information, to the means of communication to inaccessible areas and to a clean environment; these are a few of the areas to which the right to life has extended. In the contemporary society of today, there can be no doubt about the fact that education is the key to meaningful human existence. In one sense, perhaps basic, education is the source of the acquisition of knowledge and the means to secure information about the course of human affairs. In another sense, perhaps even more fundamental, education in its true sense is a means to the development of human personality. In the complex and highly specialised age that modern societies are tending to imbibe, education is a source of opportunity, of work, livelihood and gainful avocation. The Supreme Court recognised the primary importance of education in its landmark judgement in (Unnikrishnan v. State of Andhra Pradesh), 1993 (1) S.C.C. 645. The Supreme Court held that education until the attainment of the age of fourteen is a fundamental right under Article 21 of the Constitution. Recognising the importance of receiving education in the life of every child in our society, the Supreme Court upheld the fundamental right of every child to receive education until the age of fourteen. The Supreme Court held as follows: the citizens of this Country have a fundamental right to education. The said right flows from Article 21. This right is, however, into an absolute right. Its content and parameters have to be determined in the light of Articles 45 and 41. In other words every child/ citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity and development of the State. "Education has thus a position of prime importance in the Constitutional scheme of a just and fair society. The position of importance that education has in the constitutional set up has found acceptance, affirmation and elaboration in judgements of the Supreme Court. There is a significant need to spread education in a society such as ours where poverty, underdevelopment and social disability have to be overcome by making available the benefit of education to the widest strata of society. In the State of Maharashtra, it has been estimated that nearly 11,000 habitations are without a primary education facility. The levels of literacy in States such as Kerala have been substantially improved with the rapid spread of primary education. The importance of the spread of primary education is hence an intrinsic part of State Policy designed to ensure the reach of education to the population at

large. The primary duty to ensure the spread of education is one that the Constitution requires the State to perform. Yet, there is a constitutional recognition on the limitations of the State – both in terms of resources and capacity – in performing this duty. Consequently, the Supreme Court recognised a fundamental right to receive education until the age of fourteen, in Unnikrishnan's case. The Court recognised that the role of private institutions is important in order to supplement the role of the State in achieving the spread of education. The necessary consequence is that private institutions would, when they seek to enter the field of education, be subject to the same restrictions and regulatory requirements as would apply to the State as dispenser of education. In seeking recognition and in certain cases, financial assistance from the State, private managements of educational institutions are liable to be regulated by the State to ensure that the interests of students, of teachers and the course of education are promoted”.

It is also relevant to note here that it has been held in the afore cited judgment that the educational institutions covered by Article 30 of the Constitution will not be required to abide by the master plan. The grant of permission to establish school by religious and linguistic minorities will be in accordance with their rights under Article 30 of the Constitution. In granting permission for setting up a primary, secondary or higher secondary schools, due and proper emphasis has to be given to the existence of requisite infrastructure as has been held by the Bombay High Court in the afore cited decision. According to the said decision the spread of education has to be consistent with the maintenance of basic facilities required in terms of infrastructure, including a properly qualified and equipped teaching staff.

For the forgoing reasons Commission directed the petitioner to apply a fresh to the competent authority of the State Government for permission to open a new Urdu medium secondary school at village Nachangaon, Tq. Deoli, Dist. Wardha. The proposal must be accompanied by a challan of the requisite amount of Rs. 5,000/-. On receipt of the said application from the petitioner, the District Education Officer, Zilla Parishad Wardha shall consider the petitioner's proposal for setting up a new Urdu medium secondary school at village Nachangaon, Tq. Deoli, Dist. Wardha. While considering the said proposal, the District Education Officer shall give due and proper emphasis to the existence of basic facilities required in terms of infrastructure, including a properly qualified and equipped teaching staff. On being satisfied about existence of the said facilities, the District Education Officer, Zilla Parishad Wardha shall submit a proposal to the State Government for grant of the requisite permission to the petitioner. On submission of the said proposal, the State Government shall take early decision on the recommendations of the District Education Officer, Zilla Parishad Wardha for according permission to the petitioner for starting the proposed Urdu medium secondary school at village Nachangaon, Tq. Deoli, Dist. Wardha.

Case No. 344 of 2007

Grant of 'NOC' by the State Govt. for affiliation to CBSE

Petitioner/s	The Crescent School, Burdwan, West Bengal.
Respondent/s	The Director, School Education Department, Anglo-Indian Schools, Government of West Bengal, Bikash Bhavan, 7 th Floor, Salt Lake, Kolkata-91.

The Petitioner school is a minority educational institution covered under Article 30 (1) of the Constitution. It is alleged that on 17.11.2000, the petitioner school had applied to the competent authority of the State Government for grant of 'no objection certificate' for its affiliation to the C.B.S.E. Despite repeated reminders, no orders have been passed by the competent authority of the State Government on the said application. Hence, this petition.

Despite service of notice, none appeared on behalf of the respondent. Since the facts given by the petitioner have not been controverted by the respondent, we have no option but to act upon them. It transpires from the record that the petitioner had applied to the Deputy Director of School Education, West Bengal for grant of an 'NOC' for the purpose of affiliation to the C.B.S.E. The Deputy Director had issued the proforma application vide Memo No. 499/SC/AIS dated 20th July 2000. Thereafter, the petitioner submitted the application in the prescribed format along with the requisite documents on 17.11.2000. Despite repeated reminders, the Deputy Director (Education) has not passed any order on the said application. In this view of the matter, the petitioner is entitled to invoke the provision of Section 10 of the National Commission for Minority Educational Institutions Act, 2004 (for short the Act) which 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.

(2) The Competent authority shall,—

- (a) on perusal of documents, affidavits or other evidence, if any; and
- (b) after giving an opportunity of being heard to the applicant,

decide every application filed under sub-section (1) as expeditiously as possible and grant or reject the application, as the case may be:

Provided that where an application is rejected, the Competent authority shall communicate the same to the applicant.

- (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.
- (4) The applicant shall, on the grant of a no objection certificate or where the Competent authority has deemed to have granted the no objection certificate, be entitled to commence and proceed with the establishment of a Minority Educational Institution in accordance with the rules and regulations, as the case may be, laid down by or under any law for the time being in force.

Explanation.— For the purpose of this section,—

- a) “applicant” means any person who makes an application under sub-section (1) for establishment of a Minority Educational Institution;
- (b) “no objection certificate” means a certificate stating therein, that the Competent authority has no objection for the establishment of a Minority Educational Institution.”

It has been proved that the petitioner had filed the application for grant of an ‘NOC’ on 17.11.2000 and no orders have yet been passed thereon. Sub-section (3) of Section 10 of the Act contains a deeming provision which declares that where within a period of ninety days from the receipt of the application under sub-section (1) for the grant of No Objection Certificate, if the Competent authority does not grant such certificate, or 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. Thus, in the instant case it will be deemed under Sub-section (3) of Section 10 *ibid* that the competent authority has granted a ‘No Objection Certificate’ to the petitioner for its affiliation to the C.B.S.E.

For the reasons discussed above, Commission held that the competent authority of the State Government has granted the ‘No Objection Certificate’ in terms of Sub-section (3) of Section 10 of the Act and the petitioner can now apply to the C.B.S.E. for its affiliation.

Case No.1346 of 2006

Admission brochure of D. Ed course issued by the State Govt.

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|---------------------|--|
| Petitioner/s | <ol style="list-style-type: none">1. Sh. P.A. Inamdar, 963, Nana Peth, Pune – 411 002.2. Sh. P.A. Inamdar, President, The Maharashtra Cosmopolitan Education Society 2390, K.B. Hidaytullah Road, Pune Camp, Pune – 411 001.3. Sh. Bhushan Patil, Principal, M.C.E. Society's Jr. College of Education (D.Ed.),K.B. Hidaytullah Road, Pune Camp, Pune– 411 001. |
| Respondent/s | <ol style="list-style-type: none">1. The Secretary, School Education Department, Government of Maharashtra, Mantralaya, Mumbai- 400 032.2. The Director, State Council of Education Research and Training, Maharashtra State, Sadashiv Peth, Pune- 411 030.3. The Regional Director, National Council for Teacher Education, Western Regional Committee, Manas Bhavan, Shaml Hill, Bhopal.4. Dy. Director of Education, Pune Region, Dr. Ambedkar Road, Pune-411 001.5. The Principal, District Institute of Education & Training, Loni Kalbhor, Pune.6. The Commissioner, Maharashtra State Council for Examination, 17, Dr. Ambedkar Marg, Pune- 411 001. |

Challenge in this petition is to the Rule 14.14 of the admission brochure issued by the respondent No.2 for the academic year 2006-07 which is as under:

“After giving admission as per prescribed time table approved by DIET through Selection, Decision and Regulatory Committee, if seats are remained vacant in minority quota (religious and linguistic), admissions can not be regulated by the management. The report of these vacant seats should be reported by the concerned DIET to the State level D.Ed Admission Selection & Decision Committee.”

The petitioner No.3 D.Ed. college has been established and is being administered by the members of the Muslim community and as such the petitioner college is entitled to fill up 100% seats sanctioned by the respondent No.3 which is a competent authority for recognising D.Ed colleges in accordance with the provisions

of the National Council for Teachers Education Act (for short the Act). It is alleged that the directions incorporated in the impugned rule requiring the minority educational institutions to surrender vacant seats to the State Level D.Ed Admission Selection and Decision Committee is violative of the right enshrined in Article 30 of the Constitution.

The respondent no.1 to 4 & 5 resisted the petition on the ground that since the jurisdiction of this Commission is confined only to advise Central or State Government on any question relating to education of minorities, the present petition is outside the cognizance of this Commission. It is also alleged that the impugned rule is valid as it has been framed to prevent maladministration in the matter of selection and admission of students in the colleges. The respondent No.6, which is a proforma respondent, has elaborated the procedure prescribed for recognition of a D.Ed College.

The first question which arises for consideration is as to whether the impugned rule 14.14 of the admission brochure issued by the respondent No.2 is violative of the educational rights of the minorities guaranteed under Article 30(1) of the Constitution. It has been held by the Supreme Court in T.M.A. Pai Foundation Vs. State of Karnataka 2002 (8) SCC 481 and P.A. Inamdar's case (2005) 6 SCC 537 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 5(a) pertaining to the minorities' right to establish and administer educational institutions of their choice to include in the said right, the procedure and methods of admission and selection of students, it was held by the Supreme Court that the minority institution can have its own procedure and method 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. Even an unaided minority institution should not ignore merit of the students for admission, while exercising its right to admit students in the college. We may usefully excerpt the following observations of their lordships of the Supreme Court 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 student's 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 held in *Inamdar’s case* (supra) that single window system relating 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 also 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).”

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).

The command of the impugned rule 14.14 asking the minority educational institutions to surrender vacant seats to the State Level D.Ed Admissions Selection and Decision Committee completely annihilates the right of the minority educational institution to admit students of their choice and as such it is violative of Article 30(1) of the Constitution. The impugned rule 14.14 requiring the minority educational institution to surrender vacant seats in the minority quota to the said committee cannot be held to be a reasonable restriction within the purview of the Article 30(1) of the Constitution. On the contrary the impugned rule directly stares into the face of the law declared by the Supreme Court in the case of T.M.A. Pai Foundation Vs. State of Karnataka and P.A. Inamdar's case (supra). The Management of a minority educational institution can exercise its right under Article 30 (1) 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.

Learned counsel for the respondents has strenuously urged that the present petition is outside the purview of the Commission. We are not impressed by the said submission of the learned counsel. We have already held that impugned rule 14.14 arrogating to itself the right of admission in respect of vacant seats in a minority

educational institution is violative of the educational rights of the minorities guaranteed under Article 30(1) of the Constitution. Section 11(b) of the NCMEI Act empowers the Commission to enquire into complaint regarding depravate 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 inquiry to the appropriate Government for its implementation. Consequently, the present petition falls within the purview of Section 11(b) of the Act.

For the foregoing reasons Commission held that the impugned rule 14.14 of the brochure of admissions issued by the respondent No.2 declaring that the admissions cannot be regulated by the management of a minority educational institutions in respect of vacant seats and directing the minority colleges to surrender these vacant seats to the State Level D.Ed Admission Selection and the Decision Committee is violative of the educational rights of the minorities guaranteed under article 3(1) of the Constitution. According to the law laid down by the Supreme Court in the cases of T.M.A. Pai Foundation Vs. State of Karnataka and P.A. Inamdar's case (supra) these vacant seats can be filled up by minority educational institutions 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.

The said findings of the Commission were sent to the State Government for implementation.

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

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

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 year are as follows:

Case No. 118 of 2006

Petition against Statutes of University of Gorakhpur

Petitioner/s St. Andrew's College, Gorakhpur, U.P.

Respondent/s The Secretary, Department of Higher Education, U.P.
Administration, Govt. Secretariat, Lucknow, Uttar Pradesh & Ors.

St. Andrew's College, Gorakhpur, U.P., a minority educational institution covered by Article 30 of the Constitution has challenged in their petition the statute 25.06(1)(b)

of the First statutes of University of Gorakhpur as violative of Article 30 of the Constitution.

According to statute 25.06 (1) (b) of the First Statutes, the Selection Committee for appointment of Class III staff shall consist of: -

- (i) the Head of the Management or a Member of the Management nominated by him, who shall be the Chairman;
- (ii) the Principal of the College;
- (iii) the District Inspector of schools;
- (iv) the District Employment Officer or an Officer authorized by him in this behalf.

The persons at No. (iii) & (iv) are Government officers and are permanent members of the Selection Committee.

It is contended on behalf of the petitioner that according to the said statute a minority educational institution does not have power or right to constitute its own selection committee for appointment of its class III staff. It is suggested that necessary amendment be made in statute 25.06 (1) (b) of the first Statutes so as to bring it in consonance with Section 31(4) (d) of the U.P. State Universities Act 1973 (for short the Act). The grievance of the petitioner college is that the said provision is violative of Article 30(1) of the constitution as it virtually strikes at the substance of the fundamental right of the minorities to establish and administer educational institutions of their choice in as much as it virtually takes away the rights of the minorities to constitute its own Selection Committee for appointment of Class III. It has been held by 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 establish and administer broadly comprises 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 employees.

Thus the Apex Court has clearly held that a minority educational institution has right to select and appoint its teaching and non teaching staff. Although the right of minorities to establish and administer educational institution of their choice is subject to regulatory powers of the State for maintaining and facilitating the excellence of their standards, the regulation as has been held in T.M.A. Pai Foundation (supra) must satisfy a dual test – 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. It is permissible for the authorities to prescribe regulations, which must be complied with, before any minority institution could seek or retain affiliation and recognition, but such regulations should not impinge upon the minority character of the institution. Therefore, a balance has to be struck between the two objectives – that of ensuring the standard of excellence of the institution, and that of preserving the right of the minorities to establish and administer their educational institutions. Regulations that embraced and reconciled the two objectives could be considered to be reasonable.

In Ahmedabad St. Xavier's College Society Vs. State of Gujarat (1974) 1 SCC 717, their Lordships of the Supreme Court have held that administration connotes management of the affairs of the institution. The management of a minority educational institution must be free of control so that the founders and their nominees can mould the institution as they think fit and in accordance with their ideals of how the interest of the community in general and institution in particular will be best served. The same position of law has again been reiterated by their Lordships of the Supreme Court in T.M.A. Pai Foundation (supra).

The right to constitute a Selection Committee for appointment of teaching and non teaching staff of a minority educational institution perhaps is a most important facet of the right to administer an educational institution and the imposition of any trammels thereon is void to the extent of infringement of Article 30(1) of the Constitution. According to statute 25.06 (1) (a) of the First Statute Selection Committee for appointment to the post of Librarian/ Dy. Librarian, Physical Training Instructor, shall consist of:

- (i) the head of Management or a member of the Management nominated by him, who shall be the Chairman;
- (ii) the principal of the College;
- (iii) one officer to be nominated by the Director of Education (Higher Education).

(b) The Selection Committee for the appointment to the remaining posts referred to in Statute 25.01 or Statute 25.03 either by direct recruitment or by promotion shall consist of :-

- (i) the Head of the Management or a member of the Management nominated by him who shall be the Chairman.
- (ii) the Principal of the College;
- (iii) the District Inspector of Schools;
- (iv) the District Employment Officer or an officer authorised by him in this behalf.

Commission found that inclusion of Government officials in the selection committee is invalid as it constitutes an interference with the right of administration of a minority educational institution and the Constitution of such a selection committee completely destroys the administrative autonomy of the petitioner college as a minority educational institution and reduces it to a settelite of the respondent university. The introduction of an outside authority, however high it may be, either directly or through its nominees in the Selection Committee of a minority educational institution to select its teaching staff would be completely destructive of the fundamental right guaranteed by Article 30(1) of the Constitution. It would reduce the management to a helpless entity having no real say in the matter of selection and destroy the personality and individuality of the institution which is fully protected by Article 30 of the Constitution.

It needs to be highlighted that fundamental rights enshrined in Article 30(1) are protected by a prohibition against its violation. The prohibition is contained in Article 13 of the Constitution which bars the State from making any law abridging or limiting any of the provisions of part III of the Constitution and threatens to veto any law found inconsistent with. Thus the State or any university or authority under the cover and garb of exercising regulatory measures cannot destroy the administrative autonomy of a minority educational institution so as to render the right of management of the institution concerned nugatory or illusive. Such a blatant interference is violative of Article 30(1) and would be wholly inapplicable to the institution concerned.

It has been held by the Supreme Court in *Brahmo Samaj Education Society Vs. State of West Bengal* (2004) 6 SCC 224 that it is the duty of the State governments to take note of the declaration of the law by the Supreme Court and amend their laws, rules and regulations so as to bring them in conformity with the principles set out therein. It is also significant to mention here that the statute 25.06 (1) (b) is also not in consonance with Section 31(4) (d) of the Act. The second proviso of Section 31(4) (d) of the Act provides full power to the Management of a minority educational institution to constitute its own Selection Committee for appointment of teachers. In view of the said provisions of the Act, statute 25.06(1) (b) has to be amended so as to bring it in consonance with the second proviso of Section 31(4) (b) *ibid*.

For the foregoing reasons Commission held that the statute 25.06 (1) (b) of the First Statute is not only violative of Article 30(1) of the Constitution but it also runs counter to the provisions of Section 31 (4) (d) of the Act. Consequently, the respondent university was directed to amend the provisions of statute 25.06 (1) (b) of the First statute so as to bring it in consonance with the law declared by the Supreme Court in *T.M.A. Foundation* case (*supra*) and the provisions of Section 31(4) (d) of the Act.

Case No.1130 of 2006

Release of Salary of the Teachers appointed against the vacant posts

Petitioner/s Falah-e-Darain Inter College, Moradabad, U.P.

Respondent/s District Inspector of Schools, Moradabad, U.P.

This petition filed by Falah-e-Darain Inter College, Moradabad, U.P. relates to violation of the educational rights of the minorities enshrined under Article 30(1) of the Constitution of India.

It is beyond the pale of controversy that the petitioner college is an aided minority educational institution and it has primary section also. It is also admitted that on 28.8.2001, one post of Asstt. Teacher fell vacant on account of resignation of Shri Aqil Hasan and on 30.6.2002 another post of Asstt. Teacher of the primary section fell vacant on account of superannuation of Shri Abdul Huda; that on 2.2.2003 and on 23.4.2003 the petitioner appointed Ku. Nilofar and Ku. Uzma Aqil respectively against the vacant posts of Asstt. Teachers; that thereafter the petitioner sought approval of the Distt. Inspector of schools Moradabad for these appointments but the same was declined on the ground that the State Government had banned fresh appointments of teachers of primary schools vide Memo No.2836/15-6-2001-28(51)/2000/T.C. dated 24.7.2001 (herein after referred to as the impugned order) and that the Distt. Inspector of schools, Moradabad had intimated the petitioner that in view of the impugned order of the State Govt. financial aid for these posts cannot be sanctioned.

In the petition, the petitioner has challenged the impugned order on the ground of its infraction with the Article 30(1) of the Constitution.

The respondent resisted the petition on the ground that the petitioner has appointed Ku. Nilofar and Ku. Uzman as Asstt. Teachers in flagrant violation of the impugned order of the State Govt. and as such the petitioner is not entitled to any relief from this Commission.

In view of the rival contentions of the parties, the question which arises for consideration is: whether the impugned order is violative of Art. 21 – A read with Article 30 (1) the Constitution.

It has been held by the Apex Court in TMA Pai Foundation v. 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.

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 administration 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 Rev. 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.V. 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 of the school 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.

The impugned order amounts to a defacto denial of the clearly established right of the minorities to select and appoint teaching and non teaching staff provided that the minimum eligibility requirements prescribed by the regulatory authorities are met. It is well settled that any law or 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 or political, can justify the infringement of a fundamental right. By the impugned order the State Government has imposed total ban on recruitment of teachers of primary schools pending finalization of recruitment rules in this regard. The impugned order is dated 24.7.2001 and there is nothing on record to show or suggest that at any point of time the impugned order has either been withdrawn or cancelled by the State Government. It appears that even after a lapse of six long years the State government could not finalise the rules envisaged by the impugned order. Needless to add here that a fundamental right enshrined under Article 30(1) of the Constitution cannot be kept by the State Government in suspended animation for an indefinite period.

The issue herein can also be examined from another angle. It is beyond the pale of controversy that the petitioner primary school is an aided minority educational institution and the posts of two Asstt. Teachers of the said school fell vacant on 16.4.01 and 30.6.02. It is significant to mention that Article 21-A of the Constitution declares the right to education as a fundamental right of all children in the 6-14 age group and the State is under the constitutional obligation to establish adequate facilities to provide affordable quality 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 the age group

of 6-14, it should encourage managers of private primary schools to discharge its obligation by providing adequate financial assistance and treat them as partners with it making Article 21-A, a meaningful reality on the ground. Needless to add here that Minority communities are providing minimal educational facilities in places where the State has failed. It is not difficult to see that educational institutions that serve the poorer sections cannot survive without grant in aid. Minority communities are struggling to fill in the educational vacuum resulting from State inaction. In the instant case, the State Govt. has, in flagrant violation of Article 21-A of the Constitution, imposed a total ban on filling up vacancies of primary school teachers in the State resulting in deprivation of fundamental right of the children in the age group of 6-14 years to receive free education. Article 13 of the Constitution injuncts the State from enacting any law, rules or regulations which is violative of fundamental rights embodied in Chapter III of the Constitution and declares the existing law or rule void ab initio to the extent of its inconsistency with fundamental rights. That being so, no law or rule which is unconstitutional could be allowed to stand in the way of the exercise of fundamental rights. That being so, the impugned order of the State Govt. is eclipsed by the fundamental right enshrined in Article 21-A of the Constitution and remains, as it were, in a moribund condition as long as the shadow of fundamental right falls upon it.

As demonstrated earlier, the impugned order also takes away or abridges the fundamental rights of the minorities under Article 30(1) of the Constitution.

The management of the petitioner school has appointed two assistant teachers namely Ms. Uzma Aqil and Ku. Nilofar Aqil as Asstt. Teachers in exercise of the right enshrined under Article 30(1) of the Constitution. It is not the case of the State Government that both the teachers appointed by the Management did not fulfill the conditions of eligibility prescribed for appointment of an assistant teacher of the primary schools. That being so their appointments as Assistant teachers are valid. Commission was constrained to observe that both the teachers are not getting pay on account of non approval of their appointments by the concerned authorities. Commission observed that in view of the specific mandate of the Article 30(1) of the Constitution no approval of the concerned authority is required to validate appointment of a teaching or non teaching staff of a minority educational institution provided the minimum eligibility requirements prescribed by the regulatory authorities are met.

For the foregoing reasons Commission found that the impugned order No.2036/15-6-2001-28(51) 2000 T.C. is violative of Article 30(1) and 21-A of the Constitution and as such it is inapplicable to an educational institution covered under Art. 30(1) of the Constitution. Consequently Commission directed the State Government to release the salaries of both the teachers appointed by the petitioner school against vacant posts of Asstt. Teachers of primary section of the school.

Case No.1309 of 2006

Establishment of new Girls College

Petitioner/s	Aqsa Education Trust, Bhiwandi
Respondent/s	<ol style="list-style-type: none">1. The Principal Secretary, Higher & Technical Education Department, Government of Maharashtra.2. The Registrar, S.N.D.T. Women's University, 1, Nathibai Thackersey Road, Churchgate, Mumbai – 400 020.3. The Director of Higher Education, Directorate of Education, Government of Maharashtra.

The petitioner Trust which is a registered public Trust established by the Muslim trustees for the integrated development of education of the Muslim community has established primary and secondary schools exclusively for girls at Bhiwandi with the prior approval of the concerned authorities of the State. Section 83 of the Maharashtra Universities Act 1994 empowers the university to affiliate colleges to the university as affiliated colleges, within the university area under conditions prescribed and withdraw such affiliation. On 18.10.2005, the petitioner submitted an application to the respondent university seeking affiliation to the university of a girls college which the Trust wanted to start. The respondent university recommended to the State Government for granting permission to the petitioner for starting a new college in terms of sub section (5) of Section 82 of the Maharashtra Universities Act 1994. By the order dated 8.8.06, the State Government declined to grant the permission on the ground of a policy decision not to give permission for the arts, science and commerce colleges except technical education colleges for the academic year 2006-07. Consequent to the impugned order dated 8.8.06, the respondent university also declined to grant affiliation to the college proposed to be set up by the petitioner. It is alleged that the impugned action of the State Government in not allowing the petitioner to open the new college duly recommended by the respondent university is violative of Article 30(1) of the constitutions.

The State Government, even after due service of the notice, did not contest the proceedings. The respondent university resisted the petition on the ground that since the State Government had declined to accord permission to open new arts, science and commerce colleges, affiliation cannot be granted to the petitioner. It is also alleged that the State Government has taken a uniform policy decision to grant permission only to the professional courses for the academic year 2006-07, the present petition is outside the cognizance of this Commission.

Commission on the basis of Supreme Court rulings commencing with the Kerala Education Bill, 1957 (AIR 1958 SC 959) and climaxed by P.A. Inamdar & Ors Vs. State of Maharashtra & Ors (2005) 6 SCC 537 has settled the law for the present. The

whole edifice of case law on Article 30(1) of the Constitution has been bedrocked in Kerala Educational Bill's case (supra). Article 30(1) of the Constitution gives the minorities a fundamental right to establish and administer educational institutions of "their choice". The rationale behind Article 30(1) of the Constitution is to give protection to minorities to run educational institutions of their choice. These rights are protected by a prohibition against their violation and are backed by a promise of enforcement. The prohibition is contained in Article 13 which bars the State from making any law or rule or regulation abridging or limiting any of these provisions under Chapter III of the Constitution and threatens to veto any law, rule or regulation found inconsistent with.

In the case of Ahmedabad St. Xavier College Society Vs. State of Gujarat AIR 1974 SC 1389, their lordships of the Supreme Court attributed the real reason for Article 30(1) of the Constitution "to the conscience of the nation that the minorities, religious as well as linguistic, 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. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institution of their choice, they will feel isolated and separated. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole."

In Re: Kerala Education Bill (supra) S.R. Das C.J. observed as under:

"The key to the understanding of the true meaning and implication of the article under consideration are 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."

In St. Stephens College Vs. University of Delhi (1992) 1 SCC 558, the Supreme Court has observed 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 distinct language, script or culture or for imparting general secular education or for both the purposes."

At this juncture, it would be useful to excerpt the following observations of their Lordships of the Supreme Court in the case of P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors.(supra):

“.....The object underlying article 30(1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services, educational institutions imparting higher instructions including general secular education. Thus, the twin objects sought to be achieved by Article 30(1) in the interest of minorities are:

- i) To enable such minority to conserve its religion and language, and ii) to give a thorough, good general education to the children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the above said two objectives, the institution would remain a minority institution.”

The right to establish educational institutions “of their choice” must, therefore, mean right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions (See AIR 1958 SC 956). At present, the situation is such that an educational institution cannot possibly hope to survive and function effectively without recognition, nor can it confer degrees without affiliation to a university. Although minorities establish and run their educational institutions with a view to educate their children in an atmosphere congenial to the conservation of their language or culture, yet that is not their only aim. They also desire that their students are well-equipped for useful career in life.”

As stated earlier a meaningful exercise of the rights guaranteed under Article 30(1) of the Constitution must, therefore, mean the right to establish effective educational institutions which may subserve the real needs of the minorities and the scholar who resort to them. It is permissible for the State or the regulatory authority to prescribe regulations, which must be complied with, before any minority institution could seek or retain affiliation and recognition but such regulations should not impinge upon the minority character of the institution. Therefore, a balance has to be kept between the two objectives – that of ensuring the standard of excellence of the institution, and that of preserving the right of the minorities to establish and administer their educational institutions. Regulations that embraced and reconciled the two objectives could be considered to be reasonable. (See T.M.A. Pai Foundation Vs. State of Karnataka) 2002 (8) SCC 481). In T.M.A. Pai Foundation’s case, it has been held by the Supreme Court that affiliation and recognition has to be available to every institution that fulfills the conditions for grant of such affiliation and recognition. Moreover, the right conferred by Art. 30 on minorities imposes a duty on the legislature and the executive to abstain from making any law or taking any executive action which would take away or abridge that right. The decision of the State Government imposing total prohibition to open new Arts, commerce and science colleges and that too for a girls college can never be said to be in the interest of ensuring the standard of excellence of the petitioner institution and would not fall within reasonable regulation permissible under Article 30.

It is significant to mention here that the petitioner wants to start the proposed girls' college at Bhiwandi, which has a sizeable Muslim population. The petitioner wants to impart higher education to girls of the Muslim community. It is an admitted position that the petitioner had already paid a sum of Rs.2 lac to the respondent university as course wise affiliation fee. The proposal for starting the proposed college was submitted on 18.10.2005 and the State Government declined to grant the requisite permission vide order dated 8.8.2006. This inordinate delay in taking decision by the State Government on the recommendations of the respondent university for according to the petitioner for starting the proposed college cannot be appreciated at all.

The so called policy decision of the State Government not to grant permission to the proposed college of the petitioner is totally irracionale. If any, policy decision of the Government is inconsistent with the provisions of Article 30(1), of the Constitution, it would be inoperative to the extent of such inconsistency as declared by Article 13 of the Constitution. The right enshrined in Article 30(1) was intended to be effective and was not to be whittled down by the so called regulative measures or policy decision. Otherwise, the said fundamental right will be but a teasing illusion, a promise of unreality (Sidh Raj Bhari Vs. State of Gujrat) AIR 1963 SC 540).

The issue herein can also be examined from another angle. In Unni Krishnan J.P. Vs. State of A.P. AIR 1993 SC 2178, the Supreme Court has observed that education is enlightenment. It is the one that lends dignity to a man. The fundamental purpose of education is the same at all times and in all places. It is to transfigure the human personality into a pattern of perfection through a synthetic process of the development of body, the enrichment of the mind, the sublimation of the emotion and the illumination of the spirit. Education is a preparation for a living and for life. In the context of a democratic form of Government which depends for its sustenance upon the enlightenment of the populace, education is at once a social and political necessity. The Supreme Court, therefore, held that the right to education flows from the right to life guaranteed under Art. 21 of the Constitution. Similar view was also taken by the Supreme Court in Mohini Jain Vs. State of Karnataka AIR 1992 SC 1858. It was held by the Supreme Court that the State is under obligation to establish educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligation through State owned or State recognized educational institutions. When the State Government grants recognition to the private educational institutions it creates an agency to fulfill its obligation under the Constitution. Thus, the State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizen. In the instant case, the State Government has also violated Art. 21 of the Constitution by denying permission to the petitioner for starting a girl's college at Bhiwandi.

Needless to add here that the State Government is the custodian of fundamental rights of the citizens, keeping in view the mandate of Article 30(1) of the Constitution, the State Government is under constitutional obligation to consider the choice and

needs of a minority community for imparting higher education to its children. No inconvenience or difficulties, administrative and financial, justify infringement of the fundamental right. It is significant to mention that the petitioner wants to start a new college for girls and the application submitted by the petitioner to the respondent university was duly forwarded to the State Government for according permission under sub Section (5) of Section 82 of the Maharashtra Universities Act. The impugned action of the State Government in now allowing the petitioner to start the proposed college is arbitrary and is hit by Article 30 (1) of the Constitution which allows minorities to have the right to establish and administer educational institutions of their choice. Consequently, we find and hold that impugned order dated 8.8.2006 of the State Government, being violative of Art. 30 (1) of the Constitution cannot be made applicable to the minorities educational institutions.

For the foregoing reasons, the Commission directed the State Government to accord permission to the petitioner under Sub Sec.(5) of Section 82 of the Maharashtra universities Act 1994, to establish a new Girls college in accordance with the recommendations of the respondent university for the academic year 2006-07.

Case No.702 of 2006

Non-approval appointment of 17 teaching and non-teaching staff

Petitioner/s	Bishop Azariah Elementary & High School For girls, Andhra Pradesh
Respondent/s	1. Secretary (School Education), Government of Andhra Pradesh & Anr. 2. The District Education Officer, Vijaywada, Andhra Pradesh. 3. The Chairman of the Managing Committee, Bishop Azariah Elementary & High School For Girls, Vijaywada, Andhra Pradesh –10

By this petition, 17 teaching and non teaching staff recruited by the Management of the Bishop Azariah Elementary & High School for Girls, Vijaywada, sought a direction to the State Government for approval of their appointment made by the said school. It is alleged that the petitioners were recruited by the Management of the said school in 2003 through proper interview process. When the proposal relating their appointments was sent to the Education Department for approval, the same was rejected on the ground that the appointments were not made in accordance with the procedure prescribed in Rule 12 and 13 of G.O.M.S. No.1 dated 1.1.1994. It is, therefore, alleged that non approval of these appointments by the Government of Andhra Pradesh 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 approval sought by the Management of the Bishop Azariah Elementary & High School for Girls, Vijaywada was denied on the following grounds:-

- i) That the selection committee did not have a nominee of the education department.
- ii) That the selection process did not comply with the stipulations regarding reservations to the private aided schools.

The point which arises for consideration is as to whether the impugned action of the State Government in not according approval of the appointments made by the Management is violative of Article 30(1) of the Constitution.

It is beyond the pale of controversy that the Bishop Azariah Elementary & High School for Girls, Vijaywada has already been declared as a minority educational institution by the State Government and the said school is an aided school. It is stated in the replies filed by the respondents that according to the procedure prescribed under the A.P. Education Board, all the educational institutions receiving grant-in-aid from the Government shall notify the vacancies to the Employment Exchange and in addition to advertisement in the newspapers and they shall also be required to call the candidates sponsored by the employment exchange for the test and interview provided that the persons applying to the post in response to the advertisement in the newspapers should have got registered their names in the Employment Exchange in the State. Aided schools shall also be required to have a nominee of the District Education Officer not below the rank of Deputy Education Officer in the Staff Selection Committee. It is also provided that the selection of the post in all private aided educational institutions shall conform to the communal rotation roster. All the appointments made by the unaided institutions shall be subject to the approval of the competent authority of the State Government. It is contended on behalf of the respondents that the appointments made by the Management without following the procedure prescribed therefor and without having a nominee of the District Education Officer in Selection Committee are invalid and unenforceable. It is further contended that as the Management did not follow the procedure prescribed in Rule 12 & 13 of G.O.M.S. No.1 dated 1.1.1994 the appointments were not approved and salaries of the petitioners were not paid by the Government.

It has been held by the Apex Court in TMA Pai Foundation v. 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)

- 143.** “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: -

- (v) the minimum qualifications, experience and other criteria bearing on merit, for making appointments,
- (vi) the service conditions of employees without interfering with the overall administrative control by the Management over the staff.
- (vii) a mechanism for redressal of the grievances of the employees.
- (viii) 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 administration 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 Rev. 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 v. Union of India, 1986 (4) SCC 707, D.A.V. 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 of the school 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 in 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 course 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.”

It is relevant to mention here that the selection procedure adopted by the Management does not suffer from any legal infirmity. The posts concerned were advertised in Andhra Bhoomi and Deccan Chronicle dated 4.11.03 and 5.11.03 respectively. The vacancies were also notified in the Regional Employment Exchange. The staff selection Committee of the institution met on 9.1.04 with Bishop G. Dyvasirvadam in the chair and adequate subject experts and selected the petitioners, all of whom possess the required educational qualifications prescribed by the Government. The selections made by the Management were duly communicated to the District Education Officer Krishna, Machilipatnam vide letter No.BASHSG/101/2004/1 dated 12.1.04 for approval. The Deputy Education Officer, Vijayawada has intimated to the District Education Officer Krishna, Machilipatnam that the candidates appointed by the Management fulfill the eligibility criteria prescribed by the Government and they are suitable for the post for which they have appointed and they have proper registration with the employment exchange. He, therefore, recommended to the District Education Officer to approve the appointments and released the salaries of the petitioners with effect from 10.1.04 vide letter No.190/04 dated 22.7.04. In view of the said letter of the Deputy Education Officer, Vijayawada, it cannot be held that the petitioners did not fulfill the eligibility criteria laid down by the State Government and they are wholly unfit for the appointment.

In the matter of appointment of teachers it is to be highlighted that the Andhra Pradesh High Court has held in Government of A.P. Vs. Thiruivali Devi 2001 (3) D.T. (A.P.)21 that the rule of reservation cannot be extended to the private educational institutions. We are in respectful agreement which the law laid down by the A.P. High Court.

For the foregoing reasons the Commission have no hesitation in holding that the impugned order of the State Government amounts to a defacto denial of the clearly established right of the minorities to select and appoint teaching and non teaching staff provided that the minimum eligibility requirements prescribed by the regulatory authorities are met. It is well settled that any law or 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.

For the foregoing reasons the State Government was directed to reconsider or caused to be reconsidered by a competent authority, the cases of the petitioner for releasing their salaries as their appointments do not suffer from any legal infirmity. The

State Government shall ensure that the cases of the petitioners are considered and appropriate reasoned order, supporting the decision or conclusion regarding release of the petitioner's salary is passed within a period of 6 weeks from the date of receipt of a copy of this order. Accordingly, the findings of the Commission were sent to the State Government for implementation.

Case No.1203 of 2006

Denial of approval for appointment to fill up vacant posts of teaching and non-teaching staff

- Petitioner/s** Nirmal Hindi Primary School, Gondia, Maharashtra
- Respondent/s**
1. The Directors of Education, Secondary & Higher Secondary Education, Central Building, Pune
 2. The Education Officer, (Primary) Zila Parishad, Gondia, M.P.
 3. The Deputy Director, Nagpur Division, Nagpur, Maharashtra

By this petition, the petitioner, Nirmal Hindi Primary School, Gondia, Maharashtra, seeks directions to the respondent nos. 1 & 2 to approve appointments of Ku. Maria Alfred Martin and Ku. Preeti Laxmanrao Wankhede as Asstt. Teachers of the said school and also accord permission to fill up the vacant post Asstt. Teacher of the said school. Despite service of notices on the respondents, they did not contest the proceedings.

It needs to be highlighted that the petitioner's plea of being a minority educational institution went unheeded. Consequently, Commission concluded that the petitioner school is a minority educational institution within the meaning of Sec. 2 (g) of the National Commission for Minority Educational Institutions Act (for short the Act). On this point Commission was also fortified by the order No.Pry/K/18161/98 dated 23rd December, 1998 of the Deputy Director of Education, Nagpur Division, Nagpur. It is also relevant to mention here that by the aforesaid order following posts for the petitioner school had been sanctioned and notified under rule 3 (2) of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act:

S. No.	Names of the Post	No. of Posts
1	Headmistress	01 Post
2	Asst. Teachers	02 Posts
3	Clerk	01 Post
	Total	04 Posts

Ms. Shakun M. Tiwari and Ms. Janemary Thomas were appointed as Asstt. Teachers against the sanctioned posts. Both these posts fell vacant on superannuation of Ms. Shakun M. Tiwari and Ms. Janemary Thomas, Asstt. Teachers. The petitioner

school appointed Ku. Maria Alfred Martin and Ku. Preeti Laxmanrao Wankhede as Asstt. Teachers against the vacancies caused on account of superannuation of Ms. Shakun M. Tiwari and Janemary Thomas. Their appointments were sent to the Education Officer, Primary Zila Parishad to be forwarded to the Deputy Director of Education, Nagpur Divison, Nagpur. In the meantime, the petitioner school also sought permission to appoint Shikshan Sevak in the fixed pay of Rs. 3,000/- per month against the post of Smt. Philomina Bastian Asstt. Teacher who was to retire on 31.8.06. The aforesaid request of the petitioner was also duly forwarded by the Education Officer, Zila Parishad, Gondia, to the Deputy Director, Nagpur Divison, Nagpur, who is now seized of the said proposals. The petitioner was verbally informed by the Deputy Director, Nagpur Divison, Nagpur that the posts in question will be filled up by adjusting the surplus staff of the education department. Aggrieved by the denial of the said right to administer a minority educational institution, the petitioner, has approached this Commission.

The question which arises for consideration is whether the impugned action of the Deputy Director Nagpur Divison is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. It is beyond the pale of controversy that the petitioner school is a minority educational institution within the meaning of Section 2(g) of the Act. It is also undisputable from the material brought on record that Ku. Maria Alfred Martin and Ku. Preeti Laxmanrao Wankhede were appointed as Asstt. Teachers against the vacancies caused by superannuation of Ms. Shakun M. Tiwari and Ms. Janemary Thomas and they meet the eligibility requirements prescribed therefor. The petitioner had also sought permission to appoint the Shikshan Sewak against the vacant post of Smt. Philomina Bastian, Asstt. Teacher who was to retire on 31.8.06. It is now 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 Rev. 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.V. 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 of the school is well insulated by the protective cover of Article 30 (1) of the Constitution and it cannot be chiselled out through any legislative act or executive fiat except for prescribing the qualifications and conditions of service for the post. Article 13 (1) 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. This has not been in any way diluted or altered by the decision rendered by the Apex Court in T.M.A. Pai Foundation Vs. State of Karnataka (2002) 8 SCC 481.

Bearing in mind the dictum of law laid down by their lordships of the Supreme Court in T.M.A. Pai Foundation (supra), prior approval of the Deputy Director of Education relating to appointments of Ku. Maria Alfred Martin and Ku. Preeti Laxmanrao Wankhede as Asstt. Teachers was not required at all. Similarly, there was no necessity to seek prior approval of the said authority to fill up the post of Shikshan Sevak against the vacant post of Smt. Philomina Bastian, Asstt. Teachers who has already superannuated on 31.8.06.

For the foregoing reasons the Commission was constrained to hold that the impugned action of the Deputy Director of Education in withholding the approval of appointment of Ku. Maria Alfred Martin and Ku. Preeti Laxmanrao Wankhede as Asstt. Teachers of the petitioner school is violative of educational rights of the minorities guaranteed in Article 30(1) of the Constitution. Similarly, the impugned action of the Deputy Director of Education, Nagpur, in not allowing the petitioner school to fill up the vacant post of Shikshan Sewak is also violative of Article 30(1) of the Constitution. Consequently, the respondent no. 3 is directed to pass appropriate orders on the aforesaid proposals of the petitioner school within one month from the date of receipt of this order. Accordingly, the order was sent to the Director of Education, Government of Maharashtra for implementation.

Case No. 1035 of 2006

Grant of Recognition to start and run a primary school on 'no grant-in-aid basis'

Petitioner/s	Shabbir Ansari Education Society, Pathri, Parbhani, Maharashtra
Respondent/s	1. The Secretary, Deptt. Of School Education, Govt. of Maharashtra, Mantralaya Extension Building, Mumbai, Maharashtra 2. The Education Officer (PS), Zila Parishad (Parbhani), Distt. Parbhani, Maharashtra

The petitioner Education Society sought a direction to the State Government to grant recognition to start and run a primary school at Pathri, Tq. Pathri, Distt. Prabhani on no grant-in-aid basis. Despite repeated service of notices, the respondents did not contest the proceedings.

The petitioner Education Society have been formed by the members of the Muslim Community. On 7.5.2000 the petitioner Society had applied to the State Government for recognition of a primary school at Pathri, Tq. Pathri, Distt. Prabhani, but in vain. Despite repeated reminders, the State Government did not grant recognition as sought by the petitioner. It is alleged that the impugned action of the State Government in denying recognition to the said school is violative of Article 30 of the Constitution.

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

For the reasons discussed above, the Commission was of the opinion that by denying recognition as sought by the petitioner, the State Government has violated educational rights of the minorities enshrined in Article 30(1) of the Constitution. Consequently, the State Government was directed to reconsider the request of the petitioner for grant of recognition of a primary school at Pathri, Tq. Pathri, Distt. Prabhani.

Case No. 42 of 2007

Request for establishment of Medical College

Petitioner/s Safa Educational Society, Salarjung Colony, Hyderabad, Andhra Pradesh

Respondent/s 1. The Chief Secretary, Government of Andhra Pradesh, Secretariat, Hyderabad, Andhra Pradesh.

2. The Principal Secretary, Health, Medical & Family Welfare Department, Government of Andhra Pradesh, Andhra Pradesh.

The petitioner Society has been formed by members of the muslim community. In order to establish a medical college at Kurnool (A.P.) for the muslim community, the Society acquired 30 acres of land and it started construction of a 300 bedded hospital, in accordance with the prescribed norms for establishment of a medical college. The petitioner Society is also financially sound for establishment of the proposed medical college. On 4.1.2005, the petitioner Society applied to the State Government for grant of an Essentiality Certificate for the proposed college. The State Government did not pass any order on the said application. Hence this petition.

Despite service of notice, the State Government did not contest the proceedings. The point for consideration is as to whether the impugned action of the State Government in not granting essentiality certificate to the petitioner is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. It has been held by the Supreme Court in *Thirumuruga Kirupanada Variya Thavathiru Sundara Swamigal Medical Educational and Charitable Trust Vs. State of Tamil Nadu* (1996) 3 SCC 15 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 the policy consideration because the policy in the matter of establishment of a new medical college now rests with the Central Government alone. Similar view has also been reiterated by the Supreme Court in *Govt. of A.P. Vs. Medwin Education Society* (2004) 1 SCC 86. At this juncture it would be useful to excerpt the following observations of their Lordship of the Supreme Court in (1996) 3 SCC 15 (Supra):

30. Section 10-A seeks to achieve this object by prescribing in sub section (1) that no person shall establish a medical college except with the previous permission of the Central Government obtained in accordance with the provisions of the said section. Similar permission is required for obtaining a new or higher course of study or training or for increase in the admission capacity in any course of study or training in a medical college. Sub-section (2) of Section 10-A requires that every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in the prescribed form and the said scheme is to be referred to the Medical Council for its recommendations. Under sub-section (3), the scheme is required to be considered by the Medical Council having regard to the factors referred to in sub-section (7) and Medical Council submits the scheme together with its recommendations thereon to the Central Government. Sub-section (4) empowers the Central Government, after considering the scheme and the recommendations of the Medical Council and after obtaining, where necessary,

such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in sub-section (7), to either approve, with such condition, if any, as it may consider necessary, or disapprove the scheme and any such approval shall be a permission under sub-section (1). Under sub-section (5) the scheme shall be deemed to have been approved by the Central Government in the form in which it had been submitted and the permission of the Central Government required under sub-section (1) shall be deemed to have been granted where no order passed by the Central Government has been communicated to the person or college within one year from the date of submission of the scheme of the Central Government sub-section (2). The factors that are required to be taken into consideration by the Medical Council and the Central Government under sub-section (7) include the capacity to offer the minimum standard of medical education as prescribed by the Central Government, adequacy of financial resources, necessary facilities in respect of staff equipment, accommodation, training, and other facilities to ensure proper functioning of the medical college, adequate hospital facilities, arrangement/ programme to impart proper training to students and the requirement of manpower in the field of practice of medicine.

31. It would thus appear that in Section 10-A Parliament has made a complete and exhaustive provision covering the entire field for establishing of new medical colleges in the country. No further scope is left for the operation of the State Legislation in the said field which is fully covered by the law made by Parliament. Applying the tests laid down by this Court, it must be held that the proviso to sub-section (5) of Section 5 of the Medical University Act which was inserted by the State Act requiring prior permission of the State Government for establishing a college is repugnant to Section 10-A inserted in the Indian Medical Council Act, 1956 by the Central Act which prescribes the conditions for establishing a new medical college in the country. The said repugnancy is, however, confined to the field covered by Section 10-A, viz., establishment of a new medical college and would not extend to establishment of other colleges.

Needless to add here that under Article 30(1) of the Constitution the petitioner 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 medical college in accordance with the the provisions of the Medical Council of India. That being so, the impugned action of the State Government in not granting the essentiality certificate to the petitioner is violative of Article 30(1) of the Constitution.

For the foregoing reasons the Commission directed State Government to reconsider the petitioner's application for grant of Essentiality Certificate in the light of the aforesaid decisions of the Supreme Court and the mandate of Article 30(1) of the Constitution.

Case No. 238 of 2007

Grant of Permission to start a primary Urdu School

Petitioner/s Phaltan Urdu Education Society, Tehsil Phaltan, Dist. Satara, Maharashtra.

Respondent/s

1. The District Education Officer, Government of Maharashtra, Satara, Maharashtra
2. The Director of Education, Government of Maharashtra, Central Building, Pune

The petitioner Education Society has been formed by the members of the minority community. The said Society applied to the respondents for grant of permission to start a primary Urdu school in Phaltan city. The proposal was turned down by the District Education Officer (primary) Satara, Zila Parishad on the ground that opening of a new Urdu primary school will give rise to an unhealthy competition between other schools of the locality. It is alleged that there is no Urdu primary school in Phaltan taluka and the impugned action of the education Officer Satara Zila Parishad in rejecting the proposal of the petitioner is violative of the Article 30 of the Constitution.

Despite service of notice, the respondents did not contest the proceedings. The point which arises for consideration is as to whether the impugned action of the District Education Officer, Satara in rejecting the application of the petitioner for starting a Urdu primary school in Phaltan is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. It is alleged that muslim population of Taluka Phaltan is about 12000 and there is not a single Urdu primary school in Taluka Phaltan to cater the needs of muslim students. It is universally accepted that education empowers the people for full development of human personality, strengthens the respect for human rights, and helps to overcome exploitation and the traditional inequalities of caste, class and gender. Learning liberates from ignorance, superstition and prejudice that blind the vision of truth. The learning and communicative processes involved in conservation of culture, language and script are animated by the Constitutional policy of mother tongue instruction contemplated in Article 350-A of the Constitution. Art. 30(1) of the Constitution confers a fundamental right on minorities to establish and administer educational institutions of their choice. In re, Kerala Education Bill AIR 1958 SC 956, Chief Justice SR Dass opined that “the minorities evidently desire that education should be imparted to the children of their community in an atmosphere congenial to the growth of their culture. The constitution Makers recognised the validity of their claim and to allay their fears conferred on them the fundamental rights referred to in the Articles 29 and 30”. Thus, the communitarian atmosphere – either religious or linguistic – congenial for imparting education is relevant only so long as the child’s mind requires to feel at home in the learning process. The child at the primary and secondary level of education, in fact, requires such incubation. Education occupies a position of prime importance in the Constitutional scheme of a just and fair Society.

Commission relied on the observations made by the High Court of Bombay in Gramvikas Shikshan Prasarak Mandal, Sondoli, Vs. State of Maharashtra (2000-BCR-4-379).

In the afore cited judgment it has been told that the educational institutions covered by Article 30 of the Constitution will not be required to abide by the master plan. The grant of permission to establish school by religious and linguistic minorities will be in accordance with their rights under Article 30 of the Constitution. In granting permission for setting up a primary, secondary or higher secondary schools, due and proper emphasis has to be given to the existence of requisite infrastructure as has been held by the Bombay High Court in the afore cited decision. According to the said decision the spread of education has to be consistent with the maintenance of basic facilities required in terms of infrastructure, including a properly qualified and equipped teaching staff.

Having regards to the facts and circumstances of the case, Commission was of the view that petitioner's right to establish an Urdu primary school cannot be kept in suspended animation. The petitioner has stated in the petition that there is no Urdu primary school in Phaltan Taluka. In his view of the matter, the State Government is under Constitutional obligation to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to the muslim community. Reference may in this connection be also made to the mandate of Article 21A of the Constitution which has elevated right to education as a fundamental right for the children in the 6-14 age group.

For the foregoing reasons Commission was of the opinion that the impugned action of the educational officer of the District Satara in denying the permission to the petitioner's society to start a new primary Urdu school in Phaltan Taluka is violative of the fundamental rights enshrined under Article 30(1) read with Article 21-A of the Constitution.

Consequently, the State Government was directed to reconsider the application of the petitioner society for starting a primary Urdu school in Phaltan Taluka in the light of the Constitutional mandates of Articles 30(1), 21-A and 350-A of the Constitution.

Case No. 435 of 2007

Permission to allow admission of students under management quota

Petitioner/s	Unity Degree College, Kakori, Lucknow.
Respondent/s	1. The Registrar, Lucknow University, Lucknow. 2. The Secretary, Higher Education Department, Secretariat, Lucknow, U.P. 3. The Secretary, Minority Welfare Department, Government of U.P., 6 th Floor, Indira Bhavan, Lucknow, U.P.

The petitioner, Unity Degree College has challenged the order dated 23.5.07 of the respondent university restraining it from holding any admission test for filling up seats in the management quota as the State Government has decided to hold a common entrance test for admissions in all the B.Ed. Colleges of the State. The petitioner degree college has been certified as a minority educational institution vide orders dated 5.7.2004 issued by the State Government. According to the petitioner, the petitioner college has been admitting 50 students in the management quota in accordance with the decisions rendered by the Supreme Court in Islamic Academy Education Vs. State of Karnataka (2003) 6 SCC 697 and P.A. Inamdar Vs State of Maharashtra (2005) 6 SCC 537. Remaining 50 seats are to be filled by the respondent University with which the petitioner college is affiliated. It is alleged that the impugned memo dated 23.5.07 issued by the Respondent University is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

Despite service of notices on the respondents, neither of them chose to contest the proceedings.

The question which arises for consideration is as to whether the impugned order dated 23.5.07 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) SCC 481 it has been very clearly held that minority educational institutions should be given greater autonomy in determination of admission procedure and the state regulation should be minimal and only with a view to maintain fairness and transparency in admission procedure. We may in this connection usefully excerpt the following observations of their lordships in the case of P.A. Inamdar (supra).

“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 therefore 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 above said triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit based admissions and preventing maladministration. The admission procedure so adopted by a private institution or group of institutions, if it fails to satisfy 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.

There is nothing on record to show or suggest that the admission procedure adopted the petitioner college had failed to satisfy all or any of the triple tests indicated

in the case of P.A. Inamdar (Supra). Consequently, the admission procedure for admissions in the minority educational institutions can't be taken over by the State substituting its own procedure.

In Islamic Academic of Education (supra) it has been held by their lordships as under:

“It must be clarified that minority professional colleges can admit, in their management quota, a student of their own community/language in preference to a student of another community even though that other student is more meritorious. However, whilst selecting/admitting students of their community/language the inter se merit of those students cannot be ignored. In other words, whilst selecting/admitting students of their own community/language they cannot ignore the inter se merit amongst students of their community/language. Admission, even of members of their community/language, must strictly be on the basis of merit except that in case of their own students it has to be merit inter se those students only. Further, if the seats cannot be filled up from members of their community/language, then the other students can be admitted only on the basis of merit based on a common entrance test conducted by government agencies.”

In T.M.A. Pai Foundation Vs. State of Karnataka 2002(8) SCC 481 that “the right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30(1) of the Constitution, the State Government or the controlling authority may not be entitled to interfere with that right so long as the admission to the minority educational institution is on transparent basis and the merit is adequately taken care of. The minority educational institution is given the right to admit students belonging to the minority community to ensure that its minority character is preserved and the objective of establishing the institution is not defeated. It needs to be highlighted that in T.M.A. Pai Foundation Vs. State of Karnataka (supra) the following question was formulated by the 11 judges bench of the Supreme Court and it was answered as under:-

“Q.5 (a) Whether the minorities's rights to establish and administer educational institutions of their choice will include the procedure and method of admission and selection of students?

An. 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 impugned order shows that the respondent university has, in flagrant violation of the constitutional mandate of Art. 30(1), restrained the petitioner college from admitting in their management quota, students of its own community. It has been held by the Supreme Court in the case of P.A. Inamdar (supra) that neither can the policy of reservation be enforced by the State nor can any quota or percentage of admissions be carved out to be appropriated by the state in a minority educational institution. The States have no power to insist on seat sharing in minority educational institutions by fixing a quota of seats between the Management and the State. P.A. Inamdar (supra) is also unanimous on the view that a minority educational institution has a right to admit students of its own choice, it may have its own procedure and method of Management as well as selection of students, but such procedure should be fair and transparent. That being so, the impugned order of the respondent university restraining the petitioner college from holding entrance test for admissions of the students belonging to the minority community in the management quota constitutes a serious encroachment on the right and autonomy of the petitioner college, which is a minority educational institution covered by Article 30(1) of the Constitution.

For the foregoing reasons, Commission held that the impugned order dated 23.5.07 of the respondent university is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. The respondents cannot restrain the petitioner college from admitting students of its own choice in the management quota. Consequently, the respondents university and the State Government was directed to allow the petitioner college to admit students of its own choice in the management quota provided the admission procedure adopted by the college is fair, transparent and non-exploitative.

Case No. 1313 of 2006 & Case No. 1315 of 2006

Non-approval of appointment of teachers

Case No. 1313 of 2006

Petitioner/s	A. Islamia Inter College, Lucknow, Uttar Pradesh
Respondent/s	1. The Secretary, (Secondary Education), Govt. of U.P., Secretariat, Lucknow, Uttar Pradesh. 2. The Director of Education, (Secondary Education), Sarojini Naidu Marg, Civil Lines, Allahabad, Uttar Pradesh.

Case No. 1315 of 2006

Petitioner/s	Mumtaz Inter College, Lucknow, Uttar Pradesh.
Respondent/s	1. The Secretary, (Secondary Education), Govt. of U.P., Secretariat, Lucknow, Uttar Pradesh.

2. The Director of Education, (Secondary Education), Sarojini Naidu Marg, Civil Lines, Allahabad, Uttar Pradesh.

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 from Case No. 1313/2006. The petitioner, Amiruddin Islamia Inter College, Lucknow, Uttar Pradesh, being a minority educational institution, is covered by Article 30(1) of the Constitution. It is alleged that on 6.8.02 Smt. Sabih Fatima was duly selected for appointment as an Assistant Teacher in primary section of the College and on 16.8.2002, the proposal relating her appointment was sent to the District Inspector of Schools for approval (vide Annexure –III). Despite repeated reminders dated 17.1.2003, 10.3.2003, 23.3.04, 1.7.2005, 28.2.2006 and 19.10.2006 her appointment was not approved by the District Inspector of Schools. Similarly, on 6.6.2002, Sh. Wasim Ullah Hashmi was duly promoted to the post of Lecturer in Book Craft and the proposal seeking approval of his promotion was sent to the District Inspector of the schools on 7.1.2003. By the letter dated 13.10.2003 his promotion was illegally disapproved by the District Inspector of the Schools, Lucknow. Mr. Rakesh was duly appointed as Gardner (Mali) by the Principal on 2.2.2003. On 7.2.2003 all the relevant papers were sent to the District Inspector Schools for approval of his appointment. Despite repeated reminders, appointment of Mr. Rakesh was not approved by the District Inspector of Schools Lucknow. Similarly, Mr. Musheer Ahmad was duly appointed as Chowkidar and on 14.8.2004 all the relevant papers were sent to the District Inspector of Schools, Lucknow for according approval. His appointment was disapproved on the ground that prior permission for advertisement of the said post was not obtained from the District Inspector of such schools. On 27.1.2002, Mr. Fuzail Ahmad Siddiqui was duly promoted to the post of Lecturer in Urdu. On 1.4.2002, all the relevant papers relating to his promotion was sent to the District Inspector of Schools for approval, which was granted vide letter dated 9.11.2006, after a lapse of more than four years. It is alleged that the impugned actions of the District Inspector of the Schools are violative of the fundamental rights of the minorities enshrined in Article 30(1) of the Constitution. It is suggested that the State Government be directed to amend Section 16FF of the Uttar Pradesh Intermediate Education Act, 1921 and the Regulation No.101 and 103 of U.P. Education Manual to bring them in conformity with the law declared by the Supreme Court in TMA Pai Foundation v. State of Karnataka [2002 (8) SCC 481].

Despite repeated service of notices on the respondents, none of them chose to contest the proceedings. Thus the averment made by the petitioner remained uncontroverted on record. Order 8 Rule 5 CPC embodies the rule which is known as doctrine of non traverse which means that where a material averment is passed over without a specific denial, it is taken to be admitted. Consequently, it may be taken to be admitted that all the material allegations made against the District Inspector of Schools, Lucknow relating to the impugned action are correct.

The question which arises for consideration is as to whether the impugned actions of the District Inspector of the Schools, Lucknow in not according approval to the appointments and promotions made by the petitioner college are violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

It has been held by the Apex Court in TMA Pai Foundation v. State of Karnataka (supra) 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. In The Secretary, Malankara Syrian Catholic College Vs. T. Jose & Ors. (Civil Appeal No. 8599 of 2003 – decided on 27.11.2006 the Supreme Court has held 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.

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: -

- (ix) the minimum qualifications, experience and other criteria bearing on merit, for making appointments,
- (x) the service conditions of employees without interfering with the overall administrative control by the Management over the staff.
- (xi) a mechanism for redressal of the grievances of the employees.
- (xii) 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 administration 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 Rev. 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.V. 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 of the school 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 view of the aforesaid authoritative pronouncements of the Supreme Court, it may safely be held that a minority educational institution covered by Article 30(1) of the Constitution does not require any approval of the State Government for publication of advertisements to fill up any post of its teaching or non teaching staff. The impugned action of the District Inspector of schools, Lucknow in withholding the approval of the selection and appointment of Smt. Sabi Fatima, Sh. Wasim Ullah Hashmi, Sh. Rakesh and Sh. Musheer Ahmed is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. It is well settled that any law or 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 or political can justify the infringement of a fundamental right. In Brahmo Samaj Education Society Vs. State of Bengal (2004) 6 SCC 224, it has been held by the Supreme Court that the State Governments are obliged to take note of the declaration of the law

by the Supreme Court and amend their laws, rules and regulations to bring them in conformity with the principals set out. It is rather unfortunate that the State government has not amended Section 16FF of the U.P. Intermediate Education Act 1921 and the Rules 101 and 103 of the U.P. Education Manual so as to bring them in conformity with the law declared by the Supreme Court in T.M.A. Pai Foundation case (supra).

For the foregoing reasons, Commission was constrained to observe that the impugned action of the District Inspector of the Schools, Lucknow in not approving the appointment of Smt. Sabi Fatmi, Sh. Wasim Ullah Hashmi, Sh. Rakesh and Sh. Musheer Ahmad is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. Consequently, Commission directed the State Government to implement the decisions of the Eleven Judges Bench of the Supreme Court in T.M.A. Pai Foundation Case (supra) by directing the District Inspector of Schools, Lucknow to accord approval to the appointments of Smt. Sabi Fatmi, Sh. Wasim Ullah Hashmi, Sh. Rakesh and Sh. Musheer Ahmad.

Case No. 436 of 2007

Denial of approval of appointment of lecturers by the University

Petitioner/s	Guru Nanak Girls College, Yamuna Nagar, Haryana
Respondent/s	1. The Registrar, Kurukshetra University, Kurukshetra. 2. The Financial Commissioner and Principal Secretary, Higher Education Department, Government of Haryana, Civil Secretariat, Haryana – 160 001.

In this case the petitioner College sought direction to the respondent University to grant approval to the three lecturers duly selected and appointed by the petitioner College. It is alleged that the petitioner College is a minority educational institution within the meaning of Section 2(g) of the National Commission for Minority Educational Institution Act (for short 'the Act') vide certificate dated 21.4.06 granted by this Commission and as such the petitioner College had a right under Article 30(1) of the Constitution to select and appoint its teaching staff. According to the petitioner, the proceedings of the Selection Committee constituted for appointment of these lecturers were approved by the respondent University vide letter No.CBA-215B/2006/3093 dated 15.12.06 and MEC letters No.8/111-206 C4(1) dated 19.12.06. After selection of the lecturers, proposal was submitted to the respondent University for approval of their appointments vide letter No. GNGC 06 dated 2.1.2007, but despite repeated reminders no approval has been received from the respondent University. Due to non grant of approval, the salary of these lecturers is not being released by the State Government. Hence this petition.

The Higher Education Commissioner, Haryana submitted that the Dean of Colleges of the respondent University had sought some clarification vide his letter No.CBA-215-B/2007/808 dated 21.1.2007, which was given vide Office Memo No.8/

111-06 C-IV (1) dated 2.7.2007. Copy of the said letter has been enclosed. The respondent University did not file reply. A written request was received from the university for further adjournment on the ground that reply will be filed on receipt of the advice of the Govt. on the points of reference made by the Dean of colleges. Since sufficient opportunity was granted to the respondent University for filing reply, the prayer for further adjournment was disallowed.

It is beyond the pale of controversy that the petitioner College is a minority educational institution within the meaning of Section 2(g) of the Act as certified by this Commission vide certificate dated 21.4.06. Reference may, in this connection be made to Sec. 2 (f) of the Central Educational institutions (Reservation in Admission) Act, 2006, which is 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;

Thus, Sec. 2 (f) puts its stamp on the authenticity of a minority status certificate granted by this Commission.

The question which arises for consideration is as to whether the impugned action of the respondent University in withholding the approval of the lecturers selected and appointed by the petitioner College is violative of educational rights of the minorities enshrined in 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: -

- (xiii) the minimum qualifications, experience and other criteria bearing on merit, for making appointments,
- (xiv) the service conditions of employees without interfering with the overall administrative control by the Management over the staff.
- (xv) a mechanism for redressal of the grievances of the employees.
- (xvi) 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 administration 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 Rev. 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.V. 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 in 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 course 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.”

It needs to be highlighted that the petitioner College has specifically stated in the petition as under:-

“As per condition mentioned at para 2 above the college had constituted the Selection Committee including subject experts from K.U.K. for each subject as per KUK rules and appointed three lectures one each in the subject of English, Economics

and Music (I). The proceedings of the selection committee was approved by the university and H.E.C. vide KUK letter No. CBA-215B/2006/3093 dated 15.12.2006 & HEC letters No. 8/111-2006 C4(1) Dated 19.12.2006 (copies enclosed) respectively.”

The aforesaid facts pleaded by the petitioner College have not been controverted by the respondents. Order 8 Rule 5 CPC embodies the rule which is known as doctrine of non-traverse which means that where a material averment is passed over within a specific denial, it is taken to be admitted. Consequently, it may be taken to be admitted that the three lecturers possessing the requisite qualifications were duly selected and appointed by the petitioner College. Now it is well settled law that once the candidate possessing the requisite qualifications was selected by a minority educational institution, the State or the affiliating University would have no right to veto the selection of such a candidate. In the instant case the Dean of colleges of the respondent University sought certain clarification from the State Government which were duly given to the respondent University vide Memo No.8/111-206 C-IV (C-1) dated 2.7.07. It would be useful to quote the following portion of the said Memo, which is relevant for deciding the issue raised in the case: -

“Kindly refer to your office letter No. CBA – 215-B/2007/808 dated 29.01.2007 and reminder No. CBA-215-B/2007/2171 dated 26.03.2007 on the subject noted above.

In this connection, it is clarified as under:

1. As regards approval for appointment of teaching faculty selected by the Selection Committee constituted at their own level, the decision of the Hon’ble Supreme Court in Secretary Malankara Syrian Catholic College V/S T. Jose and others dated 27.11.2006 is absolutely clear. The Apex Court has held as follows:

“24. The importance of the right to appointment of Principals/Headmasters and teachers of their choice by minorities, as an important part of their fundamental rights 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 depends. 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 the teachers appointed by the Management after and overall assessment of their outlook and philosophy is perhaps the most important fact of the right to administer and 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.”

This is also the view taken by the Government in issuing the guidelines to be applied to minority institutions circulated vide letter 1/66-2003 Co (2) dated 25.09.2006. Therefore, it is amply clear that minority institutions can constitute their own Selection Committee for appointment of Principal and teaching staff. The University as well as State Government, while granting approval for the selected candidates, are to see that the candidates possess the necessary qualifications and that the selection process is transparent and in accordance with the mode of selection so prescribed. So the University may proceed in this case in view of the guidelines issued by the State Government for regulation of minority institutions.”

[emphasis supplied]

Needless to add here that clarification given by the Commissioner, Higher Education is in consonance with the law declared by the Supreme Court in T.M.A. Pai Foundation Vs. State of Karnataka 2002(8) SCC 481. For the reasons best known to him, the Dean of the colleges did not want to implement the decision of the Supreme Court quoted in the letter under reference. He has, therefore, written another letter to the Higher Education Commissioner, Haryana, seeking further clarification on the following points vide letter No.CBA-215B/2007/6331 dated 23.7.07.

- a) Whether or not the presence of nominee of the Higher Education Commissioner, two nominees of the University and the subject experts should be there on the Selection Committee in respect of colleges enjoying minority status.
- b) Whether aided minority institution must have at least 50% of the students from the community to qualify for the minority status or an aided minority institution should have upto 50% students from the community to qualify for the minority status.

In view of the clarification given by the Higher Education Commissioner, Haryana vide letter dated 26th March, 2007 there was no need to seek further clarification from the Government on the points stated above. It appears that the Dean of the respondent University is not comfortable with the law declared by the Supreme Court on the subject cited above. Instead of implementing the law of the land, he had sought further clarification from the State Government to prolong the agony of the lecturers duly selected and appointed by the petitioner College. Viewing the aforesaid circumstances, we are constrained to observe that this is a classic case of shadow light between a minority educational institution and an affiliating University. At this juncture, learned counsel for the petitioner has invited our attention to sub-section (2) Section 12-E of the Act in support of his contention that appropriate action be taken against the erring official of the respondent university for blatant violation of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. Sub section (2) of Section 12E is as under:

“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.”

Having regard to the facts and circumstances of the case, Commission was inclined to initiate any action under Sub Section (2) *ibid* as it was hoped that the respondent university will implement the law declared by the Supreme Court relating to educational rights of the minorities enshrined in Article 30(1) of Constitution.

For the foregoing reasons Commission held that the impugned action of the respondent University amounts to a *de facto* denial of the clearly established right of the minorities to select and appoint teaching and non teaching staff provided that the minimum eligibility requirements prescribed by the regulatory authorities are met. Since these lecturers of the petitioner College have been duly selected and appointed, their salaries cannot be withheld by the State Government on any valid ground. Moreover, in the facts and circumstances of the case, no approval of the respondent university is required to validate appointments of these lecturers.

In the result, the State Government was directed to implement the *aforecited* decisions of the Supreme Court by releasing salaries of the lecturers appointed by the petitioner’s college as their appointments do not suffer from any legal infirmity and thus no approval of the respondent university is required to validate their appointments. The findings of the Commission was sent to the State Government for implementation.

Case No. 599 of 2007

Appropriation of 40% seats out of total sanctioned seats to non-minority students

Petitioner/s	Al Falah School of Engineering & Technology, Dhauj, Faridabad, Haryana.
Respondent/s	<ol style="list-style-type: none">1. The Financial Commissioner & Principal Secretary, (Technical Education Department), Government of Chandigarh.2. The Director, Technical Education Department, Chandigarh.3. The Member Secretary, Haryana State Counseling Society, Chandigarh.4. The Registrar, Maharishi Dayanand University, Haryana.

Challenge in this petition is to the order of the respondent no. 2 appropriating 40% seats out of the total sanctioned intake of 420 for non-minority students. It is alleged that the petitioner college is a minority educational institution covered by Article 30(1) of the Constitution and as such it has a right to admit students of its own

community. According to the petitioner, the impugned action of the respondent in imposing quota of State seats or enforcing reservation policy of the State on available seats constitutes serious encroachment on its right and autonomy of a minority educational institution. Such appropriation of seats can't be held to be a regulatory measure in the interest of the minority within the meaning of Article 30(1) of the Constitution.

Despite service of notices, the respondent no. 1, 3 & 4 did not contest the proceedings. Respondent No. 2 resisted the petition on the ground that admissions to 40% seats are being made in accordance with the request made by the petitioner and as such no fundamental right has been infringed by the respondent as alleged by the petitioner.

It is beyond the pale of controversy that the petitioner college is a minority educational institution covered by Article 30 (1) of the constitution. It is also an admitted position that 40% of the sanctioned seats of the petitioner college are being appropriated by the State Government. The question for consideration is: whether the impugned action of the State is violative of the educational rights of the minorities enshrined in Article 30 (1) of the Constitution.

In P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537, following question arose for consideration before 7 Members Constitutional Bench of the Supreme Court.

Whether a minority educational institution, though established by a minority, can cater to the needs of that community only?

In T.M.A. Pai Foundation Vs. State of Karnataka 2002 (8) SCC 481, it has been held by the Supreme Court 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 admitting students; (b) to setup 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 (Para 50)

In P.A. Inamdar's vs. State of Maharashtra (Supra), it has been observed as under: -

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

(emphasis supplied)

Their lordships of the Supreme Court have further observed that the object underlying Article 30 (1) of the Constitution 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. In the State of Kerala vs. Very Rev. Mother Provincial (1970) 2 SCC 417, the Supreme Court has held as under: -

“It matters not if a single philanthropic individual with his own means, 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 that in addition to the minority community others from other minority communities or even from the majority community can take advantage of these institutions. Such other communities bring in income and they do not have to be turned away to enjoy the protection.”

In T.M.A. Pai Foundation (Supra), their lordship of the Supreme Court has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admission and the procedure, therefore, subject to its being fair, transparent, non-exploitative. In this connection, we may usefully excerpt the following observations of their lordships of the Supreme Court in P.A. Inamdar (Supra).

“It is necessarily follows from the law laid down in Pai Foundation that to establish a minority institution the institution must primarily cater to the requirement 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.”

“As per our understanding , neither in the judgment of Pai Foundation nor in the Constitution Bench decision in Kerala Educational 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.”

In view of the authoritative pronouncements of the Supreme Court, the impugned action of the State Government in appropriating 40% seats of the sanctioned intake or imposition of quota of seats by the State Government is violative of the fundamental rights of the minorities enshrined in Article 30 (1) of the Constitution. Such appropriation of seats by the State Government can't be held to be a regulatory measure within the meaning of Article 30 (1) of the Constitution as non-minority students can't be forced upon the petitioner college.

For the forgoing reasons, the State Government was directed to follow the law declared by the Supreme Court in T.M.A. Pai Foundation (Supra) P.A. Inamdar (Supra) by allowing the petitioner college to admit students of its own choice. The State Government was also directed to desist from appropriating the sanctioned seats of the petitioner college or imposing quota seats or reservation policy on the available seats in accordance with the dictum laid down by the Supreme Court in the afore cited cases. The finding of the Commission was sent to the State Government for implementation.

Case No. 768 of 2007

Request to allow College to hold its entrance test for admission of students of its choice

Petitioner/s	Regency Teachers Training College, Regency Enclave, Raseora, Sitapur, Distt. Sitapur.
Respondent/s	<ol style="list-style-type: none">1. The Secretary, Higher Education, Government of Uttar Pradesh, Civil Secretariat, Lucknow.2. The Director, Higher Education Department, Government of Uttar Pradesh, Sarojini Naidu Marg, Near Govt. Press, Allahabad.3. The Registrar, Chhatrapati Sahu Ji Maharaj University, Kanpur.

The petitioner college has been certified as a minority educational institution by this Commission vide order dated 05.07.2007 passed in Case No. 205 of 2007. It is alleged that the petitioner college, being a minority educational institution, is entitled to hold its entrance test for admission of students of its choice for B. Ed. courses but the State Government is holding a common entrance test for the said courses and the students so selected are likely to be imposed upon the petitioner college, which would be violative of the educational rights of the minorities enshrined in Article 30 (1) of the Constitution. The petitioner college, therefore, seeks a direction to the respondents to allow the petitioner college for holding its entrance test for admission of students of its choice.

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

The petitioner college has been declared as a minority educational institution under the National Commission for Minority Educational Institutions Act. It needs to be highlighted that Section 2(f) of 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)

Thus, Section 2(f) *ibid* puts its stamp on the authenticity of a minority status certificate granted by this Commission.

As regards right of a minority institution to admit students of its choice, it has been held by the Supreme Court in P.A. Inamdar Vs State of Maharashtra (2005) 6 SCC 537 that minority educational institutions are free to admit all students of their own minority community, if they so, choose to do so (Para 120 of P.A. Inamdar’s case). The aforesaid dictum laid down in the P.A. Inamdar’s case (*supra*) is inconsonance with the law laid down by the 11 Judge Bench of the Supreme Court in T.M.A. Pai Foundation Vs State of Karnataka (2002) 8 SCC 481. It needs to be highlighted that the Supreme Court has held in the case of P.A. Inamdar (*supra*) that neither can the policy of reservation be enforced by the State nor can any quota or percentage of admissions be carved out to be appropriated by the State in a minority educational institution. The states have no power to insist on seat sharing in minority educational institutions by fixing a quota of seats between the Management and the State. We may, in this connection, excerpt the following observations of the Supreme Court: -

“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).”

As regards the petitioner’s right to hold an Entrance Test for admissions, it is significant to mention that one of the questions formulated for decision in the case of P.A. Inamdar (supra) was in respect of holding of examination for admissions to minority educational institutions and the said question was answered in the following paragraphs: -

“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 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.

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 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.

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.”

Bearing in mind the law laid down by the Supreme Court in the case of P.A. Inamdar (supra), we have no option but to hold that the petitioner college is not entitled to hold Entrance Test for admissions to its B.Ed. courses. But all educational institutions imparting same professional education can join together for holding a Common Entrance Test satisfying triple tests laid down by the Supreme Court in the case of P.A. Inamdar (supra).

For the forgoing reasons, Commission held that the petitioner college being a minority educational institution is free to admit students of its choice and 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 the petitioner college. However, the State Government can regulate admissions to B.Ed. courses by providing a centralised and single-window procedure in accordance with the law laid down by the Supreme Court in the case of P.A. Inamdar (supra).

Case No. 91 of 2007

Grant of recognition to the High School

Petitioner/s	Movement of Islam Trust, Kodungallur, Thrissur, Kerala
Respondent/s	The Principal Secretary, General Education Department, Government of Kerala.

The petitioner sought a direction to the State Government to grant recognition to a high school established by it at Kodungallur, Distt. Thrissur. The petitioner trust was formed for establishing various institutions including educational institutions aiming to improve the social and educational backwardness of the Muslim community. On 16.09.2004, the petitioner applied for grant of recognition to the said high school, which was duly forwarded to the Deputy Director of Education, Thrissur District. On 17.11.2004, the competent authority had submitted a survey report to the Director of Public instructions, Trivandrum recommending grant of recognition to the said high school but no recognition has yet been received from the State Government. The petitioner trust has been functioning since 1978 and has established an unrecognized lower primary school in the year 1982, the school is having standard upto 11th. The Government has accorded recognition only for upper primary school.

The Government of Kerala stated in their reply that sanctioning of schools in the State is done on the basis of Kerala Education Rules and education policy of the government based on local needs. According to the State Government, on consideration of applications for recognition of the schools appropriate response shall be forwarded to the petitioner as per rules and the procedure prescribed therefor.

It is beyond the pale of controversy that the petitioner Trust had established an unrecognized lower primary school in the year 1982. It transpires from the record that on 1.4.2004 the Assistant Educational Officer, Kodungallur visited the school and verified the details furnished by the Management for opening the proposed high school. On verification, it was found that the school has been functioning for the last several years as an unrecognized school. Management has provided 5.23 acres of land. The school had three storeyed buildings with 21 rooms. It was also found that qualified teachers have been appointed in accordance with the relevant provisions of the Kerala Education Rules. The school had also furnished a financial guarantee of Rs.15000/- for three years in terms of Rule 7, CH V KER. It was further found that necessary furniture laboratory and library facilities were also provided in the school. Classes upto standard 8th have already been started and permission had been granted for standard 1st to 8th. That being so the school has the requisite infrastructure etc for starting high school but the State Government has not accorded recognition for its upgradation to a high school. Needless to add here that Article 30(1) of the Constitution confers on minorities, the right to establish and administer educational institutions of their choice. Article 30(1), as observed by the Supreme Court in P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537 leaves it to the choice of the minority to such educational institutions as will serve both purposes, namely, the purpose of conserving their religion, language and culture, and also the purpose of giving of a thorough, good general education to their children. Without recognition or affiliation, the educational institutions established or to be established by the minority communities cannot fulfill the real objective of their choice and the right under Article 30(1) cannot be effectively exercised. As venkatarama Aiyer J observed in AIR 1958 SC 956 at page 990, the

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

- (1) the State is under a positive obligation to give equal treatment in the matter of aid or recognition to all educational institutions including those of minorities, religious or linguistic; and
- (2) the state is under a negative obligation as regards those institutions not to prohibit their establishment or intervene with their administration.

In the instant case, the competent authority of the State had submitted his inspection report certifying eligibility of the school for recognition. Strangely enough, the State Government has not granted recognition as sought by the petitioner. This attitude of the State Government is totally destructive to the rights of the minorities to establish and administer such institutions of their choice guaranteed to them under Article 30(1) of the Constitution.

For the foregoing reasons the Commission recommended to the State Government to grant recognition to the petitioner school as sought by it.

Case No. 749 of 2007

Non-approval by the State Govt. to fill up the vacant post

Petitioner/s	V.M.H.S. Rahmania Inter College, Maudaha, P.O. Ragaul, Hamirpur, Uttar Pradesh.
Respondent/s	<ol style="list-style-type: none">1. The Secretary, Secondary Education, (Madhyamik Shiksha), Government of Uttar Pradesh, Lucknow.2. The Director, Secondary Education, Government of Uttar Pradesh, Lucknow.3. The Director, Minority Welfare Directorate, Government of Uttar Pradesh, Indira Bhawan, Lucknow.4. The Joint Director of Education, Jhansi Mandal, Jhansi, Uttar Pradesh.5. The District Inspector of Schools, Hamirpur, Uttar Pradesh.

By the order dated 20th September 2006 passed in Case No. 1348 of 2006, the petitioner College was certified by this Commission as a minority educational institution within the meaning of Section 2(g) of the National Commission for Minority Educational Institutions Act. It is alleged that even after issue of the said Certificate the State Government has not recognised the petitioner College as a minority institution

and that the competent authority of the State Government has not granted approval to fill up the existing vacancies in the petitioner College. By this petition, the petitioner sought a direction to the State Government to recognise the minority status certificate issued by this Commission and to convey the approval to fill up the existing vacancies in the petitioner College.

It needs to be highlighted that once a minority status certificate has been granted by this Commission, the question of State's recognition of such certificate is not necessary. Reference may, in this connection be made to Section 2(f) of the Central Educational Institutions (Reservation in Admission) Act 2006, which 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.

In the instant case this Commission has already declared the petitioner College as a minority educational institution within the meaning of Section 2(g) of the National Commission for Minority Educational Institutions Act and as such it is not necessary for the State Government to issue another certificate in this regard. The certificate issued by this Commission is binding on the State Government.

The next grievance of the petitioner is that the State Government is not granting approval to fill up the existing vacancies in the petitioner College. It is relevant to note here that it has been held by the Constitutional Bench of the Supreme Court in the case of T.M.A. Pai Foundation Vs. State of Karnataka 2002 (8) SCC 481 that in view of the key role played by the Principal, there can be no doubt that the right to choose the principal/ teaching staff is an important part, of the right of administration and even if the institution is aided, there can be no interference with the said right. The fact that the post of principal and teachers are also covered by the State aid will make no difference.

Among the questions formulated and answered by the Supreme Court in T.M.A. Pai's case (supra) while summarizing conclusions, Question 5(c) and answer thereto has a bearing on the issued on hand.

“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 measures 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.”

In view of the proposition of law enunciated by the Supreme Court in T.M.A. Pai's case (supra), there is no need of prior approval of the competent authority of the State Government for issuing advertisement by the petitioner College inviting applications for vacant posts. Commission decided that the petitioner College can advertise existing vacancies in a daily newspaper of wide circulation inviting applications for the vacant posts of principal and teachers.

Case No.1017 of 2007, 83 of 2008 and 807 of 2007

Conducting examination of TT Course approved by the NCTE

Case No.1017 of 2007

Petitioner/s	St. Mary's Junior College of Education, Exhibition Road, Pune, Maharashtra
Respondent/s	1. The Principal Secretary, School Education Department, Government of Maharashtra, Mantralaya, Mumbai- 400 032.

2. The Director, State Council of Education Research and Training, Maharashtra State, Sadashiv Peth, Pune- 411 030.
3. The Commissioner, Bureau of Government Examinations, Ambedkar Road, Pune, Maharashtra..
4. The Chairperson, National Council for Teacher Education, Hans Bhavan, Bahadur Shah Zafar Marg, New Delhi-110 002.

Case No. 83 of 2008

Petitioner/s Notre Dame Junior College of Education, C/o. Sophia High School, 70, Place Road, Bangalore, Karnataka – 560 001

- Respondent/s**
1. The Principal Secretary, School Education Department, Government of Maharashtra, Mantralaya, Mumbai, Maharashtra - 400 032.
 2. The Director, Maharashtra State Council for Educational Research and Training, Sadashiv Peth, Pune, Maharashtra- 30.
 3. The Commissioner, Bureau of Government Examinations, Ambedkar Road, Pune, Maharashtra

Case No. 807 of 2007

Petitioner/s St. Margaret's Training College, Clare Road, Byculla, Mumbai, Maharashtra

- Respondent/s**
1. The Principal Secretary, School Education Department, Government of Maharashtra, Mantralaya, Mumbai, Maharashtra - 400 032.
 2. The Director, Maharashtra State Council for Educational Research and Training, Sadashiv Peth, Pune, Maharashtra- 30.
 3. The Commissioner, Bureau of Government Examinations, Ambedkar Road, Pune, Maharashtra.
 4. The Chairperson, National Council for Teacher Education, Hans Bhavan, Bahadur Shah Zafar Marg, New Delhi – 110 002.

Challenge in these petitions is to the impugned orders No. TCM-2001/T66/01/MSHI-4 and the Order No. TCM-2007/99/07/Mashi/4 dated 14.3.2007 restraining the respondents No. 2 and 3 from conducting examination for TTC course as the same is not equivalent to D.Ed curriculum approved by the State of Maharashtra. Since the issues raised in these petitions were common, they were disposed of by this common

order. It is an admitted position that St. Mary's Junior College of Education, Pune (Case No. 1017/07), St. Margaret's Training College, Bombay (Case No. 806/07) and St. Mary's Jr. College of Education at Bangalore (Case No. 83/08) are minority educational institutions within the meaning of Section 2(g) of the National Commission for Minority Educational Institutions Act 2004. It is also undisputed that the National Council for Teacher Education had recognized the said colleges under Section 14 (3) (a) of the National Council for Technical Education Act 1993 (for short 'the Act') for TTC course with an annual intake of 50 students; that prior to the commencement of the Act, these colleges were granted equivalence to their TTC course that D.Ed course of the State of Maharashtra vide Government Resolution No. SSN 3461-G dated 25.3.1964 and the same was continued by the Government Resolution No. TCM-2977/34506 (2697) SE.4 dated 19.2.1981; that the respondent No. 3 continued conducting annual examinations and granted T.T.C. certificates till 2007; that the TTC course of the said colleges has been approved by the NCTE (respondent No. 4); and that by the impugned orders the respondent No. 2 & 3 have been restrained from conducting examination for TTC course on the ground that the same is not equivalent to D.Ed curriculum approved by the State of Maharashtra. It is alleged by the petitioners that the impugned orders are violative of the educational rights of the minorities enshrined in Article 30 of the Constitution.

The respondents No. 1-3 resisted the petition on the ground that the curriculum of TTC course and the syllabus of Maharashtra D.Ed course are not equivalent and as such the State Government has rightly restrained the respondent nos. 2 & 3 from conducting the examination of TT course run by the petitioner college. It is alleged that on 16.1.2008 the following decision was taken by the Government of Maharashtra and the same was also communicated to the Secretary, Inter State Board for Anglo Indian Education, New Delhi vide Memo No. MSCERT/SBTE/TTC/2008 dated 16.1.2008;

“Government of Maharashtra is ready to organise examination of TTC curriculum through Maharashtra State Council of Examinations, Pune, for the said three colleges using this curriculum of TTC on following conditions:

- i. Maharashtra State Council of Examinations will only organize the examination of TTC Curriculum. But the certificates will be awarded by Interstate Board for Anglo Indian Education, New Delhi.
- ii. These candidates holding TTC certificate are eligible to work as primary teachers in Anglo Indian Schools only. They are not eligible to work as primary teachers in primary and secondary schools recognised by Maharashtra State.
- iii. If the Inter State Board for Anglo Indian Education, New Delhi reconstruct the TTC curriculum as per needs and requirements of Maharashtra State and as per equal level of curriculum of Diploma in Teacher Education of

Maharashtra State. Then after comparing these two curriculum by expert committee. Government of Maharashtra will take decision about equivalence of it with curriculum of Diploma in Teacher Education of Maharashtra State.

5/- About these conditions please convey your say to State Government so that it is convenient to take decision about organizing examinations of TTC curriculum.

With regards,

Yours faithfully,

Director,
MSCERT, Pune 30"

On these pleadings following questions arise for consideration: -

- (i) Whether the State Government can refuse to conduct examination for TT course recognized and approved by the NCTE on the ground that the curriculum of diploma in Teacher Education of Maharashtra and TTC curriculum approved by the NCTE are not equivalent?
- (ii) Whether the impugned action of the State Government in restraining the examining body (respondents No. 2 and 3) from conducting TTC course run by the petitioner's college amounts to deprivation/ violation of the educational rights of the minorities enshrined in Article 30 (1) of the Constitution?

Issue No. 1 & 2

It needs to be highlighted that the petitioner colleges are unaided minority educational institutions. They are not claiming any grant or financial aid from the State, nor do they give any assurance or guarantee to students admitted to TTC course that the State will give them employment. It is also relevant to mention here that the State Government had granted NOC to NCTE in respect of these colleges as per requirement of the Act and the regulations framed thereunder. The provisions of the Act including its preamble make it clear that the NCTE has been established under the Act for coordinated and integrated development of the teacher educational system at all levels throughout the country and is enjoined to promote qualitative improvement of such education in relation to planned quantitative growth. The Council is also required to regulate and ensure proper maintenance of norms and standards in technical education system. (See *St. Jones Teachers Training Institute Vs. Regional Director NCTE 2003 (3) SCC 321* and *State of Tamil Nadu Vs. Adhya Educational and Research Institute (1995) 4 SCC 104*). The relevant provisions of the Act are as under: -

“12. FUNCTIONS OF THE COUNCIL

It shall be the duty of the Council to take all such steps as it may think fit for ensuring planned and co-ordinated development of teacher education and for the determination and maintenance of standards for teacher education and for the purposes of performing its functions under this Act, the Council may –

- (a) undertake surveys and studies relating to various aspects of teacher education and publish the result thereof;
- (b) make recommendations to the Central and State Government, Universities, University Grants Commission and recognised institutions in the matter of preparation of suitable plans and programmes in the field of teacher education;
- (c) co-ordinate and monitor teacher education and its development in the country;
- (d) lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognised institutions;
- (e) lay down norms for any specified category of courses or trainings in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum;
- (f) lay down guidelines for compliance by recognised institutions, for starting new courses or training, and for providing physical and instructional facilities, staffing pattern and staff qualification;
- (g) lay down standards in respect of examinations leading to teacher education qualifications, criteria for admission to such examinations and schemes of courses or training;
- (h) lay down guidelines regarding tuition fees and other fees chargeable by recognised institutions;
- (i) promote and conduct innovation and research in various areas of teacher education and disseminate the result thereof;
- (j) examine and review periodically the implementation of the norms, guidelines and standards laid down by the Council, and to suitably advise the recognised institution;
- (k) evolve suitable performance appraisal system, norms and mechanism for enforcing accountability on recognised institutions;

- (l) formulate schemes for various levels of teacher education and identify recognised institutions and set up new institutions for teacher development programmes;
- (m) take all necessary steps to prevent commercialisation of teacher education; and
- (n) perform such other functions as may be entrusted to it by the Central Government.

14. RECOGNITION OF INSTITUTIONS OFFERING COURSES OR TRAINING IN TEACHER EDUCATION

- (1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations:
Provided that an institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.
- (2) The fee to be paid along with the application under sub-section (1) shall be such as may be prescribed.
- (3) On receipt of an application by the Regional Committee from any institution under sub-section (1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall -
 - (a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution **for a course or training in teacher education, as may be determined by regulations**, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations; or
 - (b) if it is of the opinion that such institution does not fulfil the requirements laid down in sub-clause (a), pass an order refusing recognition to such institution for reasons to be recorded in writing:
Provided that before passing an order under sub-clause (b), the Regional Committee shall provide a reasonable opportunity to the concerned institution for making a written representation.

- (4) Every order granting or refusing recognition to an institution **for a course or training in teacher education under sub-section (3) shall be published in the** Official Gazette and communicated in writing for appropriate action to such institution and to the concerned examining body, the local authority or the State Government and the Central Government.
- (5) Every institution, in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under clause (b) of sub-section (3).
- (6) **Every examining body shall**, on receipt of the order under **sub-section (4)**,
 - (a) grant affiliation to the institution, where recognition has been granted; or
 - (b) cancel the affiliation of the institution, where recognition has been refused.

15. PERMISSION FOR A NEW COURSE OR TRAINING BY A RECOGNISED INSTITUTION

- (1) Where any recognised institution intends to **start any new course or training in teacher education, it may make an application to seek permission** to the Regional Committee concerned in such form and in such manner as may be determined by regulations.
- (2) The fees to be paid along with the application under sub-section (1) shall be such as may prescribed.
- (3) On receipt of an application from an institution under sub-section (1), and after obtaining from the recognised institution such other particulars as may be considered necessary, the Regional Committee shall, -
 - (a) if it is satisfied that such recognised institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper conduct of the new course or training in teacher education, as may be determined by regulations, pass an order granting permission, subject to such conditions as may be determined by regulations; or
 - (b) if it is of the opinion that such institution does not fulfil the requirements laid down in sub-clause (a), pass an order refusing permission to such institution for reasons to be recorded in writing:

Provided that before passing an order refusing permission under sub-clause (b), the Regional Committee shall provide a reasonable opportunity to the institution concerned for making a written representation.

- (4) Every order granting or refusing permission to a recognised institution for a new course or training in teacher education under sub-section (3), shall be published in the Official Gazette and communicated in writing for appropriate action to such recognised institution and to the concerned examining body, the local authority, the State Government and the Central Government.

17. CONTRAVENTION OF PROVISIONS OF THE ACT AND CONSEQUENCES THEREOF

- (1) Where the Regional Committee is, on its own motion or on any representation received from any person, satisfied that a recognised institution has contravened any of the provisions of this Act, or the rules, regulations, orders made or issued thereunder, or any condition subject to which recognition under sub-section (3) of section 14 or permission under sub-section (3) of section 15 was granted, it may withdraw recognition of such recognised institution, for reasons to be recorded in writing:

Provided that no such order against the recognised institution shall be passed unless a reasonable opportunity of making representation against the proposed order has been given to such recognised institution:

Provided further that the order withdrawing or refusing recognition passed by the Regional Committee shall come into force only with effect from the end of the academic session next following the date of communication of such order.

- (2) A copy of every order passed by the Regional Committee under sub-section (1), -
 - (a) shall be communicated to the recognised institution concerned and a copy thereof shall also be forwarded simultaneously to the University or the examining body to which such institution was affiliated for cancelling affiliation; and
 - (b) shall be published in the Official Gazette for general information.

- (3) Once the recognition of a recognised institution is withdrawn under sub-section (1), such institution shall discontinue the course or training in teacher education, and the concerned University or the examining body shall cancel affiliation of the institution in accordance with the order passed under sub-section (1), with effect from the end of the academic session next following the date of communication of the said order.
- (4) If an institution offers any course or training in teacher education after the coming into force of the order withdrawing recognition under sub-section (1) or where an institution offering a course or training in teacher education immediately before the appointed day fails or neglects to obtain recognition or permission under this Act, the qualification in teacher education obtained pursuant to such course or training or after undertaking a course or training in such institution, shall not be treated as a valid qualification for purposes of employment under the Central Government, any State Government or University, or in any school, college or other educational body aided by the Central Government or any State Government.”

Section 12 (e) clearly lays down that the NCTE shall laid down norms for any specified category of courses 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 NCTE to be satisfied about fulfillment of necessary conditions and 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 promotion 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. 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 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 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 Section 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 N.C.T.E. 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 a State of Maharashtra Vs. Sant Gyneshwar Shikshan Shastra Mahavidyalaya & Ors (2006) 9 SCC 1. The impugned order of the State Government 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 specify the course of instruction 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 the State Government cannot refuse to conduct examination on the ground that the TTC course approved by the NCTE is not equivalent to the D.Ed courses of Maharashtra State.

In *Jaya Gokul Educational Trust Vs. Commissioner and Secretary to Government Higher Education Department* (2005) SCC 231, their lordships of the Supreme Court have observed as under:

“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 favourable 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.”

(emphasis supplied)

These observations have been quoted with approval in *State of Maharashtra Vs Sant Dyanenshwar Shikshan Shastra Mahavidyalaya & Ors*. (Supra). In view of the judicial pronouncements of the Apex Court we have no option but to hold that the impugned orders of the State Government are null and void.

For the foregoing reasons, Commission held that the impugned action of the State Government restraining the respondent No. 2 and 3 from conducting examination of TT course approved by the NCTE for the petitioner's college amounts to deprivation/ violation of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. The students of the petitioner colleges are allowed to appear in the examination of T.T.C. for the academic year 2007-08 subject to their eligibility in accordance with the standards and norms laid by the N.C.T.E. under the Act.

The aforesaid finding was sent to the State Government for implementation.

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

A few references have been received from the Central Government. Some of the references were registered as cases and after considering the issues, Commission has passed orders. Details of one such case is given in this Chapter. Other cases were of general matters and those were sent to the concerned authorities for taking appropriate action.

No reference has been received from any State Government in terms of Section 11(a) of the NCMEI Act.

Case No.1227 of 2006

Grant to start PTC College, exemption from charging fee, free books, uniforms & 100% salary grant by State Government and right to appoint non-teaching staff

Petitioner/s	President of Anjuman Sarvajanic High School, Radhanpur, Patan, Gujarat
Respondent/s	The Principal Secretary, (Technical Education), Government of Gujarat, New Sachivalaya Complex, Gandhinagar (Gujarat)

The representation of the President of Anjuman Sarvajanic High School, Radhanpur, Distt. Patan, Gujarat containing the following demands was forwarded to the Commission by the Ministry of Human Resource Development, Government of India:

- a) That the State Government be directed to grant a PTC College to the petitioner;
- b) That the Primary schools established by the minority community should be exempted from charging fee of Rs.6/- per student;
- c) That the students of the said primary schools should be provided with free books, uniforms and 100% salary grant by the State government;
- d) That the petitioner should be allowed to appoint non-teaching staff in primary school.

The Director of primary education, Government of Gujarat resisted the petitioner's representation on the ground that it does not merit acceptance.

As regards demand for establishment of a PTC college, it is relevant to note here that under the provisions of the NCTE Act, the All India Council for Technical Education has the power to grant approval for starting new technical institutions. Consequently, the petitioner has to approach the said Council for the said demand.

As regards demand No.(b), the State Government has prescribed the following fee to be charged from the students vide Resolution of the education Department dated 2.6.99;

1. For the private primary school Rs. 30/- per student in rural area.
2. For the private primary school in city area Rs.45/- per student.

Reference may, in this connection, be made the Resolution No.KH.P.SH-102000-27-CHA Sachivalaya, Gandhinagar, dated 14.12.2001 of the Education Department of the Gujarat Government which clearly provides that the amount collected through fee of Rs.6/- will be counted towards the grant- in- aid. In this view of the matter, the petitioner's demand for exemption from charging a fee of Rs.6/- per student does not sound reasonable.

As regards the demand No.(c), for providing free books etc., the Director of Primary Education, Government of Gujarat, has stated, in his reply that free books are being supplied to the students of the primary schools run by the local bodies and Ashramshalas. There is no provision for providing free books for the primary schools established by the minorities. The demand in question falls within the domain of the policy of the State Government and it would not be appropriate for this Commission to interfere with the policy decisions of the State government unless it is shown that such a policy is either arbitrary or hit by the doctrine of hostile discrimination.

As regards the demand for appointment of non teaching staff in the primary schools established by the minority community, reference may be made to the decision rendered by the Supreme Court in T.M.A. Pai Foundation Vs. State of Karnataka 2002(8) SCC 481 which declares that the right to establish and administer broadly 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 employee.

In view of the decision of the Supreme Court in T.M.A. Pai's (Supra), the petitioner society can appoint non teaching staff in its primary school in accordance with the eligibility conditions prescribed by the State Government. Consequently, the Commission can recommend to the State Government to allow the petitioner school to appoint its teaching and non teaching staff in accordance with the conditions of eligibility prescribed by the State Government.

For the foregoing reasons the State Government was directed to implement the law declared by the Supreme Court in T.M.A. Pai's case (Supra) by allowing the petitioner school to appoint its teaching and non teaching staff in accordance with the conditions of eligibility prescribed by its competent authority. A copy of the order was sent to the Ministry of Human Resource Development, Department of Secondary and Higher Education (Minority Cell) with reference to its letter dated 25.5.06. Copy of the order was also sent to the State Government for its implementation.

CHAPTER 9 – STUDIES UNDERTAKEN BY THE COMMISSION

Sub-section (d) and (g) of Section 11 of the NCMEI Act are as follows :

- “(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;”

According to the above sub-sections, Commission has to take up specific issues and make appropriate recommendations to the concerned authorities. During the year, it was not possible to undertake any projects for want of adequate staff. Commission has been granted only very few staff, which is not even adequate to take care of the petitions / applications received in the Commission. Large number of applications were received during the year and Commission had to expeditiously take care of the huge backlog also. Majority of the applications were requests for minority status certificate as many State Governments have not been considering the issue of grant of minority status certificate to educational institutions. Commission would be able to take up the studies only after additional staff is made available. Commission has already identified certain subjects on the basis of interactions held with stakeholders at various places and also from the analysis of the petitions received so far. The subjects would be taken up for case studies in the next year after additional staff is made available.

During the year, Commission constituted a committee to study the inadequacies in girls' education especially girls belonging to Muslim community. During the interactions that Commission had at various places, it was found that girls have proved themselves to be no less capable and talented than boys. However, the education of girl child continues to suffer neglect. This situation is prominent in the case of Muslim girls. The Commission also found that the dismal state of affairs of educational facilities available for the poorer sections of the minority communities has to be addressed properly. Education of girl child has been found to be one of the least priority area especially with the backwardness and social taboos attached. The girl child in the Muslim community has become worst sufferer. For addressing the disturbing scenario, Commission constituted a committee of eminent women educationists to recommend ways and means for ameliorating the bleak situation. Accordingly, a committee consisting of following members has been constituted by the Commission:

	Name	Designation
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 Commission has asked the committee 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 – RECOMMENDATIONS FOR INTEGRATED DEVELOPMENT OF EDUCATION OF THE MINORITIES

Our Constitution recognizes the pluralistic nature of Indian Society and the need for each segment for self development, but as an integral part of the nation in the making. Article 30 of the Constitution, which is an instrument of protective discrimination furthering substantive equality, confers a special right on the religious and linguistic minorities to mitigate their numerical handicap and to instill in them a sense of security and belonging, even when the minorities are not weaker sections or underprivileged segments of the society.

Minority communities in general have lagged behind in educational fields. Large part of Muslim population in the age group of 6-13 is out of school as compared even to SC/ST children. Due to poverty the percentage of Muslim students in higher Education falls at a faster rate than for any other community. As per the Census of 2001, only 55% of Muslim men and 41% of Muslim women in India are literate; whereas the corresponding figures for non-Muslims are 64.5% and 45.6%. Only one in 101 Muslim women is a graduate, whereas one out of 37 women in the general population is a graduate. What is even more worrisome is the fact the drop-out rate for Muslims rises steeply as they move up the pyramid of education. Muslim are 53% worse off as compared to the national average in respect of higher education. Muslim women at the graduate level are fewer by 63%. For the Muslim community to be brought on par with the rest of the society educationally, 31 million more Muslims have to be educated by 2011. Particularly alarming is the anomaly that the greatest concentration of the educationally un-empowered and unemployable Muslim youth are in the urban and semi-urban areas. If the current state of affairs continues, a large proportion of Muslims could vanish from the map of India's educated workforce. Needless to add here that for an enlightened and inclusive democracy, it is necessary that all sections and classes of people are well educated and intellectually equipped to shoulder the responsibility of a free nation. As the Muslim community has lagged behind educationally over the decades, it is necessary to advance, foster and promote the education of the community at a quicker pace.

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 effect, 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 Muslims 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.

Madarsas are centers of free education. They are also bastions of social service, where knowledge of humanism and universal brotherhood, which is one of the basic tenets of ISLAM, is being imparted and human values are taught. They are still regarded as a nucleus of the cultural and educational life of Muslims. These Madarsas, as an invaluable institution of traditional education, have played a vital role in spreading literacy among the down trodden segments of Muslim society. They are found even in the remotest rural areas, where often no other educational facilities exist. Thus the contribution of these Madarsas has been so important that one cannot think of the educational development of Muslim community by neglecting or overlooking their services to the community. Needless to add here that only the poor segment of Muslim community is resigned to send their children to Madarsas which not only offer them free education but also free boarding and lodging. Those who establish Madarsas, or with whose financial help these Madarsas run, seldom educate their children in them. On the contrary, they prefer convent schools for their children.

The system of education followed in the Madarsas is outdated and out of tune with the present-day environment of expertise. The Madarsas should no longer continue to be like a fixed stone in the midst of the flowing river of life. Change is the only constant in temporal life. No community can live gainfully today ignoring humankind's march to progress in diverse areas of knowledge and knowhow. A community cannot be a human island without self-exiling itself from the mainstream to its own disadvantage.

There is a need to standardize the system of Madarsa education 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”.

In our last report, Commission had indicated the recommendations given to the Central Government to establish a Central Madarsa Board as an autonomous body through an Act of Parliament, duly insulated against Governmental interference, given the extreme sensitivities and anxieties that lurk in this domain. In the scheme recommended by the Commission for the Central Madarsa Board, adequate provisions and safeguards against the Governmental interference in the Madarsa have been incorporated which guarantee the autonomy of the Central Madarsa Board. Affiliation to the Central Madarsa Board is purely voluntary and affiliated Madarsa can pull out of the affiliation at any time. The Central Madarsa Board will not have the power to dictate the theological content of Madarsa education. Commission again recommends to the Central Government to expeditiously take decision for setting up of a statutory Central Madarsa Board.

During the interactions Commission has at various places the stark reality which has struck the Commission is the lack of facilities for higher education in many minority dominated areas. Without adequate opportunities for getting affordable higher education, the members of the minority community, especially of the Muslim population fight a losing battle in redeeming themselves economically. Many of the institutions of higher education are beyond their reach as the cost of education is quite high. Government should pay more attention to establish educational institutions, especially for higher education at those places where large population of minority community resides. For enabling the children of minority community to compete successfully with others, Government should also evolve appropriate programmes for providing coaching classes for the children of the minority community.

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

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.

The Supreme Court has observed in a recent judgement in Superstar Education Society versus State of Maharashtra and Ors 2008 AIR SCW 2052, that it is the duty of the State Government to provide access for education. Unless new schools in the private sector are permitted, it would not be possible for the State to discharge its constitutional obligation. The Supreme Court has also upheld the view taken by the Bombay High Court in Gram Vikas Shikshan Prasaran Mandal versus 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 Masterplan. Commission has seen that in many States, particularly in the State of Maharashtra, there is reluctance on the part of the State to grant recognition to the educational institutions established by the members of the minority community. Commission is of the view that the State authorities should not shy away from recognizing educational institutions set up by the minorities subject to regulations regarding requisite infrastructure required to maintain the basic standards of education.

Even after Commission has written to the State authorities for granting minority status certificate, many States have not followed upon this advice. One of the fundamental rights bestowed by Article 30 is to get recognition as a minority educational institution. While some of the States have taken action to notify indicia for recognition of minority educational institutions and also have set up machinery for this purpose, it is still intriguing to note that some States have not taken any action in this matter. Even in some States where the guidelines have been notified, adequate machinery has not been set up resulting in complaints about inordinate delay in considering applications for minority status certificate. Multiple authorities in certain States have created confusion as different criteria are considered in the recognition of minority educational institutions. This is a sorry state of affairs. Commission has advised such States Governments to constitute a single nodal authority for this purpose to avoid different interpretations and also a single window system would ameliorate the problem of applicants running from pillar to post.

Another issue which has been brought to the notice of the Commission is the tendency of some State Governments to grant minority status certificate for a period of 1 year or 3 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 a 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. 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 conditions mentioned in Sec.12C of the NCMEI Act.

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 regulations still in force under various Acts of Universities and Government orders are contrary to the rights declared by the Apex courts 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 or 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.

CHAPTER 12 – CONCLUSION

In the last Annual Report, Commission had mentioned about some amendments required for the NCMEI Act. These amendments were required as the Commission, during its functioning, found out certain bottlenecks in the proper implementation of the Act required to be removed. Some provisions which were not clear and ambiguous were to be re-worded to insulate from the interpretation. After carefully considering issues, the following recommendations were made for amending the NCMEI Act. Commission reiterates the following amendments to be considered by the Government:

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 Brahma 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 for 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.

The Commission in its last report has given the details of recommendations made to the Government for establishment of a statutory Central Madarsa Board. Commission recommended a Central Madarsa Board for coordinating and standardizing the Madarsa system of education and also for its integrated development and mainstreaming. For the sake of brevity details of the report giving justification for the establishment of the Board is not being given in this report. The Board to be established as autonomous body, should be through an Act of Parliament, which would be duly insulated with the 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 Madarsas 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.

Commission hopes that the Government finalises its decision in this regard soon.

The primary responsibility recognizing educational institutions and granting minority status certificate lies with the authorities of the State Government. Commission, to its dismay, found that many State Governments have not set up any mechanism to consider the request for grant of minority status certificate. In many State Governments, the approach has been lethargic. Commission has also found that the officials concerned have not been sensitized about the rights guaranteed under Article 30(1) of the Constitution. The result has been that the Commission received large number of applications from the educational institutions for grant of minority status certificate. After the Commission wrote to the State Governments, some of them finalised criteria and had set up appropriate machinery for dealing with the matter. During the interaction, the Commission had with many State Governments emphasis has been made for the prompt consideration of such requests. Since some State Governments requested the Commission to advise them in the matter of finalizing proper guidelines, Commission has considered the matter and intends to bring out appropriate guidelines for the determination of minority status certificate. The guidelines would be based on the various pronouncements made by the Apex Court and also some of the High Courts interpreting the rights under Article 30(1). Commission would soon finalise these guidelines and would sent them to all State Governments, regulatory authorities and other concerned authorities for their guidance. However, Commission would request the Central Government to write to all the State Governments to expeditiously set up a required machinery wherever it has not been set up and also to deal with the applications for grant of minority status certificate without any delay.

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 is also requested to look into the rules and regulations made by the Central regulatory authorities in education like U.G.C., AICTE, N.T.C.E., M.C.I., D.C.I., 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.

Commission has received many petitions alleging refusal to provide grant-in-aid to educational institutions. 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. 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 has been informed where the State Governments wanted to withdraw from its role to provide grant-in-aid. It is, therefore, recommended that State Governments should be directed to provide grant-in-aid to minority educational institutions located in remote, tribal, far-flung and under-developed areas.

State should encourage private entrepreneurs wherever they come forward to set up educational institutions. There has been many instances where States have turned a blind eye towards request for recognition of educational institutions set up by the minority community and cases of request for affiliation has been pending for quite long time. Refusal of State Governments to recognize educational institutions, established by the minority community, cuts off the root of the rights enshrined under Article 30. Commission proposes to address this issue also in the guidelines to be formulated. The guidelines would include matters relating to affiliation and recognition of educational institutions with particular reference to Article 30(1).

There is urgent need to sensitize officials of the State Governments, regulatory authorities and other organizations dealing with educational institutions about the rights guaranteed under Article 30(1) of the Constitution. In a small way, Commission has been able to make some headway wherever interactions have been held with the officials of State Governments at various places. It is recommended that the Government may write to the State Governments in this matter as sympathetic handling of the matter would go a long way in the redressal of the grievances raised by the minority community.

ANNEXURES

**THE NATIONAL COMMISSION FOR MINORITY
EDUCATIONAL INSTITUTIONS ACT, 2004**

(2 of 2005)

[6th January, 2005]

An Act to constitute a National Commission for Minority Educational Institutions and to provide for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-fifth Year of the Republic of India as follows: -

CHAPTER I
PRELIMINARY

1. Short title, extent and commencement.—

- (1) This Act may be called the National Commission for Minority Educational Institutions Act, 2004.
- (2) It extends to the whole of India except the State of Jammu & Kashmir.
- (3) It shall be deemed to have come into force on the 11th day of November, 2004.

2. Definitions.— In this Act, unless the context otherwise requires,—

- (a) “affiliation” together with its grammatical variations, includes, in relation to a college, recognition of such college by, association of such college with, and admission of such college to the privileges of, a ¹[***]University;
- ²[(aa) “appropriate Government” means,—
 - (i) in relation to an educational institution recognized for conducting its programmes of studies under any Act of Parliament, the Central Government; and
 - (ii) in relation to any other educational institution recognized for conducting its programmes of studies under any State Act, a State Government in whose jurisdiction such institution is established;]
- (b) “college” means a college or teaching institution (other than a University) established or maintained by a person or group of persons from amongst a minority community;
- (c) “Commission” means the National Commission for Minority Educational Institutions constituted under section 3;
- ²[(ca) “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;]
- (d) “degree” means any such degree as may, with previous approval of the Central Government, be specified in this behalf by the University Grants Commission, by notification in the Official Gazette;

1. The word “Scheduled” omitted by Act 18 of 2006, Sec. 2 (w.e.f. 23.1.2006).

2. Ins. by Act 18 of 2006, sec. 2 (w.e.f 23.1.2006).

- ¹(da) “educational rights to minorities” means the rights of minorities to establish and administer educational institutions of their choice;
- (e) “Member” means a member of the Commission and includes the Chairperson;
- (f) “minority”, for the purpose of this Act, means a community notified as such by the Central Government;
- (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;
- (h) “prescribed” means prescribed by rules made under this Act;
- (i) “qualification” means a degree or any other qualification awarded by a University;
- (j) ²[***]
- (k) “technical education” has the meaning assigned to it in clause (g) of section 2 of the All India Council for Technical Education Act, 1987 (52 of 1987);
- (l) “University” means a university defined under clause (f) of section 2 of the University Grants Commission Act, 1956 (3 of 1956), and includes an institution deemed to be a University under section 3 of that Act, or an institution specifically empowered by an Act of Parliament to confer or grant degrees.

CHAPTER II

THE NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS

3. Constitution of National Commission for Minority Educational Institutions.—

- (1) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the National Commission for Minority Educational Institutions to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.
- (2) The Commission shall consist of a Chairperson and two members to be nominated by the Central Government.

4. Qualifications for appointment as Chairperson or other Member.-

- (1) A person shall not be qualified for appointment as the Chairperson unless he,—
- (a) is a member of a minority community; and
- (b) has been a Judge of a High Court.

1. Ins. By Act 18 of 2006, sec. 2 (w.e.f. 23.1.2006).

2. Clause (j) omitted by Act 18 of 2006, sec. 2 (w.e.f. 23.1.2006); before omission, clause (j) stood as under:
“(j) “Scheduled University” means a University specified in the Schedule.”

- (2) A person shall not be qualified for appointment as a Member unless he,—
 - (a) is a member of a minority community; and
 - (b) is a person of eminence, ability and integrity.

5. Term of office and conditions of service of Chairperson and Members.—

- (1) Every Member shall hold office for a term of five years from the date on which he assumes office.
- (2) A Member may, by writing under his hand addressed to the Central Government, resign from the office of Chairperson or, as the case may be, of Member at any time.
- (3) The Central Government shall remove a person from the office of Member if that person —
 - (a) becomes an undischarged insolvent;
 - (b) is convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude;
 - (c) becomes of unsound mind and stands so declared by a competent court;
 - (d) refuses to act or becomes incapable of acting;
 - (e) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission; or
 - (f) in the opinion of the Central Government, has so abused the position of Chairperson or Member as to render that person's continuance in office detrimental to the public interest:

Provided that no person shall be removed under this clause until that person has been given an opportunity of being heard in the matter.

- (4) A vacancy caused under sub-section (2) or otherwise shall be filled by fresh nomination and a person so nominated shall hold office for the unexpired period of the term for which his predecessor in office would have held office if such vacancy had not arisen.
- (5) The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed.

6. Officers and other employees of Commission.—

- (1) The Central Government shall provide the Commission with a Secretary and such other officers and employees as may be necessary for the efficient performance of the functions of the Commission under this Act.
- (2) The salaries and allowances payable to, and the other terms and conditions of service of, the Secretary, officers and other employees appointed for the purpose of the Commission shall be such as may be prescribed.

7. Salaries and allowances to be paid out of grants.—

The salaries and allowances payable to the Chairperson and Members and the administrative expenses, including salaries, allowances and pensions payable to the Secretary, officers and other employees referred to in section 6, shall be paid out of the grants referred to in sub-section (1) of section 14..

8. Vacancies, etc., not to invalidate proceedings of Commission.—

No act or proceeding of the commission shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Commission.

9. Procedure to be regulated by Commission.—

- (1) The Commission shall meet as and when necessary at such time and place as the Chairperson may think fit.
- (2) The Commission shall regulate its own procedure.
- (3) All orders and decisions of the Commission shall be authenticated by the Secretary or any other officer of the Commission duly authorized by the Secretary in this behalf.

¹CHAPTER III

RIGHTS OF A MINORITY EDUCATIONAL INSTITUTION

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.
- (2) The Competent authority shall,—
 - (a) on perusal of documents, affidavits or other evidence, if any; and
 - (b) after giving an opportunity of being heard to the applicant, decide every application filed under sub-section (1) as expeditiously as possible and grant or reject the application, as the case may be:

Provided that where an application is rejected, the Competent authority shall communicate the same to the applicant.

- (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,

1. Chapter III subs. by Act 18 of 2006, sec. 3 (w.e.f. 23.1.2006); before substitution, Chapter III stood as under:

"CHAPTER III

RIGHT OF A MINORITY EDUCATIONAL INSTITUTION

10. Right of a Minority Educational Institution to seek affiliation to a Scheduled University. –

- (1) Notwithstanding anything contained in any other law for the time being in force, a Minority Educational Institution may seek recognition as an affiliated college of a Scheduled University of its choice.
- (2) The Scheduled University shall consult the Government of the State in which the minority educational institution seeking affiliation under sub-section (1) is situate and views of such Government shall be taken into consideration before granting affiliation."

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

- (4) The applicant shall, on the grant of a no objection certificate or where the Competent authority has deemed to have granted the no objection certificate, be entitled to commence and proceed with the establishment of a Minority Educational Institution in accordance with the rules and regulations, as the case may be, laid down by or under any law for the time being in force.

Explanation.— For the purposes of this section,—

- (a) “applicant” means any person who makes an application under sub-section (1) for establishment of a Minority Educational Institution;
- (b) “no objection certificate” means a certificate stating therein, that the Competent authority has no objection for the establishment of a Minority Educational Institution.

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 authorized 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 authorized 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.]

CHAPTER IV

FUNCTIONS AND POWERS OF COMMISSION

11. Functions of Commission.—

Notwithstanding anything contained in any other law for the time being in force, the Commission shall—

- (a) advise the Central Government or any State Government on any question relating to the education of minorities that may be referred to it;
- ¹[(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;

1. Subs. by Act 18 of 2006, sec. 4, for

“(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 affiliation to a Scheduled University and report its findings to the Central Government for its implementation; and

- (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.

12. Powers of Commission.-

- (1) If any dispute arises between a minority educational institution and a ¹[***] 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.

²[(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).].

(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” (w.e.f. 23.1.2006).

1. The word “Scheduled” omitted by Act 18 of 2006, sec. 5 (w.e.f. 23.1.2006).

2. Ins. by Act 18 of 2006, sec. 5 (w.e.f. 23.1.2006).

³**[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.

12B. Power of Commission to decide on the minority status of an educational institution.—

- (1) Without prejudice to the provisions contained in the National Commission for Minorities Act, 1992 (19 of 1992), where an authority established by the Central Government or any State Government, as the case may be, for grant of minority status to any educational institution rejects the application for the grant of such status, the aggrieved person may appeal against such order of the authority to the Commission.
- (2) An appeal under sub-section (1) shall be preferred within thirty days from the date of the order 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) 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

3. Ins. by Act 18 of 2006, sec. 6 (w.e.f. 23.1.2006)

with the State Government, decide on the minority status of the educational institution and shall proceed to give such direction as it may deem fit and, all such directions shall be binding on the parties.

Explanation. — For the purposes of this section and section 12C, “authority” means any authority or officer or commission which is established under any law for the time being in force or under any order of the appropriate Government, for the purpose of granting a certificate of minority status to an educational institution.

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.

12D. Power of Commission to investigate matters relating to deprivation of educational rights of minorities.—

- (1) The Commission shall have the power to investigate into the complaints relating to deprivation of the educational rights of minorities.
- (2) The Commission may, for the purpose of conducting any investigation pertaining to a complaint under this Act, utilize the services of any officer of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.
- (3) For the purpose of investigation under sub-section (1), the officer whose services are utilized may, subject to the direction and control of the Commission,-
 - (a) summon and enforce the attendance of any person and examine him;
 - (b) require the discovery and production of any document; and
 - (c) requisition any public record or copy thereof from any office.
- (4) The officer whose services are utilized under sub-section (2) shall investigate into any matter entrusted to it by the Commission and submit a report thereon to it within such period as may be specified by the Commission in this behalf.
- (5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such further inquiry as it may think fit.

12E. Power of Commission to call for information, etc.—

- (1) The Commission, while enquiring into the complaints of violation or deprivation of educational rights of minorities shall call for information or report from the Central Government or any State Government or any other authority or organization subordinate thereto, within such time as may be specified by it:

Provided that: —

- (a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint;
 - (b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required, or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly.
- (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 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.
 - (4) The Commission shall publish its inquiry report and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

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 Chapter.]

13. Financial and administrative powers of Chairperson.—

The Chairperson shall exercise such financial and administrative powers as may be vested in him by the rules made under this section:

Provided that the Chairperson shall have authority to delegate such of the financial and administrative powers as he may think fit to any Member or Secretary or any other officer of the Commission subject to the condition that such Member or Secretary or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the Chairperson.

CHAPTER V
FINANCE, ACCOUNTS AND AUDIT

14. Grants by Central Government.—

- (1) The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilized for the purposes of this Act.
- (2) The Commission may spend such sums of money as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

15. Accounts and audit.—

- (1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.
- (2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General.
- (3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

16. Annual Report.—

The Commission shall prepare, in such form and at such time, for each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and forward a copy thereof to the Central Government.

17. Annual report and audit report to be laid before Parliament.—

The Central Government shall cause the annual report, together with a memorandum of action taken on the advice tendered by the Commission under section 11 and the reasons for the non-acceptance, if any, of any such advice, and the audit report to be laid as soon as may be after they are received before each House of Parliament.

CHAPTER VI
MISCELLANEOUS

18. ¹ [***]

19. Chairperson, Members, Secretary, employees, etc., of Commission to be public servants.—

The Chairperson, Members, Secretary, officers and other employees of the Commission shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. (45 of 1860).

20. Directions by Central Government.—

- (1) In the discharge of its functions under this Act, the Commission shall be guided by such direction on questions of policy relating to national purposes, as may be given to it by the Central Government.
- (2) If any dispute arises between the Central Government and the Commission as to whether a question is or is not a question of policy relating to national purposes, the decision of the Central Government shall be final.

21. Protection of action taken in good faith.—

No suit, prosecution or other legal proceeding shall lie against the Central Government, Commission, Chairperson, Members, Secretary or any officer or other employee of the Commission for anything which is in good faith done or intended to be done under this Act.

22. Act to have overriding effect.—

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

23. Returns or information.—

The Commission shall furnish to the Central Government such returns or other information with respect to its activities as the Central Government may, from time to time, require.

24. Power to make rules.—

- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

1. Section 18 omitted by Act of 2006, sec. 7 (w.e.f. 23-1-2006); before omission, section 18 stood as under;
“**18. Power to amend Schedule.**—(1) The Central Government if deems it fit may, by notification in the Official Gazette, amend the Schedule by including therein any other University or omitting therefrom any University already specified therein and on the publication of such notification, such University shall be deemed to be included in or, as the case may be, omitted from the Schedule.

2. Every notification issued under sub-section (1), shall be laid before each House of Parliament.

(a) the salaries and allowances payable to, and the other terms and conditions of the service of, the Chairperson and Members under sub-section (5) of section 5 and of the Secretary, officers and other employees under sub-section (2) of section 6;

¹[(aa) the forms in which appeal under sub-section (3) of the section 12A and sub-section (3) of section 12B shall be made;]

(b) the financial and administrative powers to be exercised by the Chairperson under section 13;

(c) the form in which the annual statement of accounts shall be prepared under sub-section (1) of section 15;

(d) the form in, and the time at, which the annual report shall be prepared under section 16;

(e) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

25. Power to remove difficulties.-

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient, for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

26. Repeal and saving.-

(1) The National Commission for Minority Educational Institutions Ordinance, 2004 (Ord. 6 of 2004) is hereby repealed.

(2) Notwithstanding the repeal of the said Ordinance, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

1. Ins. By Act 18 of 2006, sec. 8 (w.e.f.23.1.2006)

THE SCHEDULE

¹[***]

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1. The Schedule omitted by Act 18 of 2006, sec. 9 (w.e.f 23.1.2006); before omission, the Schedule stood as under:

“THE SCHEDULE

[See section 2(j)]

Sl. No.	Name of the University
1.	University of Delhi
2.	North-Eastern Hill University
3.	Pondicherry University
4.	Assam University
5.	Nagaland University
6.	Mizoram Univrsity.”

APPENDICES

NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS

Case No. 40 of 2006

In the matter of :

Chairman, Gyan Ganga Institution
Of Technology & Sciences,
Jabalpur

... Petitioner

Through : Mr.VR Gohil, Advocate for
the petitioner

Versus

Commissioner,
Jabalpur Municipal Corporation & Ors

... Respondent

Through : NEMO

ORDER

(Delivered on 18th day of April, 2007)

Justice M. S. A. Siddiqui, Chairman

By this petition, the petitioner Gyan Ganga Institution of Technology & Sciences, Jabalpur, has complained that the Jabalpur Municipal Corporation is charging exorbitant taxes such as water tax, electricity tax, education tax and development tax on the rates applicable to the commercial institutions. It is contended that these taxes should not be levied on commercial basis but concessional rates should be made applicable for minority educational institutions.

The petition has been resisted by the Municipal Corporation of Jabalpur on the ground that the said institution is a commercial institution as donations are being received from the students at the time of their admissions. The institution is not doing any service to the backward classes or minorities. According to the Municipal Corporation the petition has been preferred before the Commission only to avoid payment of taxes to the municipal corporation. It is further alleged that the taxes are being recovered from the petitioner institution in accordance with the provisions of the Madhya Pradesh Nagar Palika Adhinyam 1956 and as such it is not possible to relax any relevant provision contained therein to give any concession to the petitioner institution.

The petitioner in the rejoinder has refuted the contention of the Municipal Corporation that the petitioner institution is not doing any service to the minorities. It is contended that the petitioner institution is a minority institution and can not be

considered at par with a commercial institution. According to the petitioner, recovery of taxes at the rates applicable to the commercial institutions is against the dictum of law laid down by the Supreme Court in the case of T.M.A. Pai Foundation Vs. State of Karnataka (2002) 8 SCC 481. It is further alleged that the fees levied from the students is in accordance with the fees fixed by the appropriate authorities of the State.

In view of the rival contentions of the parties the point for consideration is: as to whether the petitioner institution is a commercial institution and as such the municipal corporation Jabalpur is entitled to recover taxes from the petitioner institution at the rates applicable to the commercial institutions.

It is beyond the pale of controversy that the Jain Community has been notified by the State of Madhya Pradesh as a minority community and in view of the said notification the Jain Community of Madhya Pradesh is entitled to claim the protection of Article 30 of the Constitution. It is also undisputed that the petitioner college has been established and is being administered by the Jain Community. That being so, the educational institutions established and administered by the Jain Community within the territory of Madhya Pradesh can be held as minority educational institutions within the meaning of Article 30 of the Constitution. It has been held in the case of T.M. Pai Foundation Vs. State of Karnataka (supra) that education has so far not been regarded as a trade or business where profit is a motive. Even if there is any doubt about whether education is a profession or not, it does appear that education will fall within the meaning of the expression "occupation" employed in Article 19(1) (g) of the Constitution. In this context it would be useful to excerpt the following observations of the Supreme Court in the case of T.M.A. Pai Foundation (supra):

Article 19(1)(g) employs four expressions viz. profession, occupation, trade and business. Their fields may overlap, but each of them does have a content of its own. Education is per se regarded as an activity that is charitable in nature (see State of Bombay v. R.M.D. Chamarbaugwala). Education has so far not been regarded as a trade or business where profit is the motive. Even if there is any doubt about whether education is a profession or not, it does appear that education will fall within the meaning of the expression "occupation". Article 19(1)(g) uses the four expressions so as to cover all activities of a citizen in respect of which income or profit is generated, and which can consequently be regulated under Article 19(6). In Webster's Third New International Dictionary, at P.1650, "occupation" is, inter alia, defined as "an activity in which one engages" or "a craft, trade, profession or other means of earning a living".

In Corpus Juris Secundum, Vol. 67, the word "occupation" is defined as under:

"The word 'occupation' also is employed as referring to that which occupies time and attention; a calling; or a trade; and it is only as employed in this sense that the word is discussed in the following paragraphs.

There is nothing ambiguous about the word ‘occupation’ as it is used in the sense of employing one’s time. It is relative term, in common use with a well-understood meaning, and very broad in its scope and significance. It is described as a generic and very comprehensive term, which includes every species of the genus, and encompasses the incidental, as well as the main, requirements of one’s vocation, calling, or business. The word ‘occupation’ is variously defined as meaning the principal business of one’s life; the principal or usual business in which a man engages; that which principally takes up one’s time, thought, and energies; that which occupies or engages the time and attention; that particular business, profession, trade, or calling which engages the time and efforts of an individual; the employment in which one engages, or the vocation of one’s life; the state of being occupied or employed in any way; that activity in which a person, natural or artificial, is engaged with the element of a degree of permanency attached.”

A five-judge Bench in *Sodan Singh v. New Delhi Municipal Committee* at p. 174, para 28, observed as follows:

“The word ‘occupation’ has a wide meaning such as any regular word, profession, job, principal activity, employment, business or a calling in which an individual is engaged. The object of using four analogous and overlapping words in Article 19(1)(g) is to make the guaranteed right as comprehensive as possible to include all the avenues and modes through which a man may earn his livelihood. In a nutshell the guarantee takes into its fold any activity carried on by a citizen of India to earn his living.”

In *Unni Krishnan* case at p. 687, para 63, while referring to education, it was observed as follows:

“It may perhaps fall under the category of occupation provided no recognition is sought from the State or affiliation from the university is asked on the basis that it is a fundamental right.” (emphasis in original)

While the conclusion that “occupation” comprehends the establishment of educational institutions is correct, the proviso in the aforesaid observation to the effect that this is so provided no recognition is sought from the State or affiliation from the university concerned is, with utmost respect, erroneous. The fundamental right to establish an educational institution cannot be confused with the right to ask for recognition or affiliation. The exercise of a fundamental right may be controlled in a variety of ways. For example, the right to carry on a business does not entail the right to carry on a business at a particular place. The right to carry on a business may be subject to licensing laws so that a denial of the licence prevents a person from carrying on that particular business. The question of whether there is a fundamental right or not cannot be dependent upon whether it can be made the subject-matter of controls.

The establishment and running of an educational institution where a large number of persons are employed as teachers or administrative staff, and an activity is carried on that results in the imparting of knowledge to the students, must necessarily be regarded as an occupation, even if there is no element of profit generation. It is difficult to comprehend that education, per se, will not fall under any of the four expressions in Article 19(1)(g). "Occupation" would be an activity of a person undertaken as a means of livelihood or a mission in life. The above quoted observations in Sodan Singh case correctly interpret the expression "occupation" in Article 19(1)(g).

We will now examine the decision in Unni Krishnan case. In this case, this Court considered the conditions and regulations, if any, which the State could impose in the running of private unaided/aided, recognized or affiliated educational institutions conducting professional courses such as Medicine, Engineering etc. The extent to which the fee could be charged by such an institution, and the manner in which admissions could be granted was also considered. This Court held that private unaided recognized/ affiliated educational institutions running professional courses were entitled to charge a fee higher than that charged by government institutions for similar courses, but that such a fee could not exceed the maximum limit fixed by the State. It held that commercialization of education was not permissible, and "was opposed to public policy and Indian tradition and therefore charging capitation fee was illegal". With regard to private aided recognized/affiliated educational institutions, the Court upheld the power of the Government to frame rules and regulations in matters of admission and fees, as well as in matters such as recruitment and conditions of service of teachers and staff. Though a question was raised as to whether the setting up of an educational institution could be regarded as a business, profession or vocation under Article 19(1)(g), this question was not answered. Jeevan Reddy, J., however, at p.751, para 197, observed as follows:

"While we do not wish to express any opinion on the question whether the right to establish an educational institution can be said to be carrying on any 'occupation' within the meaning of Article 19(1)(g), - perhaps, it is – we are certainly of the opinion that such activity can neither be a trade or business nor can it be a profession within the meaning of Article 19(1)(g). Trade or business normally connotes an activity carried on with a profit motive. Education has never been commerce in this country."

It is relevant to mention that a commercial activity connotes an activity carried on with a profit motive. Education has never been commerce in this country. Education is essentially a charitable object and imparting education is, in our view, a kind of service to the community, therefore, it cannot be brought under the trade or business. In view of the decision rendered by the eleven judges bench of the Supreme Court in the case of T.M.A. Pai Foundation (supra) the contention of the Jabalpur Municipal Corporation that the petitioner institution is a commercial concern is not legally tenable. That being so, the impugned action of the Jabalpur Municipal Corporation in recovering taxes from the petitioner college at the rates applicable to a commercial concern is

violative of Article 30(1) of the Constitution. The State Government in the local Self-Department is directed to issue suitable directions to the Municipal Corporation Jabalpur (M.P.) in consonance with the law declared by the Supreme Court in T.M.A. Pai Foundation (supra). The finding of the Commission be sent to the State Government in the (local self department) for its implementation in terms of the Section 11(a) of the National Commission for Minority Communities Act.

The petitioner has also requested for granting aid from Maulana Azad Educational Institution for developing infrastructure like mechanical and electronic labs and computer labs etc. The Maulana Azad educational foundation has resisted the petition by contending that the foundation has been providing financial assistance to NGO's under its educational scheme which has atleast 50% of students belonging to educationally backward minorities as well as sufficient members of educational backward minorities in the Management. Since the percentage of students belonging to the target is only 10.83, the petitioner is not eligible for any financial assistance from the foundation. In view of the stand taken by the Maulana Azad Educatioal Foundation it is not possible to recommend the petitioner's case to the said Foundation for grant of financial assistance. Copies of the order be sent to the parties.

**JUSTICE M.S.A. SIDDIQUI
CHAIRMAN**

**B.S.RAMOOWALIA
MEMBER**

**VALSON THAMPU
MEMBER**

18.04.2007