



सत्यमेव जयते

# **ANNUAL REPORT**

## **2009-2010**



**NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS**  
**Gate No. 4, 1<sup>st</sup> Floor, Jeevan Tara Building**  
**5 Sansad Marg, Patel Chowk, New Delhi – 110001**



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## **CHAPTER 1 – INTRODUCTION**

In pursuance to Section 16 of National Commission for Minority Educational Institutions Act 2004, the Commission has prepared its 5<sup>th</sup> Annual Report for the year 2009-10. The Government promulgated an Ordinance dated 11<sup>th</sup> November 2004, establishing the Commission and the Ordinance was replaced by the National Commission for Minority Educational Institutions Act passed by the Parliament in December 2004. The Commission was constituted on 16<sup>th</sup> November 2004 by the Ministry of Human Resource Development with its Headquarters at Delhi. The notification was issued by the Government on 26<sup>th</sup> November 2004 appointing Justice M.S.A. Siddiqui as the Chairperson and Shri B.S. Ramoowalia and Shri Valson Thampu as the first Members of the Commission. Shri Valson Thampu resigned as Member of the Commission w.e.f. 11<sup>th</sup> September 2007. Thereafter Smt. Vasanthi Stanley was appointed as the Member and on her resignation on 5<sup>th</sup> March, 2008, Sr. Jessy Kurian was appointed as Member and she joined on 27<sup>th</sup> March 2008. Shri B.S. Ramoowalia resigned as Member on 31.3.2009. On completion of the tenure of 5 years Justice M.S.A. Siddiqui relinquished charge on 28.11.2009 and Sr. Jessy Kurian completed her tenure on 5.12.2009. The Government reappointed Justice M.S.A. Siddiqui as the Chairperson of the Commission for a further term of 5 years and he assumed charge on 18.12.2009.

### **NCMEI Act 2004**

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

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

### **NCMEI Amendment Act 2005**

On the basis of the suggestions received from various quarters for making the Commission more proactive and its functioning more specific, recommendations were made by the Commission to the Government for making amendments to the

Act. Government introduced the National Commission for Minority Educational Institutions (Amendment) Bill 2005 in Parliament. However, in the wake of 93<sup>rd</sup> constitutional amendment passed by the Parliament incorporating Article 15 (5) in the Constitution making specific provision for educational advancement of the Scheduled Castes, Scheduled Tribes and socially and educationally backward classes of the citizens, it became expedient to bring out the amendments to the NCMEI Act through an Ordinance. Accordingly, an Ordinance was notified by the Government on 23<sup>rd</sup> 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 29<sup>th</sup> March 2006.

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

Section 12F of NCMEI Act stipulates as under:-

**12F. “Bar of jurisdiction** – No court (except the Supreme Court and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) shall entertain any suit, application or other proceedings in respect of any order made under this 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 rights of the minorities to establish and administer educational institutions of their choice. According to the provisions of the Act, Commission has adjudicatory function and recommendatory powers. The mandate of the Commission is very wide. Its functions include, among other things, resolving the disputes regarding affiliation of minority educational institutions to a university, addressing the complaints regarding deprivation and violation of rights of minorities, to establish and administer educational institutions of their choice and to advise the Central Government and the State Governments on any questions relating to the educational rights of the minorities referred to it.

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

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

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

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

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

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

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

Some of the posts have been filled by the Commission on deputation basis and some others have been filled through direct recruitment. With the influx of large number of petitions/ applications, Commission has found it difficult to cope up with the workload 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 of all records.



## CHAPTER 2 – COMPOSITION OF THE COMMISSION

The Commission was established through an Ordinance (No. 6 of 2004) notified on 11<sup>th</sup> 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 6<sup>th</sup> January 2005.

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

The composition of the Commission at the beginning of the period of the report was as follows: -

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

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

On completion of the tenure of 5 years Justice M.S.A. Siddiqui relinquished his charge on 28.11.2009 and Sr. Jessy Kurian completed her tenure on 5.12.2009. The Government reappointed Justice M.S.A. Siddiqui as the Chairperson of the Commission for a further term of 5 years and he assumed charge on 18.12.2009.

The Functions of the Commission are as follows:-

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

- (e) Specify measures to promote and preserve the minority status and character of institutions of their choice established by minorities;
- (f) Decide all questions relating to the status of any institution as a Minority Educational Institution and declare its status as such;
- (g) Make recommendations to the appropriate Government for the effective implementation of programmes and schemes relating to the Minority Educational Institutions; and
- (h) Do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission.

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

- (1) If any dispute arises between a minority educational institution and a University relating to its affiliation to such University, the decision of the Commission thereon shall be final.
- (2) The Commission shall, for the purposes of discharging its functions under this Act, have all the powers of a civil court trying a suit and in particular, in respect of the following matters, namely:-
  - (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
  - (b) requiring the discovery and production of any document;
  - (c) receiving evidence on affidavits;
  - (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, (1 of 1872) requisitioning any public record or document or copy of such record or document from any office;
  - (e) issuing commissions for the examination of witnesses or documents; and
  - (f) any other matter which may be prescribed.
- (3) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

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

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

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

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

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

### CHAPTER 3 – SITTINGS OF THE COMMISSION

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

During the year 2009-10 Commission conducted 121 sittings as a court and heard 4377 cases as per details given below:

S. No.	Date of Meeting	No. of Cases
1.	01.04.2009	56
2.	02.04.2009	37
3.	08.04.2009	37
4.	09.04.2009	25
5.	15.04.2009	36
6.	16.04.2009	44
7.	21.04.2009	30
8.	22.04.2009	44
9.	23.04.2009	34
10.	28.04.2009	94
11.	29.04.2009	44
12.	05.05.2009	35
13.	06.05.2009	65
14.	12.05.2009	80
15.	13.05.2009	22
16.	19.05.2009	84
17.	20.05.2009	33
18.	21.05.2009	02
19.	26.05.2009	45
20.	27.05.2009	39
21.	28.05.2009	30
22.	29.05.2009	83
23.	02.06.2009	40
24.	03.06.2009	45

25.	04.06.2009	01
26.	09.06.2009	37
27.	10.06.2009	17
28.	11.06.2009	02
29.	16.06.2009	19
30.	17.06.2009	76
31.	18.06.2009	03
32.	23.06.2009	03
33.	24.06.2009	34
34.	02.07.2009	37
35.	07.07.2009	55
36.	08.07.2009	41
37.	09.07.2009	03
38.	13.07.2009	03
39.	14.07.2009	45
40.	15.07.2009	35
41.	21.07.2009	49
42.	22.07.2009	43
43.	23.07.2009	48
44.	27.07.2009	01
45.	28.07.2009	137
46.	29.07.2009	43
47.	30.07.2009	49
48.	05.08.2009	31
49.	11.08.2009	42
50.	12.08.2009	03
51.	18.08.2009	05
52.	19.08.2009	37
53.	20.08.2009	40
54.	24.08.2009	45
55.	25.08.2009	61
56.	26.08.2009	42
57.	27.08.2009	02
58.	28.08.2009	01
59.	01.09.2009	22

60.	03.09.2009	40
61.	07.09.2009	03
62.	08.09.2009	42
63.	09.09.2009	37
64.	10.09.2009	43
65.	15.09.2009	42
66.	16.09.2009	64
67.	17.09.2009	02
68.	23.09.2009	29
69.	24.09.2009	37
70.	30.09.2009	04
71.	20.10.2009	21
72.	21.10.2009	39
73.	22.10.2009	44
74.	26.10.2009	03
75.	27.10.2009	42
76.	28.10.2009	56
77.	29.10.2009	36
78.	03.11.2009	39
79.	04.11.2009	03
80.	05.11.2009	51
81.	09.11.2009	20
82.	10.11.2009	23
83.	11.11.2009	44
84.	12.11.2009	33
85.	16.11.2009	13
86.	17.11.2009	39
87.	18.11.2009	42
88.	19.11.2009	46
89.	23.11.2009	04
90.	24.11.2009	45
91.	25.11.2009	27
92.	26.11.2009	08
93.	05.01.2010	31
94.	06.01.2010	34

95.	12.01.2010	45
96.	13.01.2010	34
97.	14.01.2010	32
98.	19.01.2010	05
99.	20.01.2010	59
100.	21.01.2010	32
101.	27.01.2010	36
102.	28.01.2010	43
103.	02.02.2010	39
104.	03.02.2010	54
105.	11.02.2010	54
106.	15.02.2010	81
107.	16.02.2010	27
108.	17.02.2010	64
109.	18.02.2010	32
110.	23.02.2010	39
111.	24.02.2010	56
112.	25.02.2010	40
113.	03.03.2010	29
114.	04.03.2010	29
115.	09.03.2010	26
116.	10.03.2010	35
117.	11.03.2010	33
118.	16.03.2010	40
119.	22.03.2010	41
120.	23.03.2010	23
121.	30.03.2010	67
	<b>TOTAL</b>	<b>4377</b>

The number of court sittings during the year is much higher than the previous years. In the previous year 2008-09, the total number of cases heard were 3506 and during this year the number of cases have gone up to 4377. In 2005-06 the number of cases heard were 1404, in 2006-07, it was 3932 and in 2007-08 it was 2916. The Commission has decided to increase the number of sittings and accordingly more cases were heard during the year. This was primarily with the objective of disposing more cases. During the formal court sittings, cases where notices have been issued were taken up. In addition to the formal number of sittings

mentioned above, Commission has taken up fresh petitions on a daily basis and has passed orders. For fresh petitions the presence of petitioner or respondent is not necessary. The Commission has also listed more number of cases in each sitting to ensure expeditious disposal and also to ensure that backlog of cases of previous years were given priority. Even though there were constraints of shortage of staff, disposal rate of cases during the year has been much higher than the previous years.

Sittings of the court were held by the Commission every week. Maximum number of sittings were held in November 2009 which was 15. In July, 14 sittings were held and in September, 12 sittings were held. In the months of April, May, June, August 2009 and in January & February 2010, 10 sittings each were held. In March 2010, 9 sittings were held and in October 2009, 7 sittings were held.

The tenure of the first Chairman ended in November with the relinquishment of the charge of the Chairman on 28.11.2009. The new Chairman assumed charge on 18<sup>th</sup> December 2009 and therefore no sittings could be held in the month of December 2009. Despite the fact that the Commission could not sit during the month of December, the number of sittings during the year has been the largest and the disposal of the cases were maximum.

No quorum has been fixed by the Commission for the court sittings which was to ensure expeditious disposal of cases. After the tenure of the Chairman and Members of the Commission were over, the Government appointed a new Chairman who assumed charge on 18.12.2009. Even though for the rest of the period upto 31<sup>st</sup> March 2010, no members were appointed, the Commission could function smoothly as no quorum has been prescribed for court sittings.

All cases which are listed on a particular day are taken up and heard on that day itself and appropriate orders are passed by the Members present. Adequate notice period is given to the respondents. In case of pleading of urgency by petitioners, Commission gives early date of hearing. Commission also takes into consideration the inconvenience expressed by the parties to appear on a particular date and accordingly adjournments are granted to enable the parties to put up their cases effectively in consonance with the principles of natural justice. Commission has never insisted on engagement of a counsel to represent the petitioner. In other words, any petitioner who wants to argue his/her case is given the liberty to do so.

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



As per the provisions of the Act, the Commission can also hold its sittings outside Delhi. Section 9 of the NCMEI Act provides that Commission shall meet as and when necessary at such time and places as the Chairperson may think fit. This provision empowers the Commission to hold its sittings outside Delhi also. However, during the year 2009-10 the Commission's meetings were held only in Delhi. Some requests were received for holding of Commission's meetings at different locations. In case of large number of cases emanating from a particular place, Commission will hold its sittings at that particular place subject to getting adequate facilities from the concerned State Government.

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

## CHAPTER 4 – HIGHLIGHTS OF THE YEAR

Priority was given to disposal of pending cases during the year. Cases registered during the previous years were taken up on priority basis and parties were cautioned not to seek adjournments. Consequently it was possible to dispose of more cases pending from the previous years.

Commission has been interacting with various stakeholders and on the basis of feedbacks received from various sources and analysis of cases registered in the Commission, it was decided to bring out guidelines regarding minority status and recognition and affiliation matters relating to minority educational institutions. Commission found that there was no uniform standards in the rules and regulation notified by the State Governments. In order to help the State Government authorities Commission published Guidelines for determination of Minority Status, Recognition, Affiliation and related matters in respect of Minority Educational Institutions under the Constitution of India. These guidelines have also been displayed on the website of the Commission.

Commission's records were computerized during the year. Even though no technical staff has been sanctioned for the Commission, the work was got done through M/s NIIT Ltd. who provided the software solution. By engaging Data Entry Operators, Commission was able to complete the data entry of all the records during the year.

Larger number of cases were taken up and more sittings of the Commission were held during the year to ensure speedy disposal of the cases. Commission also considered more number of cases in each sitting.

## CHAPTER 5 – TOURS AND VISITS

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

S. No.	Dates of Tour	Station Visited
1.	23.5.2009 to 25.5.2009	Lucknow
2.	12.6.2009 to 13.6.2009	Guwahati
3.	20.6.2009	Amroha
4.	24.6.2009 to 30.6.2009	Jabalpur
5.	2.8.2009 to 4.8.2009	Bhopal, Indore, Vidisha
6.	7.8.2009 to 10.8.2009	Srinagar
7.	26.9.2009 to 27.9.2009	Lucknow
8.	1.11.2009 to 2.11.2009	Ajmer
9.	7.11.2009 to 8.11.2009	Badaun (Uttar Pradesh)
10.	12.11.2009 to 15.11.2009	Kolkata, Murshidabad
11.	21.11.2009 to 22.11.2009	Bokaro
12.	20.12.2009 to 21.12.2009	Rampur, Moradabad
13.	22.12.2009 to 24.12.2009	Ahmedabad
14.	1.1.2010 to 4.1.2010	Indore
15.	16.1.2010 to 18.1.2010	Mumbai, Ahmedabad
16.	3.2.2010 to 4.2.2010	Chandigarh, Patiala
17.	7.2.2010	Muzaffarnagar
18.	9.2.2010 to 10.2.2010	Bareilly
19.	12.2.2010 to 13.2.2010	Varanasi, Azamgarh
20.	19.2.2010 to 21.2.2010	Vadodara
21.	25.2.2010 to 27.2.2010	Lucknow, Barabanki

One post of Member was vacant throughout this period. The Chairman and Member visited some places together and other places separately as per their convenience. The tours were undertaken with the intent to interact with members of the minority communities. Such meetings with the members of the minority communities helped in understanding the difficulties faced by them and provided a forum for discussing the grievances. It also enabled the Commission to apprise them about their constitutional rights as well as the powers and functions of the Commission. Wherever possible, the Commission also interacted with some of the Chief Ministers of the States and Government officials concerned with educational matters. This has helped in sensitizing the State Govt. officials about the rights of the minority communities enshrined in Article 30(1) of the Constitution. The Commission found that many of the officers in the Education Departments of State

Governments were not fully aware either of the functions or powers of the Commission or the scope or width of educational rights of the minority communities enshrined under Article 30(1) of the Constitution. These visits and interactions were found to be mutually beneficial as the Commission was able to develop first hand knowledge of the extent and diversity of the problems faced by the minority educational institutions at various places. The interactions resulted in broadening the outlook of the providers and managers of the minority educational institutions and it also fostered in them a sense of partnership with the State in the practice of education.

The Commission, being a quasi-judicial body, has to function as a Court and many of the stakeholders were not aware of drafting the petitions. During the tours, the meetings held with representatives of the minority educational institutions helped in explaining the functions of the Commission and the procedure and formalities involved in approaching the Commission were explained to them. The Commission has 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.

The Chairman and Members along with Secretary of the Commission visited Guwahati on 12 & 13 June 2009. In the meetings held there the interaction provided a broad idea about the activities undertaken by various organizations in spreading awareness about the need for proper education. It was explained that education and health being very important and fundamental to the welfare of any community, these have to be given prime importance. The scope and powers of the Commission were explained to the representatives in the various interactions and they were enlightened about the procedures followed by the Commission. Commission being a quasi-judicial body, it is necessary to approach the forum with properly drafted petitions. Complaints regarding deprivation of educational rights of the minorities guaranteed under Article 30 (1) of the Constitution falls within the jurisdiction of the Commission and participants were told to make use of the forum of the Commission. Education is a national wealth essentially for the nation's progress and prosperity. It is necessary for all stakeholders to see that proper facilities are ensured for imparting excellent education.

In other places Commission has ensured that interaction is held with as many members of the minority communities. For this purpose, meetings with smaller groups were held instead of organizing bigger functions. Interaction with smaller groups ensured better exchange of information.

It was stressed that education should be the backbone of one's character and it should make all round development of a person. Education should be for nation-building and should instill the constitutional values of justice, liberty, equality and fraternity. During the interaction with the participants, clarifications were given

about educational rights of the minorities. Various judgements pronounced by the Supreme Court and High Courts were touched upon in explaining the details of rights enshrined under Article 30 (1) of the Constitution. In most of the places, the issues discussed included the rights of the minorities in the establishment of an educational institution, constitution of managing committee, right to appoint teaching and non-teaching staff, right to appoint head of institution, grant of minority status certificate, grant of NOC, right to fix a reasonable fee structure, right to take disciplinary action against teaching and non-teaching staff etc.. Main problems faced by the minority communities were lack of educational facilities, especially for the children from the Muslim community, inordinate delay in the recognition of schools, non-issue of minority status certificate, inordinate delay in considering applications for grant of minority status certificate, insistence on application of reservation policy on minority educational institutions, lack of schools teaching Urdu, lack of teachers in Urdu, disparity in pay of teachers, non-availability of text books, etc.

Another fact which was brought out in many places is lack of facilities for girl's education especially for girls from the Muslim community. The importance of girl's education should be an intrinsic part of the State policy designed to ensure the reach of education to the population at large in general and muslims in particular. Emphasis should be placed on the need to spread girl's education among muslims where poverty, underdevelopment and social disability have to be overcome by making available the benefits of education. The community has to ensure that the drop out rate of girl students especially from muslim community is reduced. Parents should be motivated and encouraged to send their daughters to schools. The government must formulate innovative schemes for empowering muslim women through education. Revolutionary steps and long term measures have to be taken to provide quality education to girls to enable them to stand up to the intellectual as well as technical strain of the burden that they will have to carry. They should be educated about the essential qualities in the character of a creative citizen so that they may be able to share actively in the common weal and woe and share common burdens willingly.

In some places it was found that the infrastructural and instructional facilities were poor. Commission emphasized that importance should be given to build proper infrastructure not only to fulfill the norms prescribed by the authorities but also to attract students. Investing funds in the field of education should be with devotion of service to the society and commercial endowment should be completely avoided. Commission would not give any relaxation in the basic norms prescribed by the authorities regarding infrastructural and instructional facilities and would not support any "teaching shop". Commission has exhorted philanthropic individuals to invest in providing better educational facilities with an eye on creating a healthy and prosperous society.

In the case of higher education, it is necessary that we should build proper educational institutions which would progressively transform the student community

into a knowledge society. Our universities should be prime centers of scholarship and should play a significant role in generating a base for creating new knowledge and technology. There is pressing need to improve the health of higher education and research. Everyone should strive to develop the concept of global university of excellence and make the existing educational institutions to promote internationalism in higher education. This initiative would create new opportunities of promoting growth and development in education. Private sector should be encouraged to establish educational institutions of global excellence.

Commission has also explained the various programmes and schemes implemented by the Central Government and has asked the minority communities to avail of the facilities offered.

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

The Commission registers cases calendar-year-wise. During the year 2009, 1883 cases were registered which were more than the cases registered in the previous year. Even though the Commission has prescribed specific format indicating the details required for the petition/ application requesting for grant of minority status certificate, it was found that many petitions/ applications for grant of minority status certificate was not in the prescribed format. Such petitioners were asked to send their applications in the prescribed format with requisite number of copies. Some of the petitions were not properly drafted and there were few petitions which did not give full details of the issues involved. There is a tendency to send petitions in the format of a letter containing general issues without seeking any specific relief. In such cases the Commission had advised the petitioners to submit modified/ revised petitions giving details of the issues involved with supporting documents and also mentioned specific relief sought.

The broad subjects of the cases registered by the Commission during the period included subjects such as non-issue of NOC by the State Governments, delay in the issue of NOC, refusal and delay in the issue of minority status, refusal to allow opening of new colleges/ schools/ institutions by minorities, refusal to allow additional courses in minority educational institutions, refusal/ delay in the release of grant-in-aid, refusal to give financial assistance, denial of permission to create new posts of teachers in minority educational institutions even though there is increase in number of students, approval of appointment of teachers being denied, inequality in pay scales of minority school teachers vis-à-vis government school teachers, denial of teaching aids/other facilities like computer, library, laboratory, etc. to minority educational institutions on par with government institutions, non-availability of books in Urdu on all subjects for students of Urdu schools, non-appointment of Urdu knowing teachers, madarsa teachers to be paid on par with minority school teachers, madarsa employees to be paid adequately, non-release of grants to madaras, non-payment of retirement benefits to teachers and non-teaching staff of minority schools, extension of Sarva Shiksha Abhiyan facilities to minority educational institutions especially in deprived rural areas, etc.

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 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 the previous years. The orders included in this report pertain to the period from 1<sup>st</sup> April, 2009 to 31<sup>st</sup> March 2010. 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 some of the orders passed by the Commission are given below and in the next Chapter.

#### **Case No. 436 of 2008**

#### **Request to fill up 50% seats in Himalaya Institute of Pharmacy & Research, Dehradun, Uttarakhand.**

**Petitioner:** 1. Himalayan Institute of Pharmacy & Research, Dehradun, Uttarakhand.

**Respondent:** 1. The Secretary, Department of Technical Education, Government of Uttarakhand, Civil Secretariat, Dehradun, Uttarakhand.  
2. The Registrar, Uttarakhand Technical University, 6, Mahant Laxman Das Road, Dehradun, Uttarakhand – 248001.

The petitioner institute sought a direction to the State Government to allow it to fill up 50% seats of the B. Pharma course through its own entrance test. It is alleged that the petitioner institute is a minority educational institution covered under Article 30(1) of the Constitution vide minority status certificate dated 27<sup>th</sup> June 2007 granted by this Commission. After obtaining the said minority status certificate the petitioner institute applied to the State Government and the Uttarakhand Technical University, Dehradun for grant of the permission to fill up the aforesaid percentage of seats but the same was not granted. Hence, this petition.



Despite service of notice, no reply was received from the State Government. Learned counsel for the respondent University did not file any reply on the ground that the respondent University has no role to play in the matter. As directed, the Secretary to the Commission wrote a D.O. letter to the Secretary, Department of Technical Education, Government of Uttarakhand but the same was not responded. Thereafter on 23<sup>rd</sup> December, 2008, the Chairman of the Commission wrote a letter to the Hon'ble Chief Minister of Uttarakhand requesting his intervention in the matter but that too was not responded.

The point which arises for consideration is as to whether management of the petitioner institute can exercise the right to admit Muslim students of its choice? If so, such choice can be exercised by conducting its own entrance test. It has been held by the Supreme Court in TMA Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 that the right to a minority educational institution to admit students is an essential facet of the right to administer educational institutions of their choice as contemplated under Article 30(1) of the Constitution. Under Question No. 5(a) pertaining to the minorities' right to establish and administer educational institutions of their choice, to include in the said right, the procedure and methods of admission and selection of students, it was held by the Supreme Court in the case of T.M.A. Pai Foundation (supra) that the minority institution can have its own procedure and methods of admission as well as selection of students, but such procedure should be fair, transparent and non-exploitative. The procedure should not be tantamount to maladministration. We may usefully excerpt the following observations of their lordships in answering the Question No. 5(a).

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

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

“Any system of student selection would be unreasonable if it deprives the private unaided institution of the right of rational selection, which it devised for itself, subject to the minimum qualification that may be prescribed and to some system of

computing the equivalence, between different kinds of qualifications, like a common entrance test. Such a system of selection can involve both written and oral tests for selection, based on principle of fairness.”

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

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

Even when students are required to be selected on the basis of merit, the ultimate decision to grant admission to the students who have otherwise qualified for the grant of admission must be left with the educational institution concerned. It was held in the clarificatory judgment of P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537 that there is nothing wrong in an entrance test being held for one group of institutions imparting same or similar professional education. Such institutions situated in one State or in more than one State may join together for holding a common entrance test satisfying the triple test i.e. the procedure for selection must be fair, transparent and non exploitative. The State can also provide

a procedure for holding a common entrance test in the interest of securing fair and merit based admissions and preventing maladministration. It was also held in Inamdar's case (supra) that single window system relating admission does not cause any dent in the right of minority unaided educational institutions to admit the students of their choice. Such choice can be exercised by selecting students from out of the list of the successful candidates prepared at CET without altering the order of merit inter se of the students so chosen. It was further held in P.A. Inamdar's case (supra) that neither the policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or non minority unaided educational institutions. Reference may, in this connection, be made to the following observations of their lordships of the Supreme Court:

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

(emphasis supplied)

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

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

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

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

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

126. The observations in para 68 of the majority opinion in Pai Foundation on which the learned counsel for the parties have been much at variance in their submissions, according to us, are not to be read disjointly from other parts of the main

judgment. A few observations contained in certain paragraphs of the judgment in Pai Foundation if read in isolation, appear conflicting or inconsistent with each other. But if the observations made and the conclusions derived are read as a whole, the judgment nowhere lays down that unaided private educational institutions of minorities and non-minorities can be forced to submit to seat-sharing and reservation policy of the State. Reading relevant parts of the judgment on which learned counsel have made comments and counter-comments and reading the whole judgment (in the light of previous judgments of this Court, which have been approved in Pai Foundation) in our considered opinion, observations in para 68 merely permit unaided private institutions to maintain merit as the criterion of admission by voluntarily agreeing for seat-sharing with the State or adopting selection based on common entrance test of the State. There are also observations saying that they may frame their own policy to give freeships and scholarships to the needy and poor students or adopt a policy in line with the reservation policy of the State to cater to the educational needs of the weaker and poorer sections of the society.

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

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

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

132. Our answer to the first question is that neither the policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or non-minority unaided educational

institution. Minority institutions are free to admit students of their own choice including students of non-minority community as also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational institution status is lost. If they do so, they lose the protection of Article 30(1).

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

137. Pai Foundation has held that the minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admission and the procedure therefor subject to its being fair, transparent and

non-exploitative. The same principle applied to non-minority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. All institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the abovesaid triple tests. The State can also provide a procedure of holding common entrance test in the interest of securing fair ad merit-based admissions and preventing maladministration. The admission procedure so adopted by a private institution or group of institutions, if it fails to satisfy all or any of the triple tests, indicated hereinabove, can be taken over by the State substituting its own procedure. The second question is answered accordingly”.

(emphasis supplied)

As demonstrated earlier the concept of administration includes the choice in admitting students. Since the petitioner institute has not joined any group of institutions imparting same or similar education, it is not entitled to hold the entrance test for admission of students of its choice. However, the petitioner can exercise its right to administer educational institutions of its choice guaranteed under Article 30(1) of the Constitution by selecting Muslim students from out of the list of successful candidates prepared at Common Entrance Test. We may observe here at the cost of repetition that it has been held in the case of P.A. Inamdar (Supra) that a minority educational institution has a right to admit students of its choice and such choice can also be exercised by selecting students from out of the list of successful candidates prepared at Common Entrance Test without altering the order of merit inter se of the students so chosen. The aforesaid right of the management of the petitioner institute is well insulated by the protective cover of Article 30(1) of the Constitution and it cannot be chiseled out through any legislative act or executive fiat. The language of Article 30(1) is wide and must receive full meaning. Needless to add here that the State’s power of regulation cannot render these core rights a teasing illusion or a promise of unreality. As Hon’ble Venkatarama Aiyer J observed in AIR 1958 Supreme Court 956 at page 990, the Constitution gives the minorities two distinct rights, one a positive and the other a negative one, viz,

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

Thus the impugned action of the State Government in denying the petitioner the right to choose students of Muslim community from out of the list of successful candidates prepared at Common Entrance Test is not only inconsistent with the law declared by the Supreme Court in the aforesaid cases but it also completely annihilates the right of minority educational institution to admit students of its choice.

For the foregoing reasons, Commission held and hold that the petitioner institution, being a minority institution covered under Article 30(1) of the Constitution, has the right to admit students of Muslim community by selecting students of its choice from out of the list of successful candidates prepared at the Common Entrance Test without altering the order of merit inter se of the students so chosen. As held by the Supreme Court in P.A. Inamdar's case (supra), the petitioner institute cannot be forced to submit seat sharing and reservation policy of the State Government.

The findings of the Commission were sent to the State Government for implementation in terms of Section 11(b) of the National Commission for Minority Educational Institutions Act.

### **Case No. 219 of 2009**

#### **Request for establishment of a new Dental College by Bombay Patel Welfare Society at Bharuch, Gujarat.**

**Petitioner:** 1. The Bombay Patel Welfare Society Bharuch (A Regtd. Society under the Society's Registration Act 1860 (ACCT XXI of 1860) Regt.No. Gujarat-90, Bharuch Dated 18.01.1980 Also regtd. As a public Trust under The Bombay Public Trust Act-1950 vide Trust Registration No. Guj. Public Trust Regt No: F-80 dated: 18-1-19-80

**Respondent:** 1. The Secretary, Ministry of Health & Family Welfare, Government of Gujarat, 7/4, Sardar Bhavan, New Sachivalaya, Gandhinagar, Gujarat

2. The Secretary, Ministry of Health & Family Welfare, Government of India, Nirman Bhawan, New Delhi.

3. The Secretary, Ministry of Education, Government of Gujarat, New Sachivalaya, Gandhinagar, Gujarat.

4. The Commissioner of Health & Medical Services & Medical Education, Block No. 5, Dr. Jivraj Mehta Bhavan, Gandhinagar, Gujarat.

The petitioner sought a direction to the Ministry of Health and Family Welfare, Government of India to grant permission under Section 10A (4) of the Dentist



(Amendment) Act, 1993 to establish a new Dental college in the name and style of the Bombay Patel Welfare Society's 'Welfare Institute of Dental & Allied Sciences' with an annual intake capacity of 100 students in BDS course from academic session 2009-2010. To appreciate the contention of the petitioner herein, the facts, in brief may be stated:

The petitioner, Bombay Patel Welfare Society, Bharuch, Gujarat (for short the petitioner society), is a public Trust registered under the Bombay Trust Act 1950 and as also a Society registered under the Societies Registration Act 1860. The said society has been constituted by members of the Muslim community and beneficiaries of the said society are also members of the Muslim community and as such it is entitled to exercise the right to establish educational institution of its choice guaranteed under Article 30(1) of the Constitution.

By the order dated 4.7.2006 passed by the Commission in Case No. 1020 of 2006 (The Bombay Patel Welfare Society, Bharuch vs. The Secretary, Health and Family Welfare Department & Ors.), the Essentiality Certificate was granted to the petitioner society under Section 12-A(4) of the National Commission for Minority Educational Institutions Act (for short the Act) for establishment of the proposed dental college at Bharuch (Gujarat) as required by Regulation No. 6(2) (e) of the Dental Council of India (Establishment of New Dental Colleges, opening of New or higher course of study or Training and Increase of Admission Capacity in Dental Colleges) Regulation, 2006. Aggrieved by the said order, the State Government filed special Civil Application No. 26949 of 2006 in the High Court of Gujarat. Since the said order of the Commission was not stayed by the High Court, the Central Government, in the Ministry of Health and Family Welfare, acting upon the said Essentiality Certificate granted the letter of intent under the Dentist Act for establishment of the proposed dental college. Thereafter, the petitioner applied to the Veer Narmad South Gujarat –University for affiliation and pending the consideration, principally the university had agreed and had directed for compliance to certain conditions. At that stage, the petitioner again moved the Commission and by the Order dated 26.11.2007 passed in Case No. 989/2007, the university was directed to grant affiliation to the proposed dental college. Aggrieved by the said order of the Commission, the University filed Special Civil Application No. 29655/2007 before the High Court of Gujarat.

Thereafter, the Special Civil Application No. 29655 of 2007 was filed before the High Court of Gujarat in Special Application No. 26949 of 2006. By the interim order dated 13.2.2008, following directions were made by the High Court:

“2. By interim order it is directed that the institution shall be entitled to start Dental College from the next academic year of 2008-2009 on condition that :

(a) The staff is appointed in the college as per UGC Norms on the basis of the recommendation of the selection committee, which may be constituted by the University i.e. The Veer Narmad South Gujarat University shall constitute committee as per the UGC Norms.

The aforesaid process of selection shall be completed within a period of one month from the receipt of the order.

(b) The inspection is permitted by the petitioner through the committee of the State Government constituted by resolution dated 31.07.1997 and the same is completed and the report is submitted within a period of six months from the receipt of the order.

3. It is further observed and directed that in the event there is any noncompliance of the aforesaid conditions or there is any report of the committee otherwise it would be open to either side to move this court for modification of the order.”

Despite service of notices the respondents did not contest the proceedings.

It needs to be highlighted that in para No. 5 of the order, the High Court of Gujarat has observed as under :-

**“It is undisputed position that the institution is Minority institution, which is to establish college. It is also undisputed position that the institution did apply to the Dental Council, the University as well as to the State Government as per the regulation, and therefore, by virtue of the order of Minority Commission, the situation prevailing is that the institution will be entitled to establish the college, which would stand affiliated with the Veer Narmad South Gujarat University”.**

Needless to add here that the said order of the High Court is also binding on the Government of India in the Ministry of Health & Family Welfare, Department as well as the Dental Council of India. Since the High Court of Gujarat has already declared that the petitioner society is entitled to start the Dental college from the new academic year of 2008-2009 and which would stand affiliated with the Veer Narmad South University, it is absolutely imperative for the Central government to give effect to the said order of the High Court by renewing the permission already granted under Section 10-A(4) of the Dentist Act. The High Court has also allowed the petitioner society to appoint staff as per UGC norms on the basis of the recommendation of the selection committee to be constituted by the university.

It is relevant to note here that by the order No. F.No. V-12017/34/2007-DE dated 1.10.2007 issued by Ministry of Health and Family Welfare, Dental Education Section, Nirman Bhawan, the Central Government has granted formal permission under Section 10 A (4) of the Dentist (Amendment) Act, 1993 to the petitioner society for establishment of new dental college in the name and style of Bombay Patel Welfare Society's Welfare Institute of Dental and Allied Sciences with an annual intake capacity of 100 students in BDS course from academic session 2007-2008 subject to the conditions contained in para No. 2 of said order.

The Commission held that it is absolutely imperative for the Central Government to give effect to the order dated 13.2.2008 passed by the High Court of Gujarat by renewing the permission dated 1.10.2007 granted under Section 10-A(4) of the Dentist Act. Consequently, the Central government in the Ministry of Health and Family Welfare (Dental Education) is directed to give effect to the aforesaid order of the High Court of Gujarat by granting formal permission under Section 10 A (4) of the Dentist (Amendment) Act, 1993 to the petitioner society for establishment of a new dental college in the name and style of the Bombay Patel Welfare Society's Welfare Institute of Dental and Allied Sciences with an annual intake capacity of 100 students in BDS course from academic session 2009-2010.

#### **Case No. 1550 of 2008**

#### **Request for grant of autonomous status to Al-Falah School of Engineering & Technology, Village Dhauj, Faridabad, Haryana.**

- Petitioner:**
1. Al- Falah School of Engineering & Technology, Village Dhauj, Distt. Faridabad, Haryana.
  2. Al-Falah Charitable Trust, 274-A, Jamia Nagar, Okhla, New Delhi – 110 025.

- Respondent:**
1. Financial Commissioner & Principal Secretary (Technical Education Deptt.), SCO 38-39, Sector – 17 A, Chandigarh.
  2. The Director, Technical Education Deptt., Haryana, SCO 38-39 Sector 17 A, Chandigarh.

Maharishi Dayanand University, Through the Registrar, Rohtak (Haryana).

The petitioner college sought a direction to the State Government to grant autonomous status to the petitioner No.1. The petitioner Al- Falah School of Engineering & Technology, Village Dhauj, Faridabad, Haryana is a minority educational institution covered under Article 30(1) of the Constitution. The petitioner college has also been accredited with National Board of Accreditation (for short NBA) of the All India Council of Technical Education (for short the AICTE). By the

notification No. 25/56/2006-4TE dt. 11.9.2006, the State Government notified the policy for grant of autonomous status to UG/PG level institutions approved by the AICTE/U.G.C. Pursuant to the said notification, the petitioner college applied to the State Government for grant of autonomous status on 3.11.2006. After proper investigation and scrutiny, the competent authority of the State Government identified the petitioner college alongwith the other institutions affiliated with the Respondent No. 2 for grant of autonomous status. The Screening Committee consisting of the Vice Chancellor of the Respondent University and the Vice Chancellors of Kurukshetra University inspected the premises of the petitioner college and were satisfied about availability of all the infrastructural and instructional facilities at the petitioner college in accordance with the norms prescribed for grant of autonomous status to an affiliated college, but the State Government wrongfully declined to grant autonomous status to the petitioner college.

It is alleged that the impugned action of the State Government in declining to grant autonomous status to the petitioner college is violative of the fundamental rights guaranteed under Article 14 and Article 30(1) of the Constitution.

The petition has been resisted by the State Government on the ground that as per norms prescribed vide notification dated 11.9.2006 issued by the State Government, the petitioner college was found ineligible for grant of autonomous status as a result-whereof, autonomous status was not granted to it. It is also alleged that non-conferral of autonomous status on the petitioner college by the State Government does not infringe the right guaranteed under Article 30(1) of the Constitution.

In the rejoinder, the petitioner college asserted that actuated with malafide intention, the State Government deliberately suppressed the report of the Screening Committee (Annexure P-10), which clearly supports its case for grant of autonomous status. It is alleged that although the Screening Committee had approved the proposal for grant of autonomous status to the petitioner college and the same was submitted to the Director of Educational Education, Haryana but the State Government declined to grant the said status on some extraneous reasons. It is also alleged that the petitioner college ought to have been granted autonomous status alongwith the following institutions affiliated with the respondent university.

1. CITM, Faridabad
2. Lingaya's Institute of Technical and Management, Faridabad
3. ITM, Gurgaon and
4. Al-Falah School of Engineering & Technology (petitioner college)

It is further alleged that the YMCA Institute of Engineering, Faridabad, which was not even accredited with the NBA, was granted autonomous status by the State Government in contravention of the norms notified vide notification dated 11.9.2006. Similarly, CITM, Faridabad, ITM, Gurgaon and Lingaya's Institute of

Technical and Management, Faridabad were not accredited with the NBA on 13.11.2006 (last date notified for submission of proposal), but autonomous status was granted to them in flagrant violation of the norms prescribed vide notification dated 11.9.2006. On the contrary, the petitioner college fulfilled all the norms notified for grant of autonomous status, but the State Government declined to grant the said status on wholly extraneous grounds. On these premise, it is alleged that impugned action of the State Government in not granting autonomous status is vitiated by arbitrariness attracting the wrath of Article 14 of the Constitution read with Article 30(1) of the Constitution.

Bearing in mind the rival contentions of the parties, the point which arises for consideration is: whether the impugned action of the State Government in declining the grant of autonomous status to the petitioner is violative of the fundamental rights guaranteed under Articles 14 and 30 (1) of Constitution of India? It is beyond the pale of controversy that the petitioner college is a minority educational institution covered under Article 30(1) of the Constitution. It is also undisputed that the policy for grant of autonomous status to under graduate/ post graduate institution approved by the AICTE/ U.G.C. was notified by the State Government vide notification 25/56/2006-4TE dt. 11.9.2006. As per norms prescribed in the notification, the parent university will confer the status of autonomy upon a college that is permanently affiliated and NBA/NAAC accredited, with the concurrence of the State Government. Before granting autonomy the university will ensure that the management structure of the applicant college is adequately participatory and provides ample opportunity for academicians to make a creative contribution.

Following criteria has been prescribed for grant of autonomous status:-

- a. Academic reputation and previous performance in university examinations and its academic/co-curricular/ extension activities in the past. Merit range of admissions in Entrance Test counseling conducted by the state in the preceding year.
- b. Accreditation by NAAC or atleast three courses by NBA.
- c. Placement record of last three years.
- d. Number of PhD's and post graduates among the faculty, viz-a-viz cadre ratio as stipulated by All India Council for Technical Education/ University Grants Commission/ University.
- e. Academic achievements of the faculty.
- f. Quality and merit in the selection of students and teachers, subject to statutory requirements in this regard.
- g. Adequacy of infrastructure; for example, library, equipment, accommodation for academic activities, etc.
- h. Quality of institutional management.

- i. Financial resources provided by the management/state government, as the case may be, for the development of the institution.
- j. Responsiveness and effectiveness of the administrative structure.
- k. Motivation and involvement of faculty in the promotion of innovative reforms.

(Emphasis supplied)

It is an admitted position that pursuant to the aforesaid notification, the proposals of the following colleges permanently affiliated to the respondent university were received in the Directorate Technical Education, Haryana.

1. Career Institute of Technology & Management, Faridabad
2. Lingaya's Institute of Technical & Management, Faridabad
3. Institute of Technology & Management, Gurgaon
4. Al-Falah School of Engineering, Faridabad
5. YMCA Institute of Engineering, Faridabad

It is also undisputed that the Screening Committee was constituted under the Chairmanship of the Financial Commissioner and Principal Secretary to Government of Haryana, Department of Technical Education. Remaining members of the Screening Committee were:-

- 1) One Nominee of the parent university
- 2) Director, Technical Education, Haryana
- 3) 3 experts
- 4) Dr. R.P. Bajpai, Vice Chancellor, Guru Jambheshwar University of Science & Technology, Hissar
- 5) Dr. S.C. Laroia, Director, National Institute of Technical Teacher Training & Research Institute, Chandigarh
- 6) Dr. Vijay Gupta, Director Punjab Engineering College, Chandigarh

It is stated in the reply filed on behalf of the State Government that on 7.11.2006, first meeting of the Screening Committee was held under the chairmanship of the Financial Commissioner and Principal Secretary, Government of Haryana, Technical Education Department. As per the approved minutes of the meeting, out of the five aforesaid institutes, the petitioner college and the YMCA institute of Engineering, Faridabad were not approved for grant of autonomous status on the ground that they did not fulfill the eligibility criteria notified in the notification issued by the State Government. In that meeting the Committee decided to consider the proposal of the following three colleges:-

1. NC College of Engineering, Israna, Panipat
2. MM Engineering College, Mullana, Ambala
3. Seth Jai Parkash Mukund Lal Institute of Engineering & Tech (JMIT) Radaur, Yamunanagar

It is also stated in the reply filed on behalf of the State Government that another meeting of the Screening Committee for the colleges affiliated to the respondent university was held on 3.8.2007 and the Committee recommended for grant of autonomous status to the YMCA institute of Engineering, Faridabad as it fulfilled the criteria for grant of autonomous status. It is also alleged that the Screening Committee visited the four institutes affiliated to the respondent university including the petitioner college on 26.8.2007 and 27.8.2007. The detailed information in the prescribed proforma alongwith the supporting documents was sought by the Screening Committee from the applicant institutions including the petitioner college and the institutions were asked for the presentation on the points mentioned in the proforma before the Screening Committee in the office of the Financial Commissioner and Principal Secretary of Government of Haryana, Technical Education Department, Haryana on 4.9.2007. However, the next meeting of the Screening Committee was held on 17.9.2007 to consider grant of autonomy to the following institutions:-

1. Career Institute of Technology & Management, Faridabad
2. Lingaya's Institute of Technical & Management, Faridabad
3. Institute of Technology & Management, Gurgaon
4. Al-Falah School of Engineering, Faridabad (the petitioner college)
5. NC College of Engineering, Israna, Panipat
6. Seth Jai Parkash Mukund Lal Institute of Engineering & Tech (JMIT) Radaur, Yamunanagar

In that meeting the case of MM Engineering College, Mullana, Ambala was not considered because the institute had already been granted deemed University status by the U.G.C. However, the petitioner college was not found eligible for grant of autonomy status by the Screening Committee in terms of the criteria laid down in the notification issued by the State Government.

Learned counsel for the petitioner has strenuously urged that the colleges namely CITM, Faridabad and ITM, Gurgaon, Lingaya's Institute of Technical and Management, Faridabad and YMCA Institute of Engineering, Faridabad were not accredited on 13.11.2006 (i.e. the last date of the submission of proposals for grant of autonomous status) but autonomous status was granted to them in contravention of the criteria of eligibility notified by the State Government. He further submitted that the YMCA Institute of Engineering, Faridabad has not been accredited with the NBA till date, but autonomous status was granted to it in flagrant violation of the criteria of eligibility prescribed therefor. That being so, the petitioner college, which





Pharmaceutical programmes (Annexure 13) which mentions the members of the governing body of the YMCA Institute of Engineering as under:-

<b>S.No.</b>	<b>Name</b>	<b>Designation</b>	<b>Brief Background</b>
1.	Sh. Bhupinder Singh Hooda,	Chairman	Hon'ble chief Minister & Technical Education Minister
2.	Sh. Ajit M. Sharan, IAS	Vice Chairman	Commissioner & Secretary to Govt. of Haryana, finance Deptt.
3.	Sh. Bhaskar Chatterjee, IAS	Member	Financial commissioner & Principal secretary to Govt. Haryana, Finance Deptt.
4.	Sh. M.P. Gupta	Member	Director Technical Education, Haryana, Chandigarh
5.	Prof. R. S. Dhankar	Member	Vice Chancellor, M.D.U., Rohtak
6.	Sh. Rakesh Bharati	Member	Vice Chairman, Bharati Telecom Ltd., New Delhi
7.	Dr. Anshul Kumar	Member	Dean, Under Graduate Studies, IIT, New Delhi
8.	Nominee of AICTE	Member	
9.	Dy. Educational Advisor (Technical)	Member Min. of HRD, New Delhi	
10.	Dr. A.K.Sharma	Member	Prof. & HOD (CE&IT), YMCA Institute of Engineering, Faridabad
11.	Dr. Ashok Kumar	Member Secretary	Director-principal, YMCA Institute of Eng., Faridabad

Bearing in mind the Chairman and members of the governing body of the YMCA Institute of Engineering, it may safely be inferred that undue favour has been shown to the said institution by granting autonomous status to it in contravention of the conditions of eligibility notified by the State Government. Surprisingly, the Financial Commissioner of the State of Haryana, who was one of the members of the governing body of the said institute presided over the meeting of the Screening Committee constituted for assessing its eligibility for grant of autonomous status and he had played a dual role in granting autonomous status to the YMCA Institute of Engineering, Faridabad. Recommendations of the Screening Committee were approved by Hon'ble the Chief Minister of the State, who was the Chairman of the governing body of the said institute.

Learned counsel for the petitioner has further invited our attention to the noting of Dr. K.V. Singh, OSD– I/CM, Government of Haryana which is as under :-

**“Government of Haryana**

**Subject :- Granting of Autonomous Status to well performing self financing institutions in the State of Haryana**

.....

In the review meeting of Technical Education Department held under the Chairmanship of C.M., it was decided to grant autonomy to the colleges, which fulfill the parameters prescribed for the purpose. Out of the five colleges recommended by the Screening Committee of Technical Education Department, only following two Colleges have the accreditation status, which is a compulsory condition for grant of autonomous status:-

1. N.C. College of Engineering, Israna, panipat
2. Seth Jai Parkash Mukund lal, college of Engineering and Technology, Radaur.

C.M. has desired that faculty position may be checked by the department before issuing the approval letter.

(Dr. K.V. Singh)  
OSD-I/CM”

Emphasis has been laid in the said noting about the decision of the State Government to grant autonomy to those colleges, which fulfill the parameters prescribed for the purpose. Needless to add here that admittedly the criteria of accreditation for atleast three courses by the NBA is one of the mandatory conditions of eligibility prescribed for grant of autonomous status to a self financing institution in the State of Haryana. As stated earlier, the YMCA Institute of Engineering,

Faridabad, CITM, Faridabad, ITM, Gurgaon, Lingaya's Institute of Technical & Management, Faridabad were not accredited on 13.11.2006 (last date of submission of proposal). The YMCA Institute of Engineering, Faridabad has not been accredited till date but all these institutions have been granted autonomous status in violation of the conditions of eligibility prescribed by the State Government.

It needs to be highlighted that the petitioner has filed a copy of the minutes of the meeting held on 4.9.2007 under the chairmanship of the Financial Commissioner and Principal Secretary to Government of Haryana, which are as under:-

**“MINUTES OF THE MEETING HELD ON 4.9.2007 AT 11:00 A.M. UNDER THE CHAIRMANSHIP OF FINANCIAL COMMISSIONER AND PRINCIPAL SECRETARY TO GOVT. HARYANA, TECHNICAL EDUCATION DEPARTMENT, IN HIS OFFICE ROOM NO. 503, 5<sup>TH</sup> FLOOR MINI SECRETARIAT, SECTOR-17, CHANDIGARH**

**Item No. 1.** To confirm the minutes of the last meeting of Screening Committee held on 3.8.2007 at 12.30 p.m. Minutes of the meeting were circulated vide Memo.No. 8260-64 dated 22.8.2007.

The minutes of the previous meeting were confirmed.

**Item No. 2.** The following four colleges affiliated to M.D.U. Rohtak, were inspected by the Screening Committee. The proposal as per the performa already approved by the Screening Committee has been received for these colleges in Directorate of Technical Education, Haryana. They are:

1. CITM Faridabad
2. Lingaya's Instt. Of Tech. & Management, Faridabad
3. ITM, Gurgaon
4. Al-Falah School of Engineering & Technology, Faridabad

**The filled performa received from these colleges were placed before the committee. The committee observed the following points.**

- To consider placement for Mechanical branch for the session 2005-06 having salary package above 2 lacs.
- To calculate cadre ratio only permanent faculty for whom TDS is deducted may be considered.

**Item No. 3.** The above four colleges are requested to make the presentation before the Screening Committee.

Presentations were made by all 4 colleges before the committee.

**Item No. 4.** The status of all the three colleges affiliated to Kurukshetra University, Kurukshetra, is also placed before the committee for consideration. The names of these colleges are:

1. NC College of Engineering, Israna, panipat.
2. MM Engineering College, Mullana, Ambala (provided deemed university status).
3. Seth Jai Prakash Mukund Lal Instt. Of Engg. & Tech. (JMIT), Radaur, Yamuna Nagar.

**The Screening Committee decided that colleges at No. 1 & 3 may be requested to send the data as per the performa already approved by the Screening committee and if fresh information is not received the previously provided information may be put up.**

**Item No. 5.** Any other point with the permission of the chairman.

The meeting ended with the vote of thanks to the chair.”

The aforesaid minutes of the meeting clearly show that the colleges including the petitioner college were inspected by the Screening Committee and the proposal as per the proforma already approved by the Screening Committee has been received in the Directorate of Technical Education, Haryana. It is also mentioned that the proforma received from the colleges mentioned therein were placed before the Screening Committee and the Committee observed the following points:-

- (a) To consider placement of mechanical branch for the session 2005-06 having salary package above 2 lacs;
- (b) To calculate cadre ratio only permanent faculty for whom TDS is deducted may be considered.

It needs to be highlighted that minutes of the said meeting clearly indicate that presentations were made by the colleges including the petitioner college before the Committee, but there is nothing in the minutes to show or suggest that any deficiency was found in the presentation made by the petitioner college for grant of autonomous status.

It is significant to mention that CITM, Faridabad, ITM, Gurgaon and Lingaya's Institute, of Tech. & Management, Faridabad were not found accredited on the last date of submission of the proposal yet they were granted autonomous status. But the petitioner college, which fulfilled all the conditions of eligibility was denied the autonomy status by the State Government.

In the factual situation narrated hereinabove, Commission was constrained to observe that the impugned action of the State Government in declining to grant autonomous status to the petitioner college is vitiated by arbitrariness attracting the wrath of Article 14 of the Constitution. In addition, the impugned action of the State Government has also violated the rights guaranteed to the minorities under Article 30(1) of the Constitution. It has been held by the Supreme Court in a case reported in AIR 1958 SC 956 that the Constitution gives the minorities two distinct rights, one a positive and the other a negative one, viz,

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

The framers of the Constitution were very much conscious and aware of wide spread inequalities and disparities in the social fabric of the country. This is the reason why concept of equality was given place of pre-eminence in the preamble of the Constitution. The concept of equality enshrined in Part III and Part IV of the Constitution has two different dimensions. It embodies the principle of non-discrimination (Article 14, 15(1) (2) and 16(2) of the Constitution. At the same time it obligates the states to take affirmatively action for ensuring that unequals in the society are brought at level where they can compete with others.

For the foregoing reasons, Commission held that the impugned action of the State Government in not granting autonomous status to the petitioner college is violative of Articles 14 and 30(1) of the Constitution of India. Commission therefore, recommended to the State Government to implement finding of the Commission in terms of Section 11 (b) of the National Commission for Minority Educational Institutions Act by reconsidering the case of the petitioner college for grant of autonomous status on the same footing as was done in the case of the YMCA Institute of Engineering, Faridabad, the NC College of Engineering, Israna, Panipat and the Seth Jai Parkash Mukund Lal Institute of Engineering & Tech (JMIT) Radaur, Yamunanagar.

#### **Case No. 1171 of 2006**

#### **Request for establishment of a Chair on Islamic Studies in Mysore University.**

**Petitioner:** 1. Mr. Mohd. Aminullah, No. L-4/2-D, Behind St. Philomena's College, Old Mysore, Bangalore Road, Mysore, Karnataka – 570 007.

**Respondent:** 1. The Registrar, Mysore University, Viswavidyanilaya Karya Soudha, Crawford Hall, Mysore, Post Box No. 406, Karnataka.

2. The Principal Secretary, Education Department, (Universities), M.S. Building, Government of Karnataka, Bangalore, Karnataka – 560 001.
3. The Secretary, University Grants Commission, Bahadurshah Zafar Marg, New Delhi – 110 002.

The petitioner Shri Mohamed Aminullah, Part-time Lecturer in MES (Middle-Eastern Studies) in the Department of History, University of Mysore requested for a direction to be given to the University of Mysore for establishing a Chair on Islamic Studies in the University.

In the reply Registrar, University of Mysore has informed that the University requires at least a minimum of Rs.3 lakhs per year for carrying out the following activities regarding the establishment of the chair:

1. To appoint a visiting professor on an honorarium of Rs.10,000/- p.m.
2. To meet the expenditure in connection with conducting seminars/ conference/ workshops etc. as per the objectives of the chair.

To mobilize Rs.3 lakhs as interest, the corpus amount required is Rs.50 lakhs. The University had requested the Secretary, Education Department, Government of Karnataka to sanction at least Rs.25 lakhs for the purpose so that the University could invest the remaining Rs.25 lakhs from its own resources.

The Higher Education Department, Government of Karnataka has stated that the State Government had examined the proposal and intimated to the Registrar, University of Mysore its approval on 7.11.2005. However, the Registrar of the respondent University submitted that the University has not received Rs.25 lakhs demanded by them for the establishment of the said chair.

The UGC was noticed and they have intimated that policy decision has been taken by the UGC that they do not favour establishment of chair and has not framed any guidelines or norms for establishment of such chairs in the Universities. If any University wants to establish a chair in the University it can name one of the existing professors for the said chair. Since UGC do not provide financial assistance for establishment of chair under General Development Assistance Scheme they cannot consider the request of the petitioner.

Since the petitioner has mentioned that Chairs for studies for Hinduism, Christianity and Jainism have been established in the respondent University, the Registrar of the said University was asked to intimate as to who had funded these Chairs in the University. In the reply the Registrar of University of Mysore has stated that the following donors funded for the establishment of Chairs in Hindu Philosophy and Christianity:

1. The Secretary, the West Coast Paper Mills Ltd, Shreeniwas House, H. Somani Marg, Bombay.
2. The Mysore Diocesan Society, Mysore.

The Registrar has also mentioned that Chair in Jainism has not been established in the University, since the money funded by the President, Sahu Jain Charitable Society, Calcutta is not sufficient to carry out the activities of the Chair. He has not mentioned the amount received.

In view of the fact that the University do not have sufficient funds for establishment of a Chair and as the University has established the Chair relating to Hinduism and Christianity through outside donors, it would not be possible for the Commission to give a direction to the University as requested by the petitioner to establish an Islamic Chair in the University. Consequently, the petition was dismissed.

### **Case No. 299 of 2008**

#### **Challenge to the proviso to Section 57A (1) of Bihar State Universities (Amendment) Bill, 2007.**

**Petitioner:** 1. Z.A. Islamia College, Through its Secretary, Mr. Zafar Ahmad Ghani, Siwan, Patna, Bihar

**Respondent:** 1. The Secretary, Human Resource Development Department, Government of Bihar, Secretariat, Patna, Bihar.  
2. The Secretary, Welfare Department, Government of Bihar, Patna, Bihar.

Two separate petitions were filed by the petitioner which have been registered as Case No. 299 of 2008 and 438 of 2008. Challenge in both these petitions is to the proviso to Section 57A (1) inserted, proposed to be incorporated by the Bihar State Universities (Amendment) Bill, 2007. It is alleged that the proposed amendment is ultra vires Article 30 of the Constitution. Since a common question of law is involved in both the petitions, they are being disposed of by this common order.

It is alleged that by the proposed amendment in Section 57A (1) of the Bihar State Universities (Amendment) Bill 2007, the State Government wants to insert the following first proviso to Section 57A (1): -

“Provided that the Governing Bodies of affiliated minority colleges based on religion and language shall appoint, dismiss, remove or terminate the services of teachers **or take disciplinary action against them with the approval of the College Service Commission**”.

(Emphasis supplied)

According to the petitioner, the said proviso requiring the governing bodies of affiliated minority colleges to take prior approval of the College Service Commission for initiating disciplinary action against the teachers is violative of Article 30(1) of the Constitution. It is also alleged that the similar provision was struck down by the High Court of Bihar in the case of The Governing Body of Karim City College & others vs. The State of Bihar & others 1984 PLJR 86. It is relevant to mention here that among the questions formulated and answered by the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka 2002 (8) SCC 481, Question 5(c) and answered thereto has a bearing on the issue raised herein: Question 5(c) is extracted below: -

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

The first part of the answer to Question 5(c) related to unaided minority institutions. With reference to statutory provisions regulating the facets of administration, **this court expressed the view that in case of an unaided minority educational institutions, the regulatory measure of control should be minimal; and in the matter of day-to-day management, like the appointment of staff (both teaching and non-teaching) and administrative control over them, the management should have the freedom and there should not be any external controlling agency.** But such institutions should have to comply with the conditions of recognition and conditions of affiliation to a University or Board; and a rational procedure for the selection of teaching staff and **for taking disciplinary action has to be evolved by the management itself.** This Court also held that fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee.

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

For redressing the grievances of employees of aided and unaided institutions **who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be**



**presided over by a judicial officer of the rank of District Judge.**

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

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

(Emphasis supplied)

In State of Kerala vs. Very Rev. Mother Provincial (1970) 2 SCC 417 a Constitutional Bench of the Supreme Court explained “right to administer” thus:

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

(Emphasis supplied)

The same view has also been reiterated by the Supreme Court in Secretary Malankara Syrian Catholic College vs. T. Jose & others [(2007) 1 SCC 386]. It is also significant to mention that the similar provision has been struck down by the High Court of Bihar in the case of The Governing Body of Karim City College & others (Supra). Thus the proposed amendment in Section 57A (1) of the Bihar State Universities Act directly stares into the face of the aforesaid authorities.

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

Commission, therefore, recommended to the State Government to reconsider the proposed amendment in Section 57A (1) of the Bihar State Universities Act in the light of the aforesaid decisions of the Supreme Court and the High Court of Bihar.

**Case No. 1348 of 2008**

**Request for financial aid to Al-Ameen Memorial Minority College, Baruipur, Kolkata.**

**Petitioner:** 1. Al-Ameen Memorial Minority College, Jogibattala, Baruipur, Kolkata - West Bengal- 700145.

**Respondent:** 1. The Chairman, West Bengal State Council of Higher Education, Government of West Bengal, Bikash Bhawan, 5<sup>th</sup> Floor, Salt Lake, Kolkata-700 091.

2. The Additional Chief Secretary, Higher Education Department, Government of West Bengal, Bikash Bhawan, Salt Lake, Kolkata- West Bengal- 700 091.

3. The Director of Public Instruction, Higher Education Department, Government of West Bengal, Bikash Bhawan, Salt Lake, Kolkata, West Bengal- 700 091

The petitioner Al-Ameen Memorial Minority College, Jogibattala, Baruipur, Kolkata, West Bengal, which is a minority educational institution covered under Article 30(1) of the Constitution, sought a direction to the State Government for grant of financial aid. Pursuant to the order dated 11.7.2006 passed by the Commission in case No. 50/2005, the State Government granted permission to the petitioner college for starting courses in Arabic language, Bengali language, English language, Philosophy, Political Science, History and Mathematics on self-financing basis vide order dated 18.10.2006. Thereafter, the University of Kolkata granted affiliation to the petitioner college on 8.8.2007. After getting the affiliation from the said university, the petitioner college approached the State Government for grant-in-aid, which did not evoke any response even after repeated reminders. It is alleged that the petitioner college is being discriminated against in the matter of grant-in-aid in as much as various colleges (non-minority and Christian minority), are receiving regular grant-in-aid from the State Government. The petitioner college has been established with the object to sub serve the Muslim community, it is charging very nominal fee from the students, and it is also burdened with liabilities and as such it is not possible to sustain itself without grant-in-aid from the State Government. Hence this petition.

The State Government resisted the petition on the ground that pursuant to the order dated 11.7.2006 passed by the Commission, the State Government granted the requisite permission for starting certain courses on self-financing basis, subject to affiliation to the University of Kolkata vide orders dated 18.10.2006. It is alleged that it was specifically mentioned in the order that the petitioner college will remain outside the purview of the West Bengal Colleges (Payment of Salaries) Act, 1978

and in no circumstance will the Government take the responsibility of the salaries of the teaching and non-teaching staff as well as expenditure either in full or in part. Since the petitioner college is outside the purview of the West Bengal Colleges (Payment of Salaries) Act, 1978, it is not entitled for grant-in-aid. It is also alleged that the petitioner college is a co-educational institution and students belonging to different caste and community are being admitted in it and as such it cannot claim that it is the first minority college in the State of West Bengal. It is further alleged that the proposal submitted by the petitioner college was conspicuous by the absence of the requirement of grant-in-aid from the State Government. The petitioner college had shown the following estimated expenditure and source of income in column No. 11 of the proforma submitted by it:

Expenditure : Rs 1,17,900

Income : Rs. 1,18,500

Taking into account the information furnished by the petitioner college in the prescribed proforma, the West Bengal State Council of Higher Education had given the following recommendation:

“10(iii) The proposed college authority has submitted an estimate of Income and Expenditure. It indicates that if permitted it will be a self –financing degree college. Simultaneously humble prayer to the ‘Government of India for benevolent Grant, aid and assistance of the college’ has been cited in the application form.”

The State Government issued the order dated 18.10.2006 taking into account the above recommendations and it was clearly mentioned in the order that the Government has no objection to the establishment of the said college on self-financing basis. It is further alleged that the State Government has prescribed only tuition fee and the other charges shown in the fee structure of the petitioner college have not been prescribed by the State Government. On these premises it is alleged that the petitioner college is not entitled to grant-in-aid from the State Government.

In the rejoinder, the petitioner college pleaded that 90% of the students’ population in the college is from the Muslim community. It is alleged that the expenditure and income mentioned in the proposal at the time of establishment of the college is not relevant now. According to the current audit report, the petitioner college is burdened with huge loan which has to be paid.

At the outset Commission made it clear that the grant-in-aid is not a constitutional imperative. Learned counsel for the petitioner has strenuously urged that the petitioner college is the only Muslim minority college of the area and it is being discriminated against in the matter of grant-in-aid in as much as similarly situated colleges belonging to the non- minority and the Christian community have

been receiving regular grant-in-aid from the State Government. Learned counsel for the petitioner has also contended that the fee structure of the petitioner college is much less than the fee charged by other educational institutions which are receiving grant-in-aid. Since the petitioner college is catering to the educational need of downtrodden section of the society and it cannot raise the fees structure, it has to be given grant-in-aid for its sustenance. On the contrary learned counsel for the respondent, contended that since the petitioner college is outside the purview of the West Bengal Colleges (Payment of Salaries) Act, 1978 vide orders dated 18.10.2006, it is not entitled for grant-in-aid.

It is beyond pale of controversy that the petitioner college is a minority educational institution covered under Article 30(1) of the Constitution. Learned counsel for the respondent has invited our attention to the inspection report of West Bengal State Council of Higher Education relating to the proposal for establishment of a self- financing general degree college with minority status at Baruipur, South 24-Parganas, West Bengal. It was clearly mentioned in the said document that the proposal submitted by the petitioner college clearly indicates that if permitted it will be a self-financing degree college. Simultaneously, it was mentioned in the proposal that the petitioner college would seek benevolent aid and assistance from the Government of India. The inspection report of the University of Kolkata also shows that it was mentioned in the proposal that the petitioner college would be a self-financing college vide inspection report dated 13.7.2007. Since the petitioner college is outside the purview of the West Bengal Colleges (Payment of Salaries) Act, 1978, it cannot claim grant-in-aid as a matter of right. But the order dated 18.10.2006 excluding the petitioner college from the purview of the West Bengal Colleges (Payment of Salaries ) Act, 1978 does not debar the State Government from re-considering the petitioner's case for grant-in-aid in the larger interest of the Muslim community. It has been observed by the Supreme Court in case of P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537 that no educational institution can survive without the grant-in-aid from the State Government. It has to be borne in mind that the importance of the spread of education is an intrinsic part of the State policy designed to ensure the reach of education to the population at large in general and Muslims in particular. The report of the Sachar Committee has clearly highlighted that the Muslim community is scratching educational barrel of the country. There is no denying the fact that the literacy rate among the Muslims particularly in the State of West Bengal is worse than the literacy rate of other religious groups. There is also an urgent need to empower the Muslim women through education so that they can move out of the confines of their homes and community for their progress and prosperity. The primary duty to ensure the spread of education is one that the Constitution requires the State to perform. The Supreme Court, in the case of Unni Krishnan has recognized that the role of private institutions is important in order to supplement the role of the State in achieving the spread of education. There is significant need to spread education among Muslims where poverty, under-development and social disability have to be overcome by making available the benefit of the education to the widest strata of Muslim society.

For the foregoing reasons, Commission recommended to the State Government to re-consider the petitioner's case for its inclusion in the purview of the West Bengal Colleges (Payment of Salaries) Act, 1978 in the larger interest of Muslims of West Bengal.

**Case No. 330 of 2008**

**Permission for grant of Essentiality Certificate to start nursing course.**

**Petitioner:** 1. The Bombay Patel Welfare Society Bharuch(A Regtd. Society under the Society's Registration Act 1860 (ACCT XXI of 1860)Regt.No. Gujarat-90, Bharuch Dated 18.01.1980Also regtd. As a public Trust under The Bombay Public Trust Act-1950 vide Trust RegistrationNo. Guj.Public Trust Regt No: F-80 dated: 18-1-19-80

**Respondent:** 1. The Under Secretary, Health & Family Welfare Department, Government of Gujarat, 7/4, Sardar Bhavan, New Sachivalaya, Gandhinagar, Gujarat.

2. The Commissioner of Health & Medical Services, Medical Education, Block 5, Jivraj Mehta Bhavan, Gandhinagar, Gujarat.

3. The Registrar, Gujarat Nursing Council, Post Box No. 2021, State Council House, Opp. Hospital Complex, Ahmedabad, Gujarat – 380 016.

4. Additional Director, State Health & Family Welfare Institution, Civil Hospital, Sola, Ahmedabad, Gujarat.

The petitioner Bombay Patel Welfare Society Bharuch (Gujarat) was permitted by the Indian Nursing Council, New Delhi and the Gujarat Nursing Council, Ahmedabad to start General Nursing and Midwifery course from the academic year 2007-08 with an intake capacity of 30 students vide letter No. 02/JUL/2007-INC dated 4.7.2007 and letter No. Insp/634 dated 16.8.2007. Since the petitioner also wanted to start Auxiliary Nursing and Midwifery (ANM) course for the academic year 2008-09, it applied to the competent authority of the State government for grant of Essentiality Certificate vide application dated 28.12.2007. Despite service of the reminder dated 12.3.2008, the competent authority of the State Government did not issue the Essentiality Certificate as sought by the petitioner. Hence this petition.

It is beyond pale of controversy that the petitioner institution is a minority educational institution covered under Article 30(1) of the Constitution. It is also undisputed that the petitioner's application dated 28.12.2007 for grant of the Essentiality Certificate and the reminder dated 12.2.2008 were received by the competent authority. The petition has been resisted by the respondent on the ground

that orders on the petitioner's application for grant of Essentiality Certificate could not be passed on account of non-finalization of the rules for grant of Essentiality Certificate for ANM courses. It is alleged that decision for grant of the said certificate will be taken after inspection of the petitioner institution.

Learned counsel for the petitioner has strenuously urged that since the competent authority has failed to grant Essentiality Certificate within a period of 90 days from the receipt of the application, it will be deemed that it has granted the Essentiality Certificate in terms of the deeming provisions envisaged under Sub Section (3) of Section 10 of the National Commission for Minority Educational Institutions Act (for short the Act). The question for consideration is whether the petitioner is entitled to invoke the provisions of Sub Section (3) of the Section 10 of the Act which is as under :-

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

(a) The Competent authority does not grant such certificate; or

(b) Where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate,

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

At the outset, we must make it clear that an application by any minority educational institution, covered under Article 30(1) of the Constitution, for starting a new course or discipline falls within the domain of the expression “to establish” employed in Article 30(1) of the Constitution. Needless to add here that Article 30 (1) confers the initial right to establish institution of minorities' choice. In the case of *Azeez Pasha vs. Union of India* AIR 1968 SC 662, the Supreme Court has interpreted the word ‘established’ employed in Article 30(1) of the Constitution to mean “to bring into existence”. Similarly, the Supreme Court has held in *Mother Provincial's Case* AIR 1970 SC 2079 that ‘establishment’ meant the bringing into being of an institution by a minority community. It is beyond pale of controversy that the petitioner institution is a minority educational institution covered under Article 30(1) of the Constitution. That being so, the petitioner institution is entitled to start ANM course. It is undisputed that the Indian Nursing Council, New Delhi and General Nursing Council, Ahmedabad had permitted the petitioner institution to start general nursing and midwifery course from the academic year 2007-08 with an intake capacity of 30 students vide 02/JUL/2007-INC dated 4/7/2007 and letter No. Insp/634 dated 16.8.2007. Since the petitioner wanted to start the ANM course from the academic year 2008-09, it applied to the Indian Nursing Council, New Delhi on 11.1.2008 and paid the requisite fee of Rs. 25,000 vide DD No. 294036 dated 5.1.2008. Thereafter,

the petitioner also applied to the State Government for grant of Essentiality Certificate for its submission before the Indian Nursing Council, New Delhi vide application dated 28.12.2007. On 12.2.2008, the petitioner also sent a reminder to the competent authority of the State Government in this regard. Pursuant to the notice issued by the Commission Dr. P. D. Vaishnav appeared on 30.6.2008 on behalf of the State Government and assured the Commission that the decision to grant the Essentiality Certificate to the petitioner will be taken within 10 days after receipt of the inspection report. Mr. Dinesh Parmar, Under Secretary to the Government of Gujarat has also supported the said stand taken by Dr. P.D. Vaishnav vide letter No. NSG/102008/894/E dated 27.6.2008. By the order dated 13.8.2008, the Secretary, Health and Family Welfare Department, Government of Gujarat was requested to intimate the Commission about the decision taken by the State Government relating to the grant of Essentiality Certificate. After repeated reminders Mr. J. H. Nagar, Deputy Secretary, Government of Gujarat, Health and Family Welfare Department intimated the Commission that the inspection report received in respect of the petitioner institution is under consideration and examination of the State Government and the decision to grant Essentiality Certificate to the petitioner institution will be taken in due course vide Memo No. NSG/102008/894/E dated 18.4.2009. Thereafter, on 23.4.2009, the competent authority of the State Government was again requested to intimate the Commission about the decision taken by the State Government in this regard. Despite service of notice no response has been received from the State Government. This sphinx silence of the State Government on the petitioner's application for grant of Essentiality Certificate is virtually negation of the constitutional protection guaranteed to the minorities under Article 30(1) of the Constitution.

We may add here at the cost of repetition that Article 30(1) of the Constitution confers on all minorities, whether based on religion or language, the right to establish and administer educational institutions of their choice. The key to the understanding of the true meaning and implication of the Article 30(1) of the Constitution lies in the words of "their choice". It is said that the dominant word is "choice" and the content of that article is as wide as the choice of the particular minority community may make it. The language of Article 30(1) of the Constitution is wide and must receive full meaning and any attempt to whittle down the protection of minorities cannot be allowed. We need not enlarge the protection but we may not reduce a protection naturally flowing from the words employed in Article 30(1) of the Constitution. In Re: Kerala Education Bill AIR 1958 SC 956, Hon'ble the Chief Justice S.R. Das, had observed as under:-

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

As Hon'ble Venkataram Iyyer, J. observed in Re: Kerala Education Bill AIR 1958 SC 956 at page 990, the Constitution gives the minorities two distinct rights, one as a positive and other a negative one, viz.,

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

Admittedly, on 28.12.2007, the petitioner applied to the competent authority of the State Government for grant of Essentiality Certificate for starting ANM course for the academic year 2008-09. Even after inspection of the petitioner institution, the competent authority had not yet passed any order on the petitioner's application for grant of the Essentiality Certificate. In this view of the matter, it will be deemed under Sub Section (3) of Section 10 of the Act that the competent authority of the State Government has granted the Essentiality Certificate to the petitioner for starting the proposed ANM course.

Having regard to the facts and circumstances of the case, Commission declared that the competent authority of the State Government has granted the Essentiality Certificate to the petitioner for starting the proposed ANM course in terms of Sub Section (3) of Section 10 of the Act. In view of the deeming provisions engrafted in Sub Section (3) of Section 10 *ibid*, the Indian Nursing Council, New Delhi was directed to grant permission to the petitioner for starting the ANM course in accordance with law.

#### **Case No. 1352 of 2008**

#### **Appointment of Assistant Teachers in Sunni Inter College, Lucknow, Uttar Pradesh.**

**Petitioner:** 1. Sunni Inter College, Victoria Ganj, Lucknow, Uttar Pradesh.

**Respondent:** 1. The District Inspector of Schools, Shiksha Bhawan, Near Medical College, Jagat Narain Road, Lucknow.

2. The Joint Director of Education, Shiksha Bhawan, Near Medical College, Jagat Narain Road, Lucknow.

The Manager of Sunni Inter College, Lucknow sought a direction to the State Government to approve the appointment of Assistant Teachers of the primary wing of the said college. The petitioner college is a minority educational institution covered under Article 30 (1) of the Constitution. It has been getting financial aid since 1950. The petitioner college had selected and appointed Assistant Teachers with B.Ed qualification for its primary wing and sought approval of the District Inspector of Schools, Lucknow vide letter dated 22.9.2008. It is alleged that although the competent authorities of the State Government had approved appointments of teachers with B.Ed. qualification for the primary wings of the non-minority colleges namely Sohan Lal Inter College, Lucknow, Jagganath Sahu Inter College, Lucknow,



Baba Thakurdas Inter College, Lucknow and Khalsa Inter College, Lucknow, but they refused to approve the appointments of B.Ed. qualified teachers of primary wing of the petitioner college. It is also alleged that appointments had been made against the sanctioned posts falling vacant consequent to the promotion on the basis of 25 per cent to the graduate scale of pay. Hence this petition.

The Joint Director of Education, Lucknow has admitted in his reply that the petitioner college is a minority educational institution. The Primary Wing of the College is covered under the Payment of Wages Act 1971 and the Intermediate Education (Amendment) Act 1921 is also applicable to the petitioner college. By the Order No. 783/79-6-03-26 (5)/ 97 dated 19.4.2003 the Government of Uttar Pradesh had issued instructions for maintenance of status quo in respect of creation of posts, creation of additional sections in the classes, appointment of teachers in the primary wing without the prior approval of the Government. It is, further, alleged that the instruction were also issued for filling up of vacant posts arising out of retirement of the incumbents only with the approval of the Government. The petition has been resisted mainly on the ground that the Manager of the petitioner college had appointed teachers for its primary wing in contravention of the rules notified vide Notification No. 9/741, dated 26.2.2003, which prescribed BTC as the qualification of eligibility for the appointment of a teacher for the primary wing of an inter college. Since the management of the petitioner college had appointed teachers with B.Ed. qualifications for its primary wing, these appointments cannot be approved.

Bearing in mind rival contentions of the parties, the question which arises for consideration is: whether the respondent's action in not approving the appointments made by the petitioner college for its primary wing 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 institution being a minority educational institution is entitled to claim constitutional protection under Article 30 (1) of the Constitution. It is also undisputed that by the Notification No. 9/741 dated 26.2.2003, the State Government has prescribed qualification of BTC for appointment of a teacher of a primary wing of an intermediate college or high school. Admittedly, the teachers appointed by the management of the petitioner college for its primary wing did not possess the qualification of BTC as prescribed by the State Government. Prescription of qualification of BTC as a condition of eligibility for the appointment of teacher of primary wing of an inter college or high school is in the interest of academic excellence and as such the petitioner was bound to select and appoint teachers for its primary wing in accordance with the qualifications of eligibility prescribed by the State Government. Admittedly, the assistant teachers appointed by the petitioner college do not possess the qualification of BTC and as such the respondent was perfectly justified in not granting approval for these appointments. It needs to be highlighted that the petitioner has annexed a copy of the reply given by the District Inspector of Schools under provision of Right to Information Act which is reproduced as under: -

प्रेषक,

जिला विद्यालय निरीक्षक,  
द्वारा पैराडाइज मैडिकल स्टोर,  
सराय माली खॉ हरदोई रोड़,  
लखनऊ ।

पत्रांक मा -2/20686- 90/08-09 दिनांक 3 मार्च 09

विषय - सूचना अधिकार अधिनियम 2005 के द्वारा मांगी गयी सूचना उपलब्ध कराने के सम्बन्ध में।

महोदय,

कृपया अपने पत्र दिनांक 2/11/08 एवं 6/11/08 का संदर्भ ग्रहण करें। जिसके द्वारा निम्न विन्दुओं पर सूचना मांगी गयी है। उक्त के सम्बन्ध में वंछित सूचना निम्नवत् आपको प्रेषित है।

क्रमांक	प्रश्न	उत्तर
1.	यह कि संयुक्त शिक्षा निदेशक षष्ठ मण्डल लखनऊ, जिला विद्यालय निरीक्षक, प्रथम/द्वितीय के द्वारा अशासकीय सहायता प्राप्त मा. विद्यालयों में वर्ष 2006,2007 एवं 2008 में कितने बी.एड./एल.टी. अर्हताधारी अभ्यर्थियों की नियुक्ति का अनुमोदन प्राइमरी विभाग में किया गया है।	जनपद के बालक अशासकीय सहायता प्राप्त माध्यमिक विद्यालयों के सम्बन्ध प्रा. अनुभाग में वर्ष 6/7/08 में बी.एड. / एल.टी. - 10 योग्यताधारी अभ्यर्थियों की नियुक्ति का अनुमोदन विभाग द्वारा प्रदान किया गया है।
2.	यह कि सितम्बर 08 में बाबा ठाकुर इण्टर कालेज लखनऊ के एक अभ्यर्थी की नियुक्ति का अनुमोदन प्राइमरी विभाग में की गई थी। जो बी.एड./एल.टी अर्हता रखते थे।	बाबा ठाकुर दास इ.का. लखनऊ में 01 बी.एड. अर्हताधारी अभ्यर्थी की नियुक्ति का अनुमोदन अपर शि. नि. मा. इलाहाबाद के आदेश सं / दिनांक द्वारा प्रदान किया गया (छायाप्रति सलंगन)
3.	यह कि जून 2008 में बाबा ठाकुर दास इ.का. लखनऊ के 5 अभ्यर्थियों की नियुक्ति प्राइमरी अनुभाग में की गई थी। जो बी.एड.	बाबा ठाकुर दास इ.का. लखनऊ में 05 बी.एड. एल.टी. अर्हताधारी अभ्यर्थियों की नियुक्ति अपर शिक्षा निदेशक मा. इलाहाबाद के आदेश सं. सा. (1) द्वितीय अनु. /927/08-09 दिनांक 23/6/08 द्वारा प्रदान किया गया ( छायाप्रति सलंगन )

4.	यह कि जून 2008 में खालसा इ.का. लखनऊ के अभ्यर्थियों की नियुक्ति का अनुमोदन प्राइमरी सेक्शन हेतु किया गया जो बी.एड./एल.टी. अर्हता रखते थे।	खालसा इ.का. लखनऊ में 02 बी. एड. अर्हताधारी अभ्यर्थियों की नियुक्ति का अनुमोदन अपर शिक्षा निदेशक मा.उ.प्र. इलाहाबाद के आदेश सं. सा. (1) द्वितीय अनु. /927/08-09 दिनांक 23/6/08 द्वारा प्रदान किया गया है। (छायाप्रति सलंगन)
5.	यह कि वर्ष 2008 में संस्कृत कन्या इ.का. सदर लखनऊ की सात अभ्यर्थियों की नियुक्ति का अनुमोदन प्राइमरी सेक्शन में किया गया जो बी.एड./एल.टी. अर्हता रखते थे।	प्रश्नगत विद्यालय जिला विद्यालय शिक्षा द्वितीय के नियंत्रण में आता है। अतः उक्त सूचना उन्ही के स्तर से दी जायेगी।
6.	यह कि सितम्बर 07 में सोहनलाल इ. का लखनऊ की एक अध्यापिका की नियुक्ति का अनुमोदन प्रा. अनुभाग में किया गया जो बी.एड. अर्हता रखती थी।	सोहन लाल इ. कालेज लखनऊ में 01 बी.एड. अर्हताधारी अभ्यर्थी की नियुक्ति का अनुमोदन संयुक्त शिक्षा निदेशक षष्ठ मण्डल लखनऊ के आदेश सं. मा -2/6014/07-08 दिनांक 01/09/07 प्रदान किया गया ( छायाप्रति सलंगन )
7.	यह कि वर्ष 2006 में करामत हुसैन गर्ल्स इण्टर कालेज की एक अभ्यर्थी की नियुक्ति का अनुमोदन प्राइमरी अनुभाग में किया गया जो बी.एड. /एल. टी. अर्हता रखती थी।	प्रश्नगत विद्यालय जिला विद्यालय निरीक्षक द्वितीय के नियंत्रण में आता है। अतः उक्त सूचना उन्ही के स्तर से दी जायेगी।
8.	सुनी इण्टर कालेज लखनऊ में प्रबन्ध तंत्र द्वारा अनियमित रूप शासनादेश सं. 783/79-6-3-26 (5)/97/दिनांक 19/4/03 एवं शासनादेश सं. 2166-7966/2003 दिनांक 10/9/08 के विपरीत सम्बद्ध प्राइमरी विभाग में बिना शासन की अनुमति के 07 बी.एड. अर्हता धारी अभ्यर्थियों की नियुक्ति प्रस्तावित की गयी थी। जो मण्डलीय समिति के निर्णय अनुसार दिनांक 6/11/08 को प्रकरण अमान्य कर दिया गया जो इस कार्यालय के पत्र दिनांक 21/11/08 द्वारा विद्यालय को अमान्य करते हुये वापस कर दिया गया।	

A bare perusal of the reply makes it clear that management of Sohan Lal Inter College, Lucknow, Jagannath Sahoo Inter College, Lucknow, Baba Thakurdas Inter College, Lucknow and Khalsa Inter College, Lucknow had appointed teachers with B.Ed. qualifications for their primary wings and these appointments were made in contravention of the qualifications of the eligibility prescribed by the Government vide Notification No. 9/741 dated 26.2.2003. Thus, this is a clear cut case of double standards in the functioning of the Education Department of the Government. The authorities concerned of the State Government have adopted two yardsticks, one for the minorities and the other for non-minorities in enforcing the rules relating to appointments of teachers for primary wings of the inter colleges. The petitioner wants us to issue a direction to the State Government to grant approval of the appointments which had been made in contravention of the Notification No. 9/741 dated 26.2.2003 on the ground that the competent authorities of the State Government had approved the appointments of teachers of primary wing of the aforementioned colleges who did not possess the requisite qualification of BTC. It has to be borne in mind that the alleged illegal act of the official concerned of the Education Department in granting approval to the appointments made by the aforesaid non-minority colleges in contravention of the Notification No. 9/741 dated 26.2.2003 does not confer any right on the petitioner college to claim approval for the appointments of the teachers for its primary wing. The reason being that two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right but would be perpetuating another wrong. The concept of equal treatment on the logic of Article 14 of the Constitution cannot be pressed into service in such cases. In such matters there is no discrimination involved. The petitioner has to establish strength of its case on some other basis and not by claiming negative equality (Union of India vs. International Training Company JD 2003 (4) SC 549).

It is relevant to mention that the Joint Director, Education, Lucknow has stated in para No. 2 of the reply that by the order No. 783/79-6-03-26 (5) dated 19.4.2003 recruitment of teachers for primary wing of an inter college has been banned by the State Government. It needs to be highlighted that Article 21A of the Constitution declares the right to education as a fundamental right of all children in 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 years 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 21A, a meaningful reality on the ground. In the instant case State Government, in flagrant violation of Article 21A of the Constitution, imposed a total ban in filling up vacancies of primary school teachers in the State resulting in deprivation of fundamental rights 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.

Thus the order dated 19.4.2003 of the State Government is eclipsed by the fundamental rights 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.

It is also stated in the reply filed on behalf of the respondent that even a minority educational institution covered under Article 30(1) of the Constitution is required to obtain prior approval of the competent authority of the State Government to fill up vacant posts of teachers for its primary wing. It has been held by the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 that autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institution. The State or any University/ Statutory Authority can not under the cover or garb of adopting regulatory measures destroy the administrative autonomy of a minority educational institution or start interfering with the administration of the management of the institution so as to render the right of the administration of the institution concerned nugatory or illusory. The State Government or a University cannot regulate the method or procedure for appointment of Teachers/ Lecturers/ Headmasters/ Principal of a minority educational institution. Once a Teacher/ Lecturer/ Headmaster/ Principal possessing the requisite qualifications prescribed by the State or the University has been selected by the management of the minority educational institution by adopting any rational procedure of selection, the State Government or the University would have no right to veto the selection of those teachers etc.

The State Government or the University cannot apply rules/ regulations/ ordinances to a minority educational institution, which would have the effect of transferring control over selection of staff from the institution concerned to the State Government or the University, and thus, in effect allow the State Government or the University to select the staff for the institution, directly interfering with the right of the minorities guaranteed under Article 30 (1).

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

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

Commission had already held that the officials concerned of the Education Department have adopted two yard sticks- one for the minorities and the other for non-minorities in granting approval of the appointments of teachers for primary wings of the inter colleges. Commission was constrained to observe that the officials of the Education Department, who have been named in the aforesaid information supplied by the District Inspector of Schools, Lucknow under the Right to Information Act, had committed a gross misconduct in granting approval to the appointments made by the aforesaid colleges for their primary wings in contravention of the Notification No. 9/741 dated 26.2.2003. The Commission, therefore, recommended to the State Government for initiating appropriate action against them in accordance with law. A copy of the order was sent to the Chief Secretary, Government of Uttar Pradesh for implementation of findings of the Commission in terms of Section 11 (b) of the National Commission for Minority Educational Institutions Act.

#### **Case No. 967 of 2008**

#### **Request for grant of Essentiality Certificate to establish a medical college in Khammam District, Andhra Pradesh.**

**Petitioner:** 1. Syed Abbas & Son’s Charitable Trust, # 6-1-197, V.D.O. Colony, Khammam, Andhra Pradesh.

**Respondent:** 1. The Principal Secretary, Department of Health, Medical & Family Welfare, Government of Andhra Pradesh, Secretariat, Hyderabad.

Syed Abbas & Son’s Charitable Trust is a registered trust constituted by members of the Muslim community to sub-serve the interest of the said community. The petitioner Trust wanted to establish a medical college in Khammam District of Andhra Pradesh and for that purpose it applied for grant of Essentiality Certificate to the respondent on 5.3.2008. It is alleged that the respondent did not pass any order on the said application. The petitioner Trust, therefore, filed the present petition for a declaration under Sub Section (3) of Section 10 of the National Commission for Minority Educational Act, 2004 (for short the Act) that the Essentiality Certificate for establishment of the proposed medical college has been granted by the competent authority of the State Government.

Despite repeated service of notices, the respondent did not contest the proceedings. As per averments made in the petition the petitioner Trust has all the infrastructural and instructional facilities for starting the proposed medical college in accordance with the norms prescribed by the Medical Council of India. It is alleged that petitioner Trust had applied to the competent authority of the State Government for grant of Essentiality Certificate for starting the proposed medical college but for reasons best known to the respondent, no orders were passed on the said application, which was duly received in the office of the respondent on 5.3.2008. Mr. Sayed Rafiq Ahmed, Secretary of the petitioner Trust has filed his affidavits in support of the said contentions. Since the affidavits filed by Secretary of the petitioner Trust have not been controverted by the respondent, we have no option but to act upon them. That being so, the affidavits filed by the Secretary of the petitioner Trust clearly proved that the petitioner Trust desires to establish a medical college to sub-serve the interest of the Muslim community; that it has all the infrastructural and instructional facilities for the proposed college and that the petitioner Trust had applied to the competent authority of the State Government for grant of Essentiality Certificate on 5.3.2008 and that the respondent did not pass any orders thereon. Thus the aforesaid proved facts attract the provisions of Section 10 of 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 **subject to such law, as may be made by the appropriate Government, any person who desired 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.”

Section 10 of the Act provides that 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. It further provides that the competent authority shall decide every application filed under Sub Section (1) as expeditiously as possible and grant or reject the application as the case may be. Sub-Section (3) of Section 10 declares that where within a period of 90 days from the receipt of the application under Sub-Section (1) for the grant of No Objection Certificate, 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 applied for the grant of such certificate, it shall be deemed that the competent authority has granted a No Objection Certificate to the applicant. In the instant case, it has been proved that on 5.3.2008, the petitioner Trust had applied to the respondent for grant of Essentiality Certificate for establishment of the proposed medical college in Khammam District of Andhra Pradesh and the competent authority did not pass any order on the said application within 90 days from the receipt of application under Sub Section (1) of Section 10. It needs to be highlighted that even after repeated service of notices, the respondent did not contest the aforesaid averments made by the petitioner. In this view of the matter, the petitioner Trust is entitled to invoke the provision of Sub-Section (3) of Section 10 of the Act.

The legal fiction created by Sub Section (3) of Section 10 of the Act was for expeditious disposal of the application filed for grant of Essentiality Certificate/N.O.C. Sub Section (4) of Section 10 commands that the applicant shall, on the grant of N.O.C. or where the competent authority has deemed to have granted the N.O.C., be entitled to commence and proceed with the establishment of a minority educational institution in accordance with the relevant rules and regulations. In the facts and circumstances of the case, we are of the opinion that full effect must be given to statutory fiction created by Sub Section (3) of Section 10 of the Act and it should be



carried to its logical conclusion. In this view of the matter, we are fortified by the decisions rendered by the Supreme Court in State of Bombay vs. Pandurang Vinayak AIR 1953 SC 244; P.E.K. Kalliani Amma vs. K. Devi AIR 1996 SC 1963.

For the foregoing reasons, Commission declared that the competent authority of the State Government has deemed to have granted the Essentiality Certificate to the petitioner Trust for establishment of the proposed medical college in terms of Sub Section (3) of Section 10 of the Act. Consequently, the petitioner Trust was entitled to commence and proceed with the establishment of the proposed medical college in accordance with the relevant rules/regulations formulated by Medical Council of India.

### **Case No. 927 of 2008**

#### **Request for grant of permission for establishment of two new Urdu Medium Primary Schools in Nashik, Maharashtra.**

**Petitioner:** 1. Educare Society of Education, S.No. 125/B-5, Nikhat Park, Rajapura, Malegaon, Distt. Nashik, Maharashtra.

**Respondent:** 1. The District Education Officer (Primary), Nashik, Maharashtra.

The Educare Society of Education, Malegaon, Distt. Nashik, Maharashtra sought a direction to the State Government to grant permission for establishment of two new Urdu Medium Primary Schools in the slum areas of Nikhat Park, Raza Pura, Malegaon and Daregaon, Tal. Malegaon, Distt. Nashik, Maharashtra. The society applied to the State Government for the requisite permission and submitted all the relevant documents including the receipt of deposit of the prescribed fee of Rs. 500 in favour of the State Government. Since no decision has been taken by the State government, the petitioner society has approached this commission.

The Education Officer (Primary), Zila Parishad, Nashik has stated in his reply that two proposals for establishment of two new Urdu Primary Schools, one at Nikhat Park, Raja Pura, Malegaon and another at Daregaon, Tal. Malegaon, Dist. Nashik were received vide letters No. 103, 170 dated 7.5.2008. After scrutiny of the said proposals they were submitted to the Director of Education (Primary), Pune vide memo No. ZPN/Pry. 8/515/08 dated 27.5.2008. The Directorate of Education (Primary), Pune, further scrutinized the proposals and forwarded the same to the State Government for final decision. According to the Education Officer, no decision has been taken by the State Government on the said proposals.

Despite service of notice, Director of Education, Government of Maharashtra did not contest the proceedings.

The point for determination is : whether the action of the State Government in not granting the permission as sought by the petitioner society is violative of

educational rights of the minorities enshrined in Article 30(1) of the Constitution. Article 30(1) of the Constitution declares that all minorities based on religion or language has a right to establish and administer educational institution of their choice. It has been held by the Supreme Court in Superstar Education Society v/s State of Maharashtra and Ors. 2008 AIR SCW 2052 that the educational institutions covered by Article 30(1) of the Constitution cannot be brought within the purview of the proposed master plan to be prepared by the Government of Maharashtra. Their Lordships have further held that before granting permission for new private schools, following facts are required to be taken into consideration:-

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

It is an admitted position that the petitioner's proposals for starting the proposed two Urdu Medium Primary Schools in the slum area were scrutinized by the District Committee, Nashik in its meeting held on 20.5.2008. It is further admitted that after verification of the said proposals, the Directorate of Education (Primary), Pune has further scrutinized the proposals and submitted the same to the Government of Maharashtra for final decision. But no final decision has been taken by the State Government in this regard. It needs to be highlighted that the Education Officer (Primary), Zila Parishad, Nashik has nowhere stated in his reply that the petitioner's society does not have infrastructural or instructional facilities for establishment of the proposed Primary Schools and that the establishment of the proposed Urdu Medium Primary Schools will generate unhealthy competition among other educational institutions of the same category. In this view of the matter it may be presumed that the proposals submitted by the petitioner society fulfill all the requirement prescribed by the Supreme Court in the case of Superstar Education Society v/s State of Maharashtra and Ors (supra). That being so, the action of the State Government in not granting permission to the petitioner society to establish the proposed Urdu Medium Primary Schools in the slum areas of Nikhat Park, Raja Pura, Malegaon and Daregaon, Tal. Malegaon, Dist. Nashik is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

Moreover, Article 21 - A of the Constitution declares the right to education as fundamental right to all children in the age group of 6-14 years and the State is under constitutional obligation to provide affordable and free education to all children in the state. If the State is unable to discharge its constitutional obligation in providing free education to the children in age group 6-14 years, it should encourage managers of private primary schools to discharge its constitutional obligation by providing adequate facilities and treat them as partners in the making Article 21 A, a meaningful reality on the ground.

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

**Case No. 918 of 2008**

**Request for grant of permission to establish two Urdu Medium Primary Schools at Malegaon, Maharashtra.**

**Petitioner:** 1. Gulshan Education Society, 86/2, Plot No. 30, Gulab Park, Malegaon, Distt. Nashik, Maharashtra .

**Respondent:** 1. The District Education Officer (Primary), Nashik, Maharashtra.

The Gulshan Education Society, Malegaon, Distt. Nashik, Maharashtra sought a direction to the State Government to grant permission for establishment of two Urdu Medium Primary Schools in the slum areas of Malegaon for the academic year 2008-09. The society applied to the State Government for the requisite permission and submitted all the relevant documents including the receipt of deposit of the prescribed fee of Rs. 500 in favour of the State Government. Since no decision has been taken by the State government, the petitioner society has approached this commission.

The Education Officer (Primary), Zila Parishad, Nashik has stated in his reply that the petitioner's proposals were scrutinized by the District Committee, Nashik in its meeting held on 20.5.2008 and thereafter, the proposals were submitted to the Directorate of Education (Primary) Pune, where these proposals were again scrutinized and the same were submitted to the State Government for final decision. According to the Education Officer, no decision has been taken by the State Government on the said proposals.

Despite service of notice, Director of Education, Government of Maharashtra did not contest the proceedings.

The point for determination is : whether the action of the State Government in not granting the permission as sought by the petitioner society is violative of educational rights of the minorities enshrined in Article 30(1) of the Constitution. Article 30(1) of the Constitution declares that all minorities based on religion or language has a right to establish and administer educational institution of their choice. It has been held by the Supreme Court in Superstar Education Society v/s State of Maharashtra and Ors.2008 AIR SCW 2052 that the educational institutions covered by Article 30(1) of the Constitution cannot be brought within the purview of the proposed master plan to be prepared by the Government of Maharashtra. Their Lordships have further held that before granting permission for new private schools, following facts are required to be taken into consideration:-

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

It is an admitted position that the petitioner's proposals for starting the proposed two Urdu Medium Primary Schools in the slum area were scrutinized by the District Committee, Nashik in its meeting held on 20.5.2008. It is further admitted that after verification of the said proposals, the Directorate of Education (Primary), Pune has further scrutinized the proposals and submitted the same to the Government of Maharashtra for final decision. But no final decision has been taken by the State Government in this regard. It needs to be highlighted that the Education Officer (Primary), Zila Parishad, Nashik has nowhere stated in his reply that the petitioner's society does not have infrastructural or instructional facilities for establishment of the proposed Primary Schools and that the establishment of the proposed Urdu Medium Primary Schools will generate unhealthy competition among other educational institutions of the same category. In this view of the matter, it may be presumed that the proposals submitted by the petitioner society fulfill all the requirement prescribed by the Supreme Court in the case of Superstar Education

Society v/s State of Maharashtra and Ors (supra). That being so, the action of the State Government in not granting permission to the petitioner society to establish the proposed Urdu Medium Primary Schools in the slum areas of Akhtarabad and Millatnagar of District Malegaon is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. Moreover, Article 21 - A of the Constitution declares the right to education as fundamental right to all children in the age group of 6-14 years and the State is under constitutional obligation to provide affordable and free education to all children in the state. If the State is unable to discharge its constitutional obligation in providing free education to the children in age group 6-14 years, it should encourage managers of private primary schools to discharge its constitutional obligation by providing adequate facilities and treat them as partners in the making Article 21 A, a meaningful reality on the ground.

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

**Case No. 1547 of 2008**

**Request for grant of permanent affiliation to B.Com courses in the Z.A. Islamia College, Siwan, Bihar.**

**Petitioner:** 1. Z.A. Islamia College, Siwan, Bihar.

**Respondent:** 1. The Principal Secretary, H.R.D. Department, Government of Bihar, Patna (Bihar).

2. The Director, Higher Education, Government of Bihar, Patna, Bihar.

3. J.P. University, Chapra, Bihar.

Z.A. Islamia College, Siwan, Bihar sought direction to the State Government to grant to the petitioner college permanent affiliation to B.Com (Pass & Hons.) courses with financial aid.

The petitioner college is a minority educational institution covered under Article 30(1) of the Constitution. Consequent upon the request of the petitioner college to grant affiliation to B.Com (Pass & Hons.) courses in the college, the respondent university constituted an inspection committee who after inspection recommended

for grant of affiliation. By the letter dated 4.7.2002, the Registrar of University wrote to the Director, Higher Education intimating him that the university has decided to grant affiliation to the petitioner college for B.Com courses and accordingly the State Government was requested to issue direction in this regard. Thereafter, the State Government granted temporary affiliation to the petitioner college for two sessions in relation to B.Com (Pass & Hons.) courses without any financial aid.

The Registrar of the respondent university has stated in his reply that by the letter dated 27.6.2006, he had submitted all relevant documents to the State Government relating to affiliation of the petitioner college. By the letter dated 23.6.2008, the State Government granted temporary affiliation to the college for two sessions in relation to B.Com (Pass & Hons.) courses without any financial aid.

Pursuant to the notice issued to the State Government, the Joint Secretary, Government of Bihar has intimated the Commission that the matter regarding grant of permanent affiliation to the college is under active consideration of the State Government.

The petitioner's main grievance is that the State Government had granted temporary affiliation for two sessions only without any financial aid. Since the petitioner's request for grant of permanent affiliation is under active consideration of the State Government, Commission recommended to the State Government to take an early decision in the matter.

#### **Case No. 448 of 2009**

#### **Request for NOC for starting Nursing College at Chidambaram, Distt. Cuddalore, Tamil Nadu.**

**Petitioner:** 1. Muna College of Nursing, Parangipettai, Chidambaram, Cuddalore District, Tamil Nadu.

**Respondent:** 1. Principal Secretary, Health and Family Welfare Department, Government of Tamil Nadu, Secretariat, Chennai, Tamil Nadu.

Dr. Rahman's Trust is a registered trust constituted by members of Muslim community for the benefit of Muslims. The petitioner was desirous of opening of a nursing college under the name and style of Muna College of Nursing at Parangipettai, Chidambaram, District Cuddalore, Tamil Nadu and accordingly on 20.1.2007 made an application for grant of No Objection Certificate to the State Government. After processing of the said application, a team of inspectors appointed by the Director of Medical Education inspected the said college on 25.5.2007. Thereafter, again in the month of November 2008 another inspection was carried on by the said team. After inspection, the Principal Secretary to the Government of Tamil Nadu directed the petitioner to rectify certain deficiencies vide letter dated 27.11.2008. The petitioner rectified the deficiencies and intimated the respondent

accordingly vide letter dated 15.12.2008. It is alleged that repeated reminders from the petitioner did not evoke any response from the respondent. Hence this petition.

Despite service of notice, none has entered appearance on behalf of the respondent. Hence the case proceeded ex-parte against the respondent.

By this petition, the petitioner has invoked the deeming provision of Sub Section (3) of Section 10 of the National Commission for Minority Educational Institutions Act 2004 (for short the Act) for a declaration that the State Government is deemed to have granted the No Objection Certificate for establishment of the proposed college of nursing. The question for consideration is whether the petitioner is entitled for a declaration about the grant of NOC for establishment of the proposed nursing college under sub Section (3) of Section 10 of the Act. Section 10 (3) of the Act is as under :-

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

(a) The Competent authority does not grant such certificate; or

(b) Where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate,

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

At the outset we must make it clear that the dispute clearly falls within the domain of Sub Section (3) of Section 10 of the Act 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, 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 applied for grant of such certificate, it shall be deemed that the competent authority has granted No Objection Certificate to the applicant. It needs to be highlighted that the National Commission for Minority Educational Institutions Act provides that the Commission will be guided by the principles of natural justice and subject to the other provisions of the Act and has the power to regulate its own procedure. Sub Section (2) of Section 12 empowers the Commission to exercise the specified powers under the Code of Civil procedure like summoning of witnesses, discovery, issue of requisition of any public record, issue of commission etc. Sub Section (3) of Section 12 specifies that every proceeding before the Commission shall be deemed to be a judicial proceeding in terms of the Indian Penal Code and the Commission shall be deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal

Procedure 1973 (2 of 1974). Sections 12A and 12B confer right of appeal to this Commission and they also provide that orders passed by the Commission shall be executable as a decree of a Civil Court. Section 12F of the Act indicates that no civil court has jurisdiction in respect of any matter which the Commission is empowered by or under the Act to determine. Thus, the conspectus of the provisions of Section 10 of the Act clearly indicates that the dispute between the State Government and a minority institution relating to grant of NOC is within the purview of the Act. There is also an ouster of jurisdiction of the civil court to entertain any suit or proceeding in respect of any matter which the Commission is empowered by or under the Act to determine. The constitution of the Act itself indicates that it is chaired by a retired Judge of the High Court. Thus the Act is self contained code intended to deal with all disputes arising out of recognition, grant of minority status certificate, No Objection Certificate and affiliation of the educational institutions of the minorities covered under Article 30(1) of the Constitution.

The Indian Nursing Council Act 1947(for short the Nursing Council Act) has been enacted to establish a uniform standard of training for nurses, midwives and health visitors. Section 9 of the Nursing Council Act provides about the constitution of the executive committee. Section 10 of the Nursing Council Act provides for recognition of qualifications included in the schedules of the Act and Section 11 provides for recognition of qualifications. Section 13 of the Nursing Council Act empowers the Executive Committee to appoint such number of inspectors as it deems necessary to inspect any institution recognized as a training institution, and to attend examination held for the purpose of granting any recognized qualification or recognized higher group of qualifications. Sub Section (2) of Section 13 provides that the inspectors appointed by the Executive Committee shall report to the Executive Committee on the suitability of the institution for the purpose of training and on the adequacy of the training therein. Sub Section (3) prescribes procedures for forwarding a copy of such report by the Executive Committee to the authority or institution concerned, and shall also forward copies with the remarks, if any,of the authority or institution to the Central Government and to the competent authority of the State Government and the State Council in which the authority or institution is situated. Section 14 of the Nursing Council Act empowers the council constituted under the Nursing Council Act to withdraw the recognition granted under Section 10 of the Nursing Council Act. Section 16 of the Nursing Council Act empowers the council to formulate regulations.

The Indian Nursing Council has formulated guidelines for establishment of new nursing colleges. The guidelines prescribed to start BSc. Course are is under:-

**“Guidelines to start BSc. Course**

- Any organization under the Central Government, State government, Local body or a Private or Public Trust, Mission, Voluntary registered under Society Registration Act or a



Company registered under company's act wishes to open a school/college of nursing, should obtain the No Objection /Essentiality Certificate from the State Government.

- The Indian Nursing Council on receipt of the proposal from the institution to start nursing college, will undertake the first inspection to assess suitability with regard to physical infrastructure, clinical facility and teaching faculty in order to give permission to start the programme.
- After the receipt of the permission to start the nursing programme from Indian Nursing Council, the institution shall obtain the approval from the State Nursing Council and University.
- Institution will admit the students only after taking approval of State Nursing Council and University.
- The Indian Nursing Council will conduct inspection every year till the first batch completes the programme. Permission will be given year by year till the first batch completes.

### **Competencies**

On completion of the four year B.Sc.Nursing program the graduate will be able to :

1. Apply knowledge from physical, biological, and behavioral sciences, medicine including alternative systems and nursing in providing nursing care to individuals, families and communities.
2. Demonstrate understanding of life style and other factors, which affect health of individuals and groups.
3. Provide nursing care based on steps of nursing process in collaboration with the individuals and groups.
4. Demonstrate critical thinking skill in making decisions in all situations in order to provide quality care.
5. Utilize the latest trends and technology in providing health care.
6. Provide promotive, preventive and restorative health services in line with the national health policies and programmes.
7. Practice within the framework of code of ethics and professional conduct, and acceptable standards of practice within the legal boundaries.

8. Communicate effectively with individuals and groups, and members of the health team in order to promote effective interpersonal relationships and teamwork.
9. Demonstrate skills in teaching to individuals and groups in clinical/community health settings.
10. Participate effectively as members of the health team in health care delivery system.
11. Demonstrate leadership and managerial skills in clinical/community health settings.
12. Conduct need based research studies in various settings and utilize the research findings to improve the quality of care.
13. Demonstrate awareness, interest and contribute towards advancement of self and of the profession.

The Indian Nursing Council has also formulated regulations for prescribing infrastructural and instructional facilities for a new nursing college. It has also prescribed clinical facilities for the college which are as under :-

**Clinical Facilities**

College of nursing should have a 120-150 bedded Parent/Affiliated Hospital for 40 annual intake in each programme:

- Distribution of beds in different areas
  - Medical – 30
  - Surgical – 30
  - Obst. & Gynaecology – 30
  - Pediatrics – 20
  - Ortho – 10
- Bed occupancy of the hospital should be minimum 75%.
- The size of the Hospital/Nursing Home for affiliation should not be less than 50 beds.
- Other Specialities/Facilities for clinical experience required are as follows:
  - Major OT
  - Minor OT
  - Dental
  - Eye/Ent
  - Burns and Plastic

- o Neonatology with Nursery
  - o Communicable disease
  - o Community health Nursing
  - o Cardiology
  - o Oncology
  - o Neurology/Neuro-surgery
  - o Nephrology etc.
  - o ICU/ICCU
- Affiliation of psychiatric hospital should be of minimum 30-50 beds.
  - The Nursing Staffing norms in the affiliated Hospital should be as per the INC norms.
  - The affiliated Hospital should give student status to the candidates of the nursing programme.
  - Affiliated hospitals should be in the radius of 15-30 kms.
  - 1 : 3 student patient ratio to be maintained.

If the institution is having both GNM and B.Sc. (N) Programme, it would require 240 bedded parent/affiliated hospital for 400 annual intake in each programme to maintain 1:3 student patient ratio.”

(emphasis supplied)

The primary object of the Nursing Council Act is to provide for the establishment of a Nursing Council with a view, among others, to plan and coordinate the development of nursing education system throughout the country and to promote qualitative improvement of such education and to regulate and properly maintain the norms and standards in the nursing education system which is subject within the exclusive legislative field of the Central Government as is clear from Entry 66 of the union list in the Seventh Schedule of the Constitution of India. That being so, the Indian Nursing Council is the final authority and has a primary voice in establishing new nursing schools and colleges. The Indian Nursing Council is a creation of the statute and the State Government cannot be ascribed with such power so as to reduce the Indian Nursing Council for nothing of and in respect of area over which the Indian Nursing Council has statutory mandate and goal assigned to it to be performed. A bare reading of the said guidelines makes it clear that the competent authority of the State Government has not been empowered to undertake the first inspection to assess suitability with regard to physical infrastructure, clinical facility and teaching faculty in order to give No Objection Certificate for establishment of a nursing school/college. The assessment of suitability with regard to the aforesaid facilities falls within the exclusive domain of the Nursing Council. The State

Government cannot also purport to arm itself with the powers to prescribe norms of infrastructural and instructional facilities for establishment of a new school/college of nursing. The Indian Nursing Council is the repository of the power to prescribe infrastructural, instructional and clinical facilities in nursing studies, subject of course, to the control of the Central Government as envisaged in the Indian Nursing Council Act.

In the instant case, the letter dated 27.11.2008 of the Principal Secretary to the Health and Family Welfare Department, Government of Tamil Nadu clearly indicates that the competent authority of the State Government has illegally armed itself with the powers to prescribe infrastructural, instructional and clinical facilities for establishment of new nursing school/colleges in the state of Tamil Nadu. It will be useful to reproduce the said letter :-

“

SECRETARIAT  
CHENNAI – 600 009

HEALTH AND FAMILY WELFARE DEPARTMENT  
Letter No. 36237/PME/2008-2, Dated : 27.11.2008

From  
Thiru V.K. SUBBARAJ, I.A.S.,  
PRINCIPAL SECRETARY TO GOVERNMENT

To  
The Secretary  
Dr. Rahman's Trust  
22/10, G.P. Street  
Parangipettai-608 502  
Cuddalore District

Sir,

Sub: Para Medical Education – Dr. Rahman's Trust,  
Parangipettai, Cuddalore District – to start a College of  
Nursing in the name and style as “Muna College of  
Nursing” at Parangipettai, Cuddalore District –  
Permission requested – Regarding.

Ref : 1. Government letter No. 36237/PME/2008-1, Health  
and Family Welfare Department, dated 10.9.2008  
addressed to the Director of Medical Education and  
copied to you.

2. From the director of Medical Education, Letter No.  
11307/PME/1/2007 dated 6.11.2008

3. Deficiencies rectified Report submitted on 15.12.2008.

I am directed to state that on perusal of the inspection report, the Project Report and the Compliance reports furnished by you, the following deficiencies are yet to be found:-

- (i) The Tamil Nadu Nursing Council Registration Certificate of the Principal and Vice-Principal are not available.
  - (ii) The following particulars are not available in respect of the Lecturers:-
    - (a) S. Vasanthakumar – she is having 15 year teaching experience out of 3 years teaching experience after M.Sc. (N).
    - (b) R. Shensheer Begam – Tamil Nadu Nursing Council Registration certificate.
    - (c) P. Abirami – she has appeared M.Sc., Nursing exam held in 3/2006. Hence she has not completed the 3 years of teaching experience after M.Sc., (N).
    - (d) Sherence G. Edwion – she has appeared M.Sc., Nursing exam held in 9/2006. Hence she has not completed the 3 years of teaching experience after M.Sc., Nursing.
    - (e) P. Dinesh Kumar – copy of the M.Sc., Nursing Degree completion certificate has not been furnished.
  - (iii) In your compliance report you have stated that the distance between the proposed college of Nursing and tie-up hospitals at Chidambaram is 21 km. which is against the norms prescribed by the INC that the distance is allowed between 6 and 15 kms.
  - (iv) The details regarding the availability of play ground, Recreation Room, Audio and Video (Visual) Room are not furnished either in the Inspection Report, or in the Project as well as Compliance Report.
2. I am, therefore, to request you to rectify the deficiencies mentioned above and to send a compliance report to Government through the Director of Medical Education with supporting documents to consider your request for starting of B.Sc., Nursing Course to your Trust immediately.

Deficiency Rectified Reports  
submitted on 15.12.2008.

Yours faithfully,

For Principal Secretary to Government

Copy to :-

The Director of Medical Education, Chennai – 10. (With a request to obtain the compliance report from the Trust and to send the same along with your specific remarks)

One of the deficiencies notified by the Principal Secretary to the Government of Tamil Nadu is about the distance between the proposed college of nursing and tie up hospitals at Chidambaram. It is stated that the said distance is 21 kms which is against the norms prescribed by the Indian Nursing Council. As stated above the regulations formulated by the Indian Nursing Council clearly states that “affiliated hospitals should be in the radius of 15-30 kms.” That being so, the aforesaid deficiency pointed out by the Principal Secretary is without any basis.

As demonstrated above, the competent authority of the State Government has no power to prescribe infrastructural and instructional or clinical facilities for establishment of new nursing schools/colleges. On the contrary the guidelines formulated by the Indian Nursing Council clearly states that any organization that desires to open a school/college of nursing should obtain No Objection Certificate/ Essentiality Certificate from the State Government. According to these guidelines, the Indian Nursing Council on receipt of the proposal from the institution to start nursing college, will undertake the first inspection to assess suitability with regard to physical infrastructural, clinical facilities and teaching faculties in order to give permission to start the programme. They further provide that after receipt of the permission to start the nursing programme from the Indian Nursing Council, the institution shall obtain the approval from the State Nursing Council and University. The institution will admit the students only after taking approval of State Nursing Council and University. Thus, the role of the State Government is confined to the extent of granting No Objection Certificate to a new nursing school/college. In the instant case there is nothing in the letter dated 27.11.2008 of the Principal Secretary to the Government of Tamil Nadu that establishment of the proposed college is likely to create any law and order problem. Therefore, it may be presumed that the State Government does not have any objection regarding location of the proposed nursing college. It needs to be highlighted that the competent authority of the State Government has neither rejected nor allowed the application filed by the petitioner for grant of NOC. It is also relevant to mention that after receipt of the aforesaid letter of the Principal Secretary to the Government of Tamil Nadu, the petitioner had intimated to the competent authority of the State Government about the rectification of deficiencies mentioned therein. Thereafter, the petitioner again requested the competent authority of the State Government for grant of NOC vide letters dated 15.12.2008 and 11.5.2009.

The aforesaid circumstances clearly indicate that the competent authority has neither granted nor rejected the petitioner’s application for grant of NOC within a period of ninety days filed under sub Section (1) of the Section 10 of the Act.

Consequently, it will be deemed that the competent authority has granted the No Objection Certificate to the petitioner for establishment of college of nursing under Sub Section (3) of Section 10 of the Act. Sub Section (4) of Section 10 provides that the applicant shall on grant of a No Objection Certificate or where the competent authority has deemed to have granted No Objection Certificate be entitled to commence and proceed with the establishment of a minority educational institution in accordance with the relevant provisions.

For the foregoing reasons, Commission held that the competent authority of the State Government is deemed to have granted the No Objection Certificate under Sub Section (3) of Section 10 of the Act for establishment of the proposed college of nursing under the name and style of Muna College of Nursing at Parangipettai, Chidambaram, Cuddalore District, Tamil Nadu. In view of the provisions of Sub Section (4) of Section 10 of the Act the petitioner is entitled to apply to the Indian Nursing Council for establishment of the proposed college of nursing. An Essentiality Certificate in terms of Sub Section (3) of Section 10 of the Act be issued accordingly in favour of the petitioner.

**Case No. 506 of 2007**

**Appeal against grant of Minority Status Certificate to Cluny Women's College, Kalimpong, Distt. Darjeeling, West Bengal.**

**Petitioner:** 1. The Registrar, University of North Bengal, P.O. Rammohanpur, District Darjeeling, West Bengal

**Respondent:** 1. Cluny Women's College, Calvery Road, 8<sup>th</sup> Mile, Kalimpong, District Darjeeling, West Bengal.

2. The Secretary, University Grants Commission, Bahadur Shah Zafar Marg, New Delhi – 110 002.

Aggrieved by the order of this Commission granting minority status certificate to the respondent Cluny Women's College, Kalimpong, Darjeeling, West Bengal, the applicant university has filed the present application for cancellation of the said certificate. It is alleged that the Sisters of St. Joseph of Cluny had obtained minority status certificate by suppressing the material facts. According to the applicant, the college was established by the Government of West Bengal vide Government Order No. 672/1(1) Edn(CS) dated 21.7.1998 and as such it cannot be treated as a minority educational institution.

Notices on the said application were served on the respondent college as well as on the State Government. It is stated in the reply filed on behalf of the State that the status of the respondent college still stands like any other state aided non-Governmental college under the State Government's Acts, namely the West Bengal College Teachers (Security of Service) Act, 1975, the West Bengal University (Control

of Expenditure) Act 1976, the West Bengal Colleges (Payment of Salaries) Act 1978 and the West Bengal College Service Commission Act 1978. The reply also contains a threat that if the said college is treated as a minority educational institution, then it will not be entitled to the benefits as are available under West Bengal Colleges (Payment of Salaries) Act 1978, and due to non-applicability of the said Act, the Government will not be under any obligation to pay salaries and other service benefits as are being enjoyed by the teaching and non-teaching staff of the said college till date.

It is alleged on behalf of the applicant university that the founding body of the respondent college, namely, Society of Sisters of St. Joseph of Cluny has no locus standi to apply before this Commission for grant of minority status certificate and the present governing body of the college is the only competent body to move the Commission for obtaining the minority status certificate in accordance with the statutes of the University. It is further alleged that the minority status certificate granted to the said college is liable to be cancelled as the same had been obtained by suppressing material facts from the Commission.

In the rejoinder filed on behalf of the college, it is alleged that the founding body of the college is the only authority to apply for minority status certificate and the governing body of the college had no locus standi to move the Commission in this regard. It is also alleged that the college is a minority educational institution and the application filed on behalf of the respondent university does not satisfy any of the conditions required for cancellation of the certificate under Section 12C of the National Commission for Minority Educational Institutions Act (for short the Act).

It transpires from the record that the notices on the application filed on behalf of the respondent college for grant of minority status certificate were duly served on competent authorities of the State Government. Despite service of the notices, none entered appearance on their behalf as a result whereof case proceeded ex-parte. The Commission, on perusal of the documentary evidence produced on behalf of the respondent college, granted minority status certificate holding that the petitioner college is an educational institution within the meaning of Section 2(g) of the Act. Section 12C of the Act empowers the Commission to cancel minority status certificate granted by any authority or Commission on violation of any of the conditions enumerated therein. It would be useful to reproduce Section 12 C which is as under:-

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

(a) if the constitution, aims and objects of the educational institution, which has enabled it to obtain minority status



has subsequently been amended in such a way that it no longer reflects the purpose, or character of a Minority Educational Institution;

- (b) if, on verification of the records during the inspection or investigation, it is found that the Minority Educational Institution has failed to admit students belonging to the minority community in the institution as per rules and prescribed percentage governing admissions during any academic year.”

It needs to be highlighted that the applicant university has not sought cancellation of the minority status certificate granted to the respondent college on account of violation of any of the conditions enumerated under Section 12C of the Act. Applicant University has sought cancellation of said certificate on the ground that it has been obtained by suppressing the material fact i.e. the petitioner institution was established by the Government of West Bengal.

At this juncture we would also like to mention that the minority status certificate granted to the respondent college may be cancelled if it is shown that the respondent college had suppressed any material fact while passing the order of conferral of minority status or there is fundamental change of circumstances warranting cancellation of the earlier order. Thus, the question which arises for consideration is as to whether the respondent college was established by the Government of West Bengal? It needs to be highlighted that there is no pleading or proof to show that the respondent college was established under any Act of Legislature passed by the Legislature Assembly of West Bengal. On the contrary, the respondent university and the State Government have relied on the order dated 21.7.1998 passed by the State Government approving proposal for establishment of the respondent college. The said order is as under:-

“S. Branch  
Bikash Bhavan, Salt Lake City  
Calcutta-91

No. 672-Edn(CS)      Dated, Calcutta, the 21<sup>st</sup> July, 1998  
4C-9/97

From : Shri R. K. Chakrabarti  
Deputy Secretary to the Govt. of West Bengal

To : The Director of Public Instruction, West Bengal

Sub : Establishment of a new degree college for women namely Cluny college,  
P.O. Kalimpong, Dist. Darjeeling

The undersigned is directed by order of the Governor to say that the Governor is pleased to approve of the proposal for the establishment of a new degree college for women named Cluny College, P.O. Kalimpong, Distt. Darjeeling w.e.f. the academic session 1998-99 subject to the following terms and conditions:-

1. The organizers shall be required to provide land, by way of registered deed, free from all encumbrances in favour of the college authority.
2. The organizers shall be required to provide, at their own cost adequate accommodation for classes, officer rooms, teacher's rooms, principal's chamber and essential furniture, equipment, books etc. for the purpose of the college.
3. In case of delay in constructing the permanent building, the organizers shall be required to construct temporary structure consisting of at least five rooms.
4. Adequate arrangements shall be made for supply of drinking water, separate toilets for students and members of staff.
5. The college shall not be permitted to run Higher Secondary Course.
6. The college will be run in the manner prescribed in the statute of the affiliating university.
7. No special constitution of the governing Body shall be allowed.
8. Terms and conditions for the purpose of affiliation laid down by University are to be fulfilled.
2. The college may for the present be affiliated in B.A. (Pass) with five subjects viz. Nepali, English, History, Geography and Office management & Secretarial Practice.
3. The Governor is also pleased to approve of creation of the following posts in the usual scale of pay with effect from the date (s) of filling up the posts during the current academic session.

Teaching Staff

- |             |  |
|-------------|--|
| Principal   | ...1(One)  |
| 2. Lecturer | ...5 (Five) one each in Nepali, English, History, Geography & Office Management & Secretarial Practice |

Non-Teaching staff

- |               |             |
|---------------|-------------|
| 1. Accountant | .....1(One) |
| 2. Clerk      | .....1(One) |
| 3. Typist     | .....1(One) |
| 4. Peon       | .....1(One) |

Teaching staff shall be appointed on the recommendation of the West Bengal College Service Commission and recruitment to non-teaching posts should be made subject to observance of the recruitment rules prescribed by the Government and provisions of the statute of the affiliating university. The candidates to be appointed to the posts of Accountant and Cashier should at least be B.com. degree holders.

4. The charge on account of payment of grant towards salary of the staff of the college will be met from the provision under the head "2202-General Education-03-University and Other Higher Education-104-Assistance to Non-govt. Colleges-State Plan (Annual & 9<sup>th</sup> Plan)..04..Establishment of new Degree Colleges including diversification courses of study in existing college—31—Grants-in-aid" towards salary in the State Budget for the Current financial year.
5. The college shall be governed by the West Bengal (Payment of Salaries) Act, 1978.
6. This order issues with the concurrence of Finance Department vide their U.O. No. Group 'B' 667 dated 10.7.98.
7. All concerned are being informed

Deputy Secretary  
Dated, Calcutta, the 21<sup>st</sup> July, 1998

No. 672/1(1)-Edn (CS)

Copy forwarded for information to the Registrar, North Bengal University, Raja Rammohanpur, Siliguri, Distt, Darjeeling. This has reference to letter No. 68-UG/98 dated 26.2.98 from the Council for Under-Graduate Studies, North Bengal University.

Deputy Secretary  
Dated, Calcutta, the 21<sup>st</sup> July, 1998

No. 672/2(15)-Edn (CS)

Copy forwarded for information to the :-

1. Principal Accountant General (A&E), West Bengal;
2. Accountant General (Audit)-I, West Bengal
3. Accountant General (Audit)-II, West Bengal
4. Finance (audit) Department (Group 'N')
5. Finance (Group 'D') Department of this Government

6. Finance (Budget) Department of this Government
7. District magistrate, Darjeeling
8. A.D.P.I. (NCC), West Bengal
9. A.D.P.I. (PPS), West Bengal.
10. A.D.P.I. (UGC), West Bengal.
11. Society of Sisters of St. Joseph & Cluny, C/o Head Mistress, St. Philomena's girls Higher Secondary School, Kalimpong, Darjeeling
12. Secretary, West Bengal College Service commission, 6 Bhavani Dutta Lane, Calcutta – 73.
13. Budget Branch of this Department.
14. Monitoring Cell
15. Guard file

Deputy Secretary”

The tenor of the said order clearly shows that the founders of the petitioner college namely society of Sisters of St. Joseph of Cluny had submitted proposal before the State government for grant of permission to establish a new college for women in the name and style of Cluny College, P.O. Kalimpong, District Darjeeling and the requisite permission was granted subject to the following conditions :-

1. The organizers shall be required to provide land, by way of registered deed, free from all encumbrances in favour of the college authority.
2. The organizers shall be required to provide, at their own cost adequate accommodation for classes, officer rooms, teacher's rooms, principal's chamber and essential furniture, equipment, books etc. for the purpose of the college.
3. In case of delay in constructing the permanent building, the organizers shall be required to construct temporary structure consisting of at least five rooms.
4. Adequate arrangements shall be made for supply of drinking water, separate toilets for students and members of staff.
5. The college shall not be permitted to run Higher Secondary Course.
6. The college will be run in the manner prescribed in the statute of the affiliating university.
7. No special constitution of the governing Body shall be allowed.

The aforesaid order clearly spells out that all the infrastructural facilities and instructional facilities were to be provided by the founding body of the respondent college and the grant-in-aid was to be provided by the Government of West Bengal for disbursement of the salaries of its teaching and non-teaching staff. On a careful perusal of the said order it becomes clear that the petitioner college is an aided college of the Christian community. That apart, the reply filed on behalf of the State Government clearly supports our aforesaid conclusion. 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 vs. State of Maharashtra (2005) 6 SCC 537 that mere receipt of state aid does not annihilate the right guaranteed under Article 30(1). A minority institution does not cease to be so, the moment grant-in-aid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and at the same time, would be required to admit a reasonable extent of non-minority students, so that the rights under Article 30(1) are not substantially impaired and further the citizens' rights under Article 29(2) are not infringed.

It is also relevant to note here that Section 2(4) of West Bengal College Teachers (Security of Service) 1975 defines government college as under :-

“Government college means “a college maintained and managed by the State Government”.

It is not the case of the State Government that the respondent college is being maintained and managed by the State Government. On the contrary, it is stated in the reply filed on behalf of the State Government that “the status of the college is still stands like other State aided non-governmental college under the State Government’s Acts of the West Bengal College Teachers (Security of Service) Act, 1975”. (See sub para D of para 3 of the reply). Thus, the respondent college cannot be declared as a Government college. This circumstance clearly knocks the bottom out of the case of the applicant university regarding cancellation of the minority status certificate granted to the respondent college. Consequently, we find and hold that the respondent college had not suppressed any material fact before the Commission while passing the order of conferral of minority status on it.

For the foregoing reasons, the application filed by the applicant university was dismissed.

### **Case No. 239 of 2008**

#### **Request for release of grant-in-aid.**

**Petitioner:** 1. Dr. Abdul Tawwab Ansari Education & Welfare Society, Firdaus Nagar, Wadjai Road, Dhule, (M.S.), Through its Chairman, Dr. Masud Ahmad Ab. Tawwab Ansari.

Habibi Urdu Primary School, Wadjai Road, Dhule (M.S.),  
Through its Headmaster

- Respondent:**
1. The Chief Secretary, Government of Maharashtra, Mantralaya, Mumbai.
  2. The Principal Secretary, School Education & Sports Department, Mantralaya, Mumbai
  3. The Director of Education (Primary), Maharashtra State, Central Building, Pune.
  4. Deputy Director of Education, Nashik Region, Nashik, (M.S).
  5. The Education Officer (Primary), Zila Parishad, Dhule, (M.S.).
  6. The Administrative Officer, The Dhule Corporation School Board Dhule, (M.S.).

The petitioner sought direction to the State Government for releasing grants-in-aid for the academic years 2005-06 to 2007-08 and for the current year 2007-08.

Dr. Abdul Tawwab Ansari Education & Welfare Society is a registered society constituted by members of Muslim community. It is registered under the Societies Registration Act 1869 and under Bombay Public Trust Act 1950. Habibi Urdu Primary School has been established and is being administered by the said society. The Dhule District Evaluation Committee refused to release grants-in-aid on the ground that the society had not obtained the minority status certificate from the competent authority of the State Government and the school has also failed to observe the reservation rules. It is alleged that the petitioner had obtained minority status certificate on 12.11.2007 from the State Government and as such it is exempted from the policy of reservation of the State Government relating to appointment and admission of students.

The respondent has resisted the petition on the ground that the Dhule District Evaluation Committee had rejected the petitioner's claim for grants-in-aid on the ground that it had not obtained minority status certificate from the competent authority of the State Government. It is also alleged that the petitioner institution has also failed to implement the policy of reservation of the State Government in the matter of employment and admission of students in schools.

It is now undisputed that the State Government has certified the petitioner institution as a minority educational institution and as such it is entitled to claim constitutional protection under Article 30(1) of the Constitution. That being so, the only issue which survives for consideration is as to whether the reservation policy of the State Government relating to employment and admission of the students can

be made applicable to a minority educational institution? It is well settled that reservation policy of the State Government cannot be made applicable to an educational institution covered under Article 30(1) of the Constitution. Reference may, in this connection, be made to the following observations of their Lordships of the Supreme Court in case of P.A. Inamdar vs. State of Maharashtra [2005 (6) SCC 537] :

“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 relevant to mention that a minority educational institution is also exempted from the policy of reservation relating to admission of students. Reference may, in this connection, be made to Sub Article (5) of Article 15 of the Constitution, which is as under:-

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

According to the Sub Article (5) of Article 15 a minority educational institution is exempted from the policy of reservation in admission. Thus, both the grounds on which the application of the petitioner for releasing grants-in-aid was rejected are legally unsustainable. On the contrary, Commission was constrained to observe that the impugned orders of the respondents in rejecting the petitioner’s application for releasing the grants-in-aid is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. Consequently, the respondents were directed to implement findings of this Commission in terms of Section 11 (b) of the National Commission for Minority Educational Institutions Act by reconsidering the application of the petitioner for releasing the grants-in-aid in the light of observations made above.

## **Case No. 44 of 2006**

### **Request for recognition of school at Yavatmal**

**Petitioner:** 1. Shaheed Abdul Hamid Alpasankhyank , Mahila Shikshan Prasarak Mandal, Pusad, Tq. Pusad, Distt. Yavatmal (M.S.), Through its Secretary, Mr. Gausiya Parveen Kausar Khan

**Respondent:** 1. The Chief Secretary, Government of Maharashtra, Mantralaya, Mumbai.  
2. The Secretary, Department of Education (Secondary), Government of Maharashtra, Mantralaya, Mumbai.  
3. Deputy Director, Department of Education (Secondary), Amravati Division, Amravati (M.S.).  
4. The Education Officer (Secondary), Zila Parishad, Yavatmal, (M.S.).

by the order dated 1.5.2007 passed in the case, the Commission has recommended to the State Government to recognize the petitioner school on non-grant basis in terms of the decision rendered by the Bombay High Court in Writ Petition No. 8736/2005 containing a clarification that the recognition of a school on permanent non-grant basis has to be read and understood as recognition on non-grant basis. The order was passed with the consent of the District Educational Officer, Yavatmal, (M.S.). Copy of the order was sent to the competent authority of the State Government for implementation of the said recommendation of the Commission in terms of Section 11(b) of the National Commission for Minority Educational Act, 2004. Since the competent authority of the State Government did not take any action on the said order of the Commission, the petitioner has again applied for implementation of the order. Non- action of the State Government on the recommendation of the Commission amounts to violation of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. It needs to be highlighted that in decision rendered by the Supreme Court of in Superstar Education Society v/s State of Maharashtra and Ors. 2008 AIR SCW 2052, it has been held that before granting permission for new private schools, following facts are required to be taken into consideration:-

1. To ensure that they have the requisite infrastructure;
2. To avoid unhealthy competition among educational institutions;
3. To subject the private institutions seeking entry in the field of education to such restrictions and regulatory requirements, so as to maintain standards of education;



4. To promote and safeguard the interests of students, teachers and education; and
5. To provide access to basic education to all sections of society, in particular the poorer and weaker sections; and
6. To avoid concentration of schools only in certain areas and to ensure that they are evenly spread so as to cater to the requirements of different areas and regions and to all section of society.

Commission, therefore, reiterated that the recommendation of the Commission vide orders dated 1.2.2007 be sent to the State Government for appropriate orders in terms of the Section 11(b) of the NCMEI Act, after taking into consideration the decision rendered by the Supreme Court in Superstar Education Society v/s State of Maharashtra (supra).

**Case No. 243 of 2008**

**Appeal against rejection of claim of grant-in-aid.**

- Petitioner:**
1. Muslim Social Welfare Trust, S.No. 438, Alhera Colony, Garib Nawaz Nagar, Dhule, Through its Chairman
  2. Alhera Urdu Primary School, S.No. 438, Alhera Colony, Garib Nawaz Nagar, Dhule, Through its Headmaster
- Respondent:**
1. The Chief Secretary, Government of Maharashtra, Mantralaya, Mumbai.
  2. The Principal Secretary, School Education & Sports Department, Mantralaya, Mumbai.
  3. The Director of Education (Primary), Maharashtra State, Central Building, Pune.
  4. Deputy Director of Education, Nashik Region, Nashik.
  5. The Education Officer (Primary), Zila Parishad, Dhule.
  6. The Administrative Officer, The Dhule Corporation, School Board Dhule.

The challenge in this petition is to the orders dated 29.5.2006 and 2.7.2007 of the Administrative Officer, Dhule Corporation School Board and the order dated 19.8.2007 of the Dhule District Evaluation Committee rejecting the claim of the petitioner for grant-in-aid for the academic year 2005-06, 2006-07 and 2007-08. It is alleged that the impugned action of the respondent in rejecting the petitioner's

claim for grant-in-aid for the aforesaid academic years is violative of Article 30(1) of the constitution.

The respondent Deputy Education Officer, Zila Parishad, Dhule has resisted the petition on the ground that the petitioner institution had not produced minority status certificate at the time of evaluation of its case for grant-in-aid. It is also alleged that the petitioner has also failed to observe the reservation policy of the State Government in the matter of employment and admission of students in the college. The respondent No. 6 has stated in his reply that he had intimated the decision of the Dhule District Evaluation Committee to the petitioner about non-sanction of grant-in-aid and as such he is not a necessary party in the present proceedings.

On the basis of the rival contentions of the parties, following issues arise for consideration:-

- (a) Whether the petitioner institution is a minority educational institution covered under Article 30(1) of the Constitution?
- (b) Whether the reservation policy of the State Government relating to employment and admission of students can be made applicable to a minority educational institution?

It is now undisputed that the State Government has certified the petitioner institution as a minority educational institution and as such it is entitled to claim constitutional protection under Article 30(1) of the Constitution. As regards to the issue No. 2, it is well settled that reservation policy of the State Government cannot be made applicable to an educational institution covered under Article 30(1) of the Constitution. Reference may, in this connection, be made to the following observations of their Lordships of the Supreme Court in case of P.A. Inamdar vs. State of Maharashtra [2005 (6) SCC 537] :

“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 relevant to mention that a minority educational institution is also exempted from the policy of reservation relating to admission of students. Reference may, in this connection, be made to Sub Article (5) of Article 15 of the Constitution, which is as under:-

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

According to the Sub Article (5) of Article 15 a minority educational institution is exempted from the policy of reservation in admission. Thus, both the grounds on which the application of the petitioner for releasing grant-in-aid was rejected are legally unsustainable. On the contrary, Commission constrained to observe that the impugned orders of the respondents in rejecting the petitioner’s application for releasing the grant-in-aid is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. Consequently, the respondents were directed to implement the findings of this Commission in terms of Section 11 (a) of the National Commission for Minority Educational Institutions Act by reconsidering the application of the petitioner for releasing the grant-in-aid in the light of observations made above.

### **Case No. 241 of 2008**

#### **Request for grant-in-aid.**

- Petitioner:**
1. Alshabab Educational society, Azad Nagar, Dhule -424001, Through its Chairman Mr. Shakil Ahmad Mohammad Isa
  2. Alshabab Urdu primary School, Azad Nagar, Dhule -424001, Through its Incharge Headmaster, Mr. Havid Iqbal Abdul Halim
- Respondent:**
1. The Chief Secretary, Government of Maharashtra, Mantralaya, Mumbai
  2. The Principal Secretary, School Education & Sports Department, Mantralaya, Mumbai.
  3. The Director of Education (Primary), Maharashtra State, Central Building, Pune.
  4. Deputy Director of Education, Nashik Region, Nashik.
  5. The Education Officer (Primary), Zila Parishad, Dhule.
  6. The Administrative Officer, The Dhule Corporation School Board Dhule.

The petitioner sought direction to the State Government for releasing grants-in-aid for the academic years 2005-06 to 2007-08 and for the current year 2007-08.

Alshabab Educational Society is a registered society constituted by members of Muslim community. It is registered under the Societies Registration Act 1869 and also under Bombay Public Trust Act 1950. The Dhule District Evaluation Committee refused to release grants-in-aid on the ground that the society had not obtained the minority status certificate from the competent authority of the State Government and the school has also failed to observe the reservation rules. It is alleged that the petitioner had obtained minority status certificate on 18.11.2007 from the State Government and as such it is exempted from the policy of reservation of the State Government relating to appointment and admission of students.

The respondent has resisted the petition on the ground that the Dhule District Evaluation Committee had rejected the petitioner's claim for grants-in-aid on the ground that it has not obtained minority status certificate from the competent authority of the State Government. It is also alleged that the petitioner institution has also failed to implement the policy of reservation of the State Government in the matter of employment and admission of students in schools.

It is now undisputed that the State Government has certified the petitioner institution as a minority educational institution and as such it is entitled to claim constitutional protection under Article 30(1) of the Constitution. That being so, the only issue which survives for consideration is as to whether the reservation policy of the State Government relating to employment and admission of the students can be made applicable to a minority educational institution? It is well settled that reservation policy of the State Government cannot be made applicable to an educational institution covered under Article 30(1) of the Constitution. Reference may, in this connection, be made to the following observations of their Lordships of the Supreme Court in case of P.A. Inamdar vs. State of Maharashtra [2005 (6) SCC 537] :

“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 relevant to mention that a minority educational institution is also exempted from the policy of reservation relating to admission of students. Reference may, in

this connection, be made to Sub Article (5) of Article 15 of the Constitution, which is as under:-

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

According to the Sub Article (5) of Article 15 a minority educational institution is exempted from the policy of reservation in admission. Thus, both the grounds on which the application of the petitioner for releasing grants-in-aid was rejected are legally unsustainable. On the contrary, Commission was constrained to observe that the impugned orders of the respondents in rejecting the petitioner’s application for releasing the grants-in-aid is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. Consequently, the respondents were directed to implement findings of this Commission in terms of Section 11 (b) of the National Commission for Minority Educational Institutions Act by reconsidering the application of the petitioner for releasing the grants-in-aid in the light of observations made above.

### **Case No. 244 of 2008**

#### **Request for release of grant-in-aid.**

- Petitioner:**
1. Students Welfare & Educational Society, Firdos Nagar, Dhule, (M.S.) Through its Secretary, Mr. Ansari Mohammad Affan Mohammad Usman
  2. Haji Mohammad Usman Marathi Primary School, Firdos Nagar Dhule -424001 (M.S.), Through its Headmaster, Mr. Shah Mohammad Iqbal Abdul Wahab
- Respondent:**
1. The Chief Secretary, Government of Maharashtra, Mantralaya, Mumbai, (M.S.)
  2. The Principal Secretary, School Education & Sports Department, Mantralaya, Mumbai, (M.S.)
  3. The Director of Education (Primary), Maharashtra State Central Building, Pune, (M.S.)
  4. Deputy Director of Education, Nashik Region, Nashik, (M.S.).

5. The Education Officer (Primary), Zila Parishad, Dhule, (M.S.).
6. The Administrative Officer, The Dhule Corporation School Board Dhule, (M.S.)

The petitioner sought direction to the State Government for releasing grants-in-aid for the academic years 2005-06 to 2007-08 and for the current year 2007-08.

Students Welfare & Educational Society is a registered society constituted by members of Muslim community. It is registered under the Societies Registration Act 1869 and under Bombay Public Trust Act 1950. Haji Mohammad Usman Marathi Primary School has been established and is being administered by the said society. The Dhule District Evaluation Committee refused to release grants-in-aid on the ground that the society had not obtained the minority status certificate from the competent authority of the State Government and the school has also failed to observe the reservation rules. It is alleged that the petitioner had obtained minority status certificate on 12.11.2007 from the State government and as such it is exempted from the policy of reservation of the State Government relating to appointment and admission of students.

The respondent has resisted the petition on the ground that the Dhule District Evaluation Committee had rejected the petitioner's claim for grants-in-aid on the ground that it had not obtained minority status certificate from the competent authority of the State Government. It is also alleged that the petitioner institution has also failed to implement the policy of reservation of the State Government in the matter of employment and admission of students in schools.

It is now undisputed that the State Government has certified the petitioner institution as a minority educational institution and as such it is entitled to claim constitutional protection under Article 30(1) of the Constitution. That being so, the only issue which survives for consideration is as to whether the reservation policy of the State Government relating to employment and admission of the students can be made applicable to a minority educational institution? It is well settled that reservation policy of the State Government cannot be made applicable to an educational institution covered under Article 30(1) of the Constitution. Reference may, in this connection, be made to the following observations of their Lordships of the Supreme Court in case of P.A. Inamdar vs. State of Maharashtra [2005 (6) SCC 537] :

“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 relevant to mention that a minority educational institution is also exempted from the policy of reservation relating to admission of students. Reference may, in this connection, be made to Sub Article (5) of Article 15 of the Constitution, which is as under:-

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

According to the Sub Article (5) of Article 15 a minority educational institution is exempted from the policy of reservation in admission. Thus, both the grounds on which the application of the petitioner for releasing grants-in-aid was rejected are legally unsustainable. On the contrary, Commission constrained to observe that the impugned orders of the respondents in rejecting the petitioner’s application for releasing the grants-in-aid is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. Consequently, the respondents were directed to implement findings of this Commission in terms of Section 11 (b) of the National Commission for Minority Educational Institutions Act by reconsidering the application of the petitioner for releasing the grants-in-aid in the light of observations made above.

### **Case No. 242 of 2008**

#### **Request for release of grant-in-aid**

- Petitioner:**
1. Tanzimi Centre, Islampura, Dhule, (M.S.), Through its Chairman, Mr. Mohd. Iqbal Mohammad Iliyas
  2. Haji Badlu Sardar Urdu Primary School, Islampura, Deopur, Dhule (M.S.), Through its Headmistress, Ms. Zulekha Hamidi Iqbal Mustafa
- Respondent:**
1. The Chief Secretary, Government of Maharashtra, Mantralaya, Mumbai.

2. The Principal Secretary, School Education & Sports Department, Mantralaya, Mumbai
3. The Director of Education (Primary), Maharashtra State, Central Building, Pune, (M.S.)
4. Deputy Director of Education, Nashik Region, Nashik, (M.S.).
5. The Education Officer (Primary), Zila Parishad, Dhule, (M.S.).
6. The Administrative Officer, The Dhule Corporation, School Board, Dhule, (M.S.)

The petitioner sought direction to the State Government for releasing grants-in-aid for the academic years 2005-06 to 2007-08 and for the current year 2007-08.

Tanzimi Centre is a registered society constituted by members of Muslim community. It is registered under the Societies Registration Act 1869 and under Bombay Public Trust Act 1950. Haji Badlu Sardar Urdu Primary School has been established and is being administered by the said society. The Dhule District Evaluation Committee refused to release grants-in-aid on the ground that the society had not obtained the minority status certificate from the competent authority of the State Government and the school has also failed to observe the reservation rules. It is alleged that the petitioner had obtained minority status certificate on 3.11.2007 from the State Government and as such it is exempted from the policy of reservation of the State Government relating to appointment and admission of students.

The respondent has resisted the petition on the ground that the Dhule District Evaluation Committee had rejected the petitioner's claim for grants-in-aid on the ground that it had not obtained minority status certificate from the competent authority of the State Government. It is also alleged that the petitioner institution has also failed to implement the policy of reservation of the State Government in the matter of employment and admission of students in schools.

It is now undisputed that the State Government has certified the petitioner institution as a minority educational institution and as such it is entitled to claim constitutional protection under Article 30(1) of the Constitution. That being so, the only issue which survives for consideration is as to whether the reservation policy of the State Government relating to employment and admission of the students can be made applicable to a minority educational institution? It is well settled that reservation policy of the State Government cannot be made applicable to an educational institution covered under Article 30(1) of the Constitution. Reference may, in this connection, be made to the following observations of their Lordships of the Supreme Court in case of P.A. Inamdar vs. State of Maharashtra [2005 (6) SCC 537] :



“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 relevant to mention that a minority educational institution is also exempted from the policy of reservation relating to admission of students. Reference may, in this connection, be made to Sub Article (5) of Article 15 of the Constitution, which is as under:-

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

According to the Sub Article (5) of Article 15 a minority educational institution is exempted from the policy of reservation in admission. Thus, both the grounds on which the application of the petitioner for releasing grants-in-aid was rejected are legally unsustainable. On the contrary, Commission was constrained to observe that the impugned orders of the respondents in rejecting the petitioner’s application for releasing the grants-in-aid is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. Consequently, the respondents were directed to implement findings of this Commission in terms of Section 11 (b) of the National Commission for Minority Educational Institutions Act by reconsidering the application of the petitioner for releasing the grants-in-aid in the light of observations made above.

**Case No. 1530 of 2008**

**Request for grant of Essentiality Certificate for establishment of a medical college in Medak District, Andhra Pradesh.**

**Petitioner:** 1. St. Augustin Educational Society, Flat No. 119, D-4 Block, Shanthy Sikhara Apartments, Somajiguda, Hyderabad, Represented by its President D. Samuel

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

The petitioner sought direction to the State Government to grant Essentiality Certificate for establishment of the TRR Institute of Medical Sciences, Inole Village, Patancheru Mandal, Medak District. It is alleged that the petitioner society St. Augustin Educational Society, Somajiguda, Hyderabad is a registered society constituted by members of the Christian community. The society has acquired an area of 123 acres of land at Inole Village, Patanchery Mandal, Medak District to establish all its educational institutions in the same campus. The petitioner has already established two engineering colleges, a dental college and a B.Ed college in the same campus. On 30.8.2004, the petitioner society submitted an application to the Secretary, Ministry of Health, Government of India for grant of permission to establish a medical college under the name and style of TRR Institute of Medical Sciences in Inole Village, Patanchery Mandal, Medak District. The petitioner society also submitted an application to the State Government for grant of Essentiality Certificate for the said medical college. The State Government did not issue Essentiality Certificate before the end of August 2004 as a result whereof the Ministry of Health and Family Welfare Department, Government of India returned the application/documents to the petitioner alongwith a draft of Rs. 3.5 lac for want of Essentiality Certificate from the State Government. In the meantime, the Government of Andhra Pradesh constituted a High Power Committee for evaluation of the applications and recommendation to the State Government for establishment of new medical colleges in private sector vide G.O. Ms. No. 58 dated 9.3.2005. The petitioner's application was forwarded to the said High Power Committee. It is alleged that the petitioner has all the infrastructural and instructional facilities for establishment of the proposed medical college but the State Government has not yet issued Essentiality Certificate for the proposed college.

In its reply, the Ministry of Health and Family Welfare has stated that the petitioner's application was returned as it was not supported by the essentiality certificate, sanction of affiliation from the university, proof of 350 bedded hospital and time bound action plan programme. It is also stated that the petitioner has also approached the High Court of Andhra Pradesh by filing Writ Petition No. 20117/2006 and the same is still pending. The State of Andhra Pradesh has resisted the petition on the ground that initially the petitioner had filed WP 18588/2005 in the High Court of Andhra Pradesh for issue of essentiality certificate but the same was dismissed as not pressed. Thereafter, the petitioner has filed another Writ petition 26130/2005 for grant of essentiality certificate and the same is still pending. These facts have been suppressed by the petitioner.

Since the issue raised herein is sub judice before the High Court of Andhra Pradesh in Writ Petition No. 26130/2005, it would not be appropriate for the Commission to intervene in the matter. The petition was disposed of accordingly.

**Case No. 926 of 2008**

**Petitioner:** 1. H. S. Fakhruddin Shah School, Bhind, Madhya Pradesh.

**Respondent:** 1. The Secretary, Madhyamik Shiksha Mandal, Madhya Pradesh, Bhopal

The petitioner sought direction to the State Government for restoring its recognition which was granted in 1999. It is alleged that the petitioner school has been established by the minority community and 95% of its student admitted in the school are from the Muslim community. The school was established about 20 years ago and it was granted recognition in 1999 by the Madhyamik Shiksha Mandal, Madhya Pradesh, Bhopal. The school was derecognized in 2006 on account of certain deficiencies found by the inspecting authorities. Though the school has rectified all the deficiencies its recognition has not been restored. Hence this petition.

The Secretary Madhyamik Shiksha Mandal, Madhya Pradesh, Bhopal has resisted the petition on the ground that during school examination in the year 2005, the students of the school were got in the act of mass copying. The Collector, Bhind also did not recommend the continuity of the recognition for the year 2005-06. The District Education Officer, on inspection, found certain deficiencies and as such did not recommend continuation of its recognition. Thereafter, Shri S.D. Dharpuray, Assistant Secretary, Madhyamik Shiksha Mandal Madhya Pradesh, Bhopal also inspected the school and noted the following deficiencies in his inspection report:-

- a. Constructed area of the building was not adequate
- b. Non-availability of staff room
- c. Non-availability of library
- d. The organization does not have the requisite land

- e. Non-availability of laboratory and the equipment
- f. Non-availability of separate toilets for boys and girls
- g. Non-availability of drinking water facilities
- h. Non-availability of sports grounds

It is also alleged that the school is located in a kutcha shed type building and as such it was not recommended for continuation of its recognition. It is also alleged that as per rules, the institution has to apply to the concerned District Education Officer within the time prescribed therefor. Inspection of the educational institution is done by the Committee under the Chairmanship of Collector and recommendation of the Committee has to be received in the Divisional Office by 31.1.2009. On evaluation of the recommendations of the Committee, the institutions which are found eligible under the rules, are granted recognition for a specific academic year. In the instant case, the petitioner has not even applied for recognition of the school in accordance with the relevant rules. It is further alleged that if the petitioner school rectifies all the deficiencies, its case for recognition will be considered in accordance with the relevant rules.

The Principal of the petitioner school in his affidavit has refuted the contentions of the respondent and has stated that the school has sufficient area and it has also got all the infrastructural facilities. As against this, the Secretary of the Madhyamik Shiksha Mandal, Madhya Pradesh, Bhopal has reiterated that the petitioner school has not rectified the deficiencies pointed out earlier and as such its recognition cannot be restored.

The first point for determination is as to whether the petitioner school is a minority educational institution covered under Article 30(1) of the Constitution? It is stated in the petition the petitioner school has been established by the members of the Muslim community. It appears that the petitioner school has not obtained minority status certificate either from the State Government or from this Commission. That being so, it cannot be held that the petitioner institution is a minority institution within the meaning of Section 2(g) of the NCMEI Act. Since the petitioner school is not a minority educational institution, it cannot invoke the provisions of the NCMEI Act and as such the petition is liable to be dismissed on this count alone.

Even assuming for the sake of arguments that the petitioner institution is a minority educational institution within the meaning of Section 2(g) of the NCMEI Act, the next question arises as to whether the impugned action of the appropriate authority of the State Government in not granting recognition to the petitioner school is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. It is beyond pale of controversy that on inspection of the school, certain deficiencies were found by the competent authorities as a result whereof it was de-recognized. The Principal of the school submitted that all the deficiencies have now been rectified but the same has been disputed by the Secretary of Madhyamik

Shiksha Mandal Madhya Pradesh, Bhopal. Commission had no valid ground to differ with the statement of the said official. It is stated in the reply filed by the Secretary, Madhyamik Shiksha Mandal Madhya Pradesh, Bhopal that on rectification of the deficiencies pointed out in the inspection report, the petitioner's case for recognition will be considered in accordance with the rules. The Commission cannot dilute the statutory rules prescribed by the Government for academic excellence. It is also relevant to mention that it has been stated by the Secretary, Madhyamik Shiksha Mandal Madhya Pradesh, Bhopal that during the school examination in the year 2005, students of the school were got in the act of mass copying. This statement has not been rebutted by the Principal of the School. In the opinion of the Commission, this ground alone is sufficient for de-recognition of the petitioner school.

For the foregoing reasons the petition was dismissed.

**Case No. 1695 of 2009**

**Approval of admission of students in Muslima Girls Degree College, Moradabad, Uttar Pradesh.**

**Petitioner:** 1. Muslima Girls Degree college, Sir Syed Nagar (Rehmat Nagar Karula), Moradabad, Uttar Pradesh.

**Respondent:** 1. The Secretary, State of Uttar Pradesh, Lucknow.  
2. The Registrar, B. R. Ambedkar University, Agra.  
3. The Registrar, M.J.P. Rohilkhand University, Bareilly.

The petitioner college sought direction to the respondent University to approve admission of ten Muslim students against vacant seats in the current B.Ed. academic year. It is alleged that the petitioner college being a minority educational institution, is entitled to admit all students of Muslim community, which is a notified minority community. According to the petitioner, the college has a sanctioned intake of 100 seats. Fifty per cent of the seats were to be filled by CET but only 40 seats could be filled up in two rounds of counseling as 10 students did not turn up. On 20.8.2009, the petitioner college wrote a letter to the Registrar of the respondent University seeking permission to fill up the said vacant seats by admitting Muslim students. This letter was not responded by the Registrar. Therefore, the management of the petitioner college selected 10 successful candidates belonging to the Muslim community from the list prepared at CET and admitted them but it was not approved by the respondent university. It is alleged that the impugned action of the respondent university in not approving admission of 10 students is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

The respondent University resisted the petition on the ground that the petitioner college cannot admit students from the open market ignoring the merit.

Strong reliance has been placed on a decision of the Constitutional Bench of the Supreme Court in P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537 and a decision of the Full Bench of the Allahabad High Court in Tuples Educational Society vs. State of U.P. (2008) (3) ESC 1521 in support of the said contention. Alternatively, it is alleged that the students admitted by the petitioner college were not sponsored by the Dr. B.R. Ambedkar University, Agra

The point for consideration is: whether the impugned action of the respondent university in not granting approval for admission of 10 students belonging to Muslim community as sought by the management of the petitioner college is violative of educational rights of the minorities guaranteed under Article 30(1) of the constitution. It is an admitted position that the petitioner college is a minority educational institution covered under Article 30(1) of the constitution. It has been held by the Supreme Court in P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537 that single window system regulating admissions does not cause any dent in the right of minority unaided institutions to admit students of their choice and 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.

Learned counsel for the petitioner has strenuously urged that the 10 students admitted in the college were chosen from out of the list of successful candidates prepared at CET and not from the open market as pleaded by the respondent University. It needs to be highlighted that Mr. Mohd. Aslam Shamsi has unequivocally stated in his affidavit that these students were chosen from out of the list of successful candidates prepared at CET. He has also submitted xerox copies of all the relevant documents in support of his affidavit. Registrar of the respondent university has stated in his counter that these students were not sponsored by the Dr. B.R. Ambedkar University, Agra and as such their admissions cannot be approved. Thus, the Registrar of the respondent has impliedly admitted that these 10 students were not chosen from the open market and their names were included in the list of successful candidates prepared at CET. Now, here an interesting question which arises for consideration is: whether the respondent university can invalidate admissions of the said students on the sole ground that they were not sponsored by the Dr. B.R. Ambedkar University, Agra. The decisions rendered by the Supreme Court in T.M.A. Pai Foundation and P.A. Inamdar (supra) are authorities for the proposition of law that a minority unaided educational institution has unfettered right to admit students of its choice from the community which has established it and in case of a professional college such choice can be exercised by selecting students of the minority community from out of the list of successful candidates prepared at CET. The Full Bench of the Allahabad High Court in Tuples Educational Society and Another vs. State of U.P. & Ors. W.P. No. 34114 of 2007 has also followed the law declared by the Supreme Court in aforecited decisions. The Supreme Court has nowhere observed in the case of P.A. Inamdar (supra) that the students to be admitted in a minority professional college should be sponsored by any university. That being so, the stand taken by the respondent university has knocked

the bottom out of its case. Consequently, Commission held that the said students of Muslim community admitted by the petitioner college were chosen from out of the list of successful candidates prepared at CET. It is now well settled that the management of a minority unaided educational institution is free to admit all students of their own minority community, if they so choose to do. [see para No. 145 of TMA Pai foundation vs. State of Karnataka (2002) 8 SCC 481]. Consequently, Commission held that the impugned action of the respondent university in not approving admissions of these ten Muslim students is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

For the foregoing reasons, the Commission recommended to the Vice Chancellor of the respondent university to implement the said finding of the Commission in terms of Section 11 (b) of the National Commission for Minority Educational Institutions Act by approving the admissions of 10 Muslim students admitted by the petitioner college who have been chosen from out of the list of successful candidates prepared at CET.

### **Case No. 463 of 2009**

#### **Selection and appointment of teachers and peon.**

**Petitioner:** 1. Ashrafia Inter College, Azamgarh, Uttar Pradesh.

**Respondent:** 1. The District Inspector of Schools, District Azamgarh, Uttar Pradesh.

2. Joint Director Education, Azamgarh, Uttar Pradesh.

Challenge in this petition is to the order dated 26.2.2010 of the Joint Director (Education), Azamgarh (U.P.) disapproving selection and appointment of two teachers and a peon. It is alleged that the petitioner college, being a minority educational institution covered under Article 30(1) of the Constitution, has the right to select and appoint its teaching and non-teaching staff in accordance with the minimum qualifications of eligibility prescribed by the State Government. According to the petitioner, the impugned order of the Joint Director (Education) is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

The Joint Director (Education) resisted the petition on the ground that appointment of teachers and the peon made by the petitioner was contrary to the provisions of Section 16FF of the U.P. Intermediate Education Act, 1921 (for short called the Act) read with Regulation No. 17 of the Regulations under the U.P. Intermediate Education Act, 1921 (for short the Regulations) in as much as the posts in question were not advertised by the management of the institution in one English newspaper having adequate circulation in the State. Thus, the appointment of teachers and the peon clearly infringes Regulation No. 17(a) of the Regulations and as such the same was legally disapproved.

In view of the rival contentions of the parties, the question which arises for determination is: whether the impugned order is hit by Article 30(1) of the Constitution. It is beyond the pale of controversy that the petitioner college being a minority educational institution is entitled to select and appoint its teaching and non-teaching staff. The law on the said right stands enumerated in Section 16FF of the Act. The Regulations prescribe procedure for selection and appointment of teaching staff of an educational institution covered under Article 30(1) of the Constitution. Regulation 17 (a) of the Regulations requires that the posts for filling up the vacancies of the head of institution and teachers by direct recruitment shall be advertised by the manager of the institution in at least one Hindi and one English newspaper having adequate circulation in the State. Regulation 17(a) is as under:-

“17. The procedure for filling up the vacancy of the head of institution and teachers by direct recruitment in any recognized institution referred to in Section 16-FF, shall be as follows:

(a) After the management has determined the number of vacancies to be filled up by direct recruitment, **the posts shall be advertised by the manager of the institution in at least one Hindi and one English newspaper having adequate circulation in the State giving particulars as to the nature** (i.e., whether temporary/permanent) and number of vacancies, descriptions of post (i.e., Principal or Headmaster, Lecturer or L.T., C.T. or J.T.C./B.T.C. grade teacher including the subject or subjects in which the lecturer or teacher is required), scale or pay and other allowances, experience required, minimum qualification and age prescribed, if any, for the post and prescribing a date which should not ordinarily be less than two weeks from the date of advertisement by which the applications shall be received by the Manager. A copy of the advertisement shall be simultaneously sent to the Inspector concerned.

Notes – (1) All vacancies in the posts of teachers and the head of institution existing at the time of advertisement shall be advertised. “

(emphasis supplied)

In the instant case, it is an admitted position that the posts in question were not advertised in any English newspaper. Obviously, Regulation 17(a) of the Regulations has been violated by management of the petitioner college. In this view of the matter, the Joint Director (Education) was perfectly justified in not approving the selection and appointment of the teachers and the peon of the petitioner college.



For the foregoing reasons, Commission held that the impugned order dated 26.2.2010 of the Joint Director does not suffer from any legal infirmity. The petition was dismissed accordingly.

**Case No. 128 of 2007**

**Request for teaching and non-teaching staff for Murthuzaviya Oriental Higher Secondary School, Triplicane, Chennai.**

**Petitioner:** 1. Murthuzaviya Educational and Cultural Foundation of South India, Triplicane, Chennai, Tamil Nadu.

**Respondent:** 1. The Secretary, School Education Department, Government of Tamil Nadu, Fort St. George, Secretariat, Chennai, Tamil Nadu – 09.  
2. The Chief Education Officer, School Education Department, Government of Tamil Nadu, Chennai, Tamil Nadu – 15

The petitioner President of Murthuzaviya Oriental Higher Secondary School, Triplicane, Chennai has requested the Commission to give a direction to the State Government authorities to provide adequate staff for the petitioner school. [In the earlier petition, the petitioner has described various difficulties faced by the minority educational institutions in Tamil Nadu and specially by the petitioner school. Later on he filed an amended petition restricting the issues to denial of adequate staff to the petitioner school.] It is alleged that the staff fixation order issued by the State Government has wrongly fixed the staff component of the school and accordingly wanted the school to terminate the services of some of the staff members. It is also alleged that Murthuzaviya Oriental Higher Secondary school is an Urdu medium Muslim minority school. It is the only one Oriental school in Chennai city with Arabic as its first language and Urdu as medium of instruction. It is a government aided high school. Since it caters to the students from Muslim community, it is having separate sections for boys and girls as per the Islamic law. The staff norms of the school was governed by G.O. No. 341 dated 14.2.1961 which had stipulated the teacher-pupil ratio as 1:10. Thereafter, the Government has issued another G.O. 525 dated 29.12.1997 which has fixed new norms for teaching staff. While G.O. No. 341 was basically meant for supporting linguistic minorities the later G.O. No. 525 has not superceded the earlier G.O. 341.

The school has separate boys and girls sections as per the Islamic rules for which a Certificate from the Chief Government Qazi was submitted to the Government with the staff fixation proposal. If the school merges boys and girls sections together, it will be unacceptable to the muslim community and will give rise to protest and parents will stop the students from attending the school. Therefore, the school has compulsorily segregated the boys and girls in different sections.

According to the petitioner the staff strength for Class VI, VII & VIII has to be as per the following chart:

Class	Strength		Total	Sections	Eligible No.	Secondary Grade Teachers
	Boys	Girls				
VI	35	31	66	2	Upto 40	1 post
					For 60+	2 posts
VII	30	35	65	2	Upto 40	1 post
					For 60+	2 posts
VIII	29	25	54	2	Upto 40	1 post
					Close to 60+ different sections	2 posts

The respondent in the reply has stated that the petitioner school is a recognized school receiving 100% staff grant from the Government of Tamil Nadu for 6 to 10 standards towards the payment of salary to the staff employed from the year 1955. The school is a minority school imparting education through Urdu medium along with Arabic language. The staff fixation for the petitioner school was done in the year 2008-09 as per the guidelines stipulated in G.O. No. 525 of the Education Department.

The Chief Educational Officer, based on the factual report submitted by the District Education Officer, Chennai East, informed that the petitioner school is eligible for one watchman post and already one watchman is working in that post and is getting salary. For the teaching staff, the school is not having Sanskrit subject but has claimed that it is eligible for 4 Urdu Munshi/ Sanskrit Post. Out of the 4 Arabic Munshi Posts, 3 persons are working as Arabic Munshi and getting salary. For the 4<sup>th</sup> post, no approval has been given by the District Education Officer so far. The respondent has also pointed out that the petitioner is having surplus post of 2 BTs, 2 language and one secondary grade post. The student strength of the school has been taken into account as per G.O. 525 and accordingly the staff strength has been fixed. The surplus staff would be deployed in needy schools.

The petitioner in the counter affidavit has reiterated that the petitioner school has to be considered as an special school since it is the only oriental school in Chennai which teaches Arabic and medium of instruction is in Urdu. The school has to provide separate sections for boys and girls as per the Islamic law to observe pardha system. The staff norms for the school was fixed by the Government earlier as per the G.O. No. 341 dated 14.2.1961 which related to the linguistic minority schools. In 2006-07, the petitioner school was sanctioned 6 Secondary Grade Assistants, 4 BT Assistants and 1 Headmistress and that number of staff continue to work at present. In 2007-08, the Chief Education Officer has revised the staff by issuing staff fixation order and has taken away 1 BT post and in subsequent orders has reduced 3 posts of Secondary Grade Teachers in the petitioner school. The

teachers continue to work without getting their legitimate salary for the previous years. He has, therefore, requested the Commission to give a direction to the concerned authorities of the State Government to restore the number of staff which was fixed earlier. They have also asked for one post of waterman.

For dealing with this case, it is necessary to have a look at the G.O. No. 341 and G.O. No. 525. G.O. No. 341 dated 14.2.1961 was issued by the Education and Public Health Department of the then Government of Madras, to provide safeguards for the linguistic minorities and their educational facilities. In this order the eligibility criteria included minimum of 10 pupil per class or 30 pupils for a school as a whole for providing facilities for instruction in the mother tongue to the children of linguistic minorities. The order also empowered the District Educational Officer to call upon any management to open separate sections in schools for linguistic minorities provided that there is a minimum strength of ten pupils per class or a total strength of 30 pupil for the school. Additional teachers would be employed for teaching the regional language in such schools and the Director of Public Instruction was to provide grants for the purpose.

G.O. No. 525 was issued by the School Education Department of the Government of Tamil Nadu on 29.12.1997. The staff fixation norms fixed as per G.O. No. 525 is as follows: -

#### **1. ELEMENTARY SCHOOLS (Standard I to V)**

- a) The teacher-pupil ratio of 1:40, will be followed. Minimum of 2 Secondary Grade Teachers upto a strength of 80 will be sanctioned. In respect of new schools, first post will be created in the first year and second post in the second year. One of the two posts will be in the grade of Headmaster.
- b) For every additional strength of 40 one post of Secondary Grade teacher will be sanctioned i.e. the third post at 100, the fourth post at 140, the fifth post at 180 and so on.
- c) Regarding the bifurcation of a standard, additional sections will be created when the strength exceeds 60 and so on in slabs of 40.

#### **II. MIDDLE SCHOOL (Standards VI to VIII)**

- a) The teacher-pupil ratio of 1:40 will be followed. The same norms suggested for elementary schools will be followed. One of the posts will be in the grade of Middle School Head Master.
- b) When a Middle School is upgraded as High school, the post of Middle School Head Master will be converted into High School Head Master. In respect of elementary Schools, one post of Head Master will be sanctioned as per existing orders.

### III. HIGH SCHOOL (Standards IX to X)

- a) The teacher-pupil ratio of 1:40 will be followed. On this basis the following norms will be followed:

Average attendance	No. of posts
Upto 50	1 Head Master and
	2 BT Assistants.

The third post will be given when the strength exceeds 60 and additional sections will be permitted in the slab of 40.

- b) Eligibility for Language teachers will be as follows:

	Total of Sections in Standards VI to X	No. of Language Teachers Post
(i)	Upto 5	1
(ii)	6 to 10	2
(iii)	11 and above	3

- c) When the strength in classes VI to X in High Schools exceeds 250 one post of Physical Education Teacher will be sanctioned and for every additional strength of 300, one additional post of Physical Education Teacher will be sanctioned subject to a maximum of 3.

### IV. HIGHER SECONDARY SCHOOLS (11<sup>th</sup> and 12<sup>th</sup> standards)

- a) The norms will be 8 Post Graduate teachers for a Higher Secondary School with a minimum of two groups as follows:

(i)	For 2 groups	6 Post Graduate Assistants
(ii)	For English	1 Post Graduate Assistant
(iii)	For Tamil	1 Post Graduate Assistant

- b) Additional post of Post Graduate Assistant will be sanctioned based on work i.e. 24 hours of teaching per week.
- c) Regarding bifurcation of a Standard, additional section will be formed when the strength exceeds 60 and so on in the slab of 40 as in the case of High Schools.
- d) For Vocational stream, 2 posts of teachers (full time) will be sanctioned irrespective of the number of courses.
- e) The Post Graduate Assistant for language in the main stream will handle the language classes of Vocational stream students also.

- f) For Schools with a strength of over 400, one post of Physical Director will be given by upgradation of existing post of Physical Education Teacher.

As far as the petitioner school is concerned, the issue has to be looked at for fixation of the staff norms from Standard VI to Standard X. The latest student strength of the petitioner school has been given as follows:-

S. No.	Standard	Boys	Girls	Total
1.	VI	36	30	66
2.	VII	39	32	71
3.	VIII	29	36	65
4.	IX	30	35	65
5.	X	37	25	62
	<b>Total</b>	<b>171</b>	<b>158</b>	<b>329</b>

According to G.O. No. 525, the teacher-pupil ratio for standard VI to VIII is 1:40. Since the total number of students exceeds 60 and the petitioner school has boys and girls sections separately, it can have 2 sections and therefore 2 posts can be sanctioned for each standard as per G.O. No. 525 i.e. 6 posts for standards VI to VIII.

For standard IX & X, upto 50 students, 1 Headmaster and 2 BT Assistants are allowed. Since the petitioner school has 127 students in standard IX & X, they are also eligible for one Headmaster and 4 BT Assistants.

Having regard to the fact that the petitioner school is a minority educational institution covered under Article 30(1) of the Constitution and teaching Arabic language, it deserves special treatment for relaxing the norms of teacher pupil ration as fixed by the G.O.No. 341 of the State Government. The petitioner school has to have separate sections of girls and boys in accordance with the commands of the Islamic law. The Commission, therefore, recommended to the State Government to maintain status quo with regard to the present strength of the staff of the petitioner school by allowing 6 Secondary Grade Assistant posts for standard VI to VIII, 1 post of Head Master and 4 posts of B. T. Assistant. The Commission further recommended to the State Government to allow one post of Waterman as the school is also providing facility for offering daily NAMAZ inside the school premises.

### **Case No. 968 of 2008**

**Challenge to the order No. 1127 dated 9.9.1978, issued by the Commissioner and Secretary to the Government of Tamil Nadu, approving the revised constitution of the M.S.S. Wakf Board College.**

**Petitioner:** 1. Mr. U. Ibrahim Ali, Social Worker, Sakkimangalam Post, Madurai, Tamil Nadu – 625 011.

- Respondent:**
1. The Secretary, Backward, Most Backward Classes and Minorities Welfare Department, Fort St. George, Chennai, Tamil Nadu – 600 009.
  2. The Additional Secretary, Backward, Most Backward Classes and Minorities Welfare Department, Fort St. George, Chennai, Tamil Nadu – 600 009.

The Chief Executive Officer, Tamil Nadu Wakf Board, No. 1, Jaffer Syrang Street, Vallal Seethakathi Nagar, Chennai, Tamil Nadu – 600 001.

Challenge in this petition is to the order No. 1127 dated 9.9.1978, issued by the Commissioner and Secretary to the Government of Tamil Nadu, approving the revised constitution of the M.S.S. Wakf Board College. According to the revised constitution, the Governing Body shall consist of the following members: -

1. The Chairman of the Tamil Nadu Wakf Board.
2. A nominee of the Tamil Nadu State Wakf Board (either from amongst its members or an expert from outside).
3. A member of the family of the original donor (Sirguro family) as nominated by the family
4. The Principal of the College – Ex-officio
5. A representative of the Madurai University;
- 6 to 9. Four members elected from among the members of the Executive Committee; and
- 10 and 11. Two nominees of the State Government.

It is alleged that the M.S.S. Wakf Board College, being a minority educational institution, should have the freedom to constitute its own Governing Body and as such the impugned order dated 9.9.1978 is violative of Article 30(1) of the Constitution.

In the reply, the respondents have denied the allegations made by the petitioner. According to the respondents, the State Government has not violated any law.

It needs to be highlighted that the M.S.S. Wakf Board College has not applied to this Commission for grant of minority status certificate and there is no evidence on record to prove that the said college is a minority educational institution. The petitioner is only a social worker and he is not related in any way with the management of the said college. Consequently, he has no locus standi to challenge the impugned order dated 9.9.1978. Moreover, the said order also does not suffer from any legal infirmity.

For the forgoing reasons, the petition was dismissed.

## **CHAPTER 7 – CASES RELATING TO 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. 633 of 2008**

**Petition by Al-Falah School of Education & Training, Vill. Dhauj, Distt. Faridabad, Haryana regarding right to admit students.**

- Petitioner:**
1. Al-Falah School of Education & Training, Vill. Dhauj, Dist. Faridabad, Haryana.
  2. Al-Falah Charitable Trust, 274- Jamia Nagar, Okhla, New Delhi- 110 025

- Respondent:**
1. The Director, Elementary Education, 30, bays Building, Sector 17B, Chandigarh, Haryana.
  2. The Higher Education commissioner, Plot No. 9-8, 9-9, Sector 5, Panchkula, Haryana.
  3. The Financial Commissioner & Secretary, Secretariat, Haryana, Chandigarh.
  4. SCERT (State Council for Education, Research & Training), Opp. Panchayat Bhawan, Rajiv Chowk, Gurgaon, Haryana

The challenge in this petition is to the order dated 4.10.2006 of the Deputy Director Colleges-I for Higher Education Commissioner, Haryana, Chandigarh and the order dated 27.11.2007 of the Director, Elementary Education, Haryana, Chandigarh restricting the petitioner's right to admit students of its own community. It is alleged that the petitioner is a minority educational institution covered under Article 30(1) of the Constitution of India and as such it is entitled to have the right of admission of students of its own choice. On 4.10.2006, Higher Education Commissioner, Haryana Chandigarh issued Memo No.1/66-2003 Co-ord (2) dated 4.10.2006 imposing condition upon the petitioner to admit students belonging to its own minority community. Similar condition was also imposed upon the petitioner by Director, Elementary Education, Haryana, Chandigarh vide Memo No. 17/33-2007 E&T (2) dated 27.11.2007. It is also alleged that the aforesaid impugned condition imposed upon the petitioner institution is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. According to the petitioner despite repeated requests the respondent did not remove the said condition. Hence this petition.

The Director, SCERT, Haryana has filed the reply stating that the Director, Elementary Education, Haryana, Chandigarh vide letter No. 17/73-2007 E&T (2) dated 5.5.2008 has granted permission to the petitioner to admit students in D.Ed. course against 50 seats in the following ratio:

Muslim candidates – 60 per cent - 36 seats,

Hindu candidates-40 per cent - 26 seats.

Thus the condition imposed vide Memo No. 17/33-2007 E&T (2) dated 27.11.2007 has been superseded by the Memo No. 17/73-2007 E&T (2) dated 5.5.2008. After removal of the impugned condition vide letter No. 17/33-2007 E&T (2) dated 5.5.2008, examination forms were issued by the respondent No. 3 for issuing roll numbers to the students admitted by the petitioner institution for D.Ed. course. Annual examination was also conducted from 28.5.2008 to 9.06.2008. Thus, nothing survives in the petition.



In the rejoinder, the petitioner has stated that imposition of quota of students vide order dated 5.5.2008 is also violative of the rights guaranteed in Article 30(1) of the constitution.

It is beyond pale of controversy that the petitioner institution is an unaided minority education institution covered under Article 30(1) of the Constitution. It is well settled that the right of a minority educational institution to admit students of its choice is an essential facet of the right to administer educational institution guaranteed under Article 30(1) of the Constitution. It needs to be highlighted that in the clarificatory judgment rendered by the Supreme Court in P.A. Inamdar v/s State of Maharashtra (2005) 6 SCC 537, one of the questions for determination was about fixation of quota of admissions (students) in respect of unaided professional institutions and their lordships of the Supreme Court has observed as under:-

“As per our understanding, neither in the judgment of T.M.A.Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 nor in the Constitution Bench decision in Kerala Education Bill 1957 AIR 1958 SC 956 which was approved by T.M.A. Pai Foundation (supra) 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 nationalization of seats which has been specifically disapproved in T.M.A. Pai Foundation Vs. State of Karnataka. 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.

Our answer to the first question is that neither the policy of reservation can be enforced by the State nor any quota or

percentage of admissions can be carved out to be appropriated by the State in a minority or non-minority unaided educational institution. Minority institutions are free to admit students of their own choice including students of non-minority community as also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational institution status is lost. If they do so, they lose the protection of Article 30(1)."

(emphasis supplied)

Thus P.A. Inamdar case (supra) is an authority for the proposition of law that the minority institutions are free to admit students of their own choice including students of non-minority community and also members of their own community from other States, both to a limited extent only not in a manner and to such an extent that their minority educational status is lost. By admitting the members of non- minority into minority institution it does not shed its character and cease to be a minority institution. Sprinkling of non-minority students in the student population of minority educational institution is expected to be only peripheral either for generating additional financial sources or for cultural courtesy. Thus, a substantive section of student population in minority educational institution should belong to the minority. It needs to be highlighted that Section 12C (b) of the National Commission for Minorities Educational Institution Act empowers the State government to prescribe percentage governing admissions in a minority educational institution. We may add here that percentage governing such admissions has to be prescribed in accordance with the principles of law enunciated by their lordships of the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 and P.A. Inamdar vs. State of Maharashtra (supra). That being so, the order dated 5.5.2008 prescribing percentage of 60% governing admission of students belonging to the Muslim community in the petitioner institution cannot be faulted on any valid ground. This part of the order is fully covered under Section 12C (b) of the National Commission of Minority Educational Institution Act. However, it is clarified that this is the minimum percentage prescribed by the State Government governing admissions of Muslim students in the petitioner institution. But the impugned order relating to reservation of quota of 40% for students belonging to Hindu community is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. As held by the Supreme Court in the case of P.A. Inamdar vs State of Maharashtra (supra) "The State Government cannot carve out any quota of percentage for non-minority students. The minority institutions are free to admit the students of their own choice including students of non-minority community and also members of their own community from other states both to a limited extent only and not in a manner and to such an extent that their minority educational institution status is lost".

For the foregoing reasons Commission held that imposition of the impugned quota of 40 per cent for students belonging to Hindu community is violative of the fundamental right guaranteed in Article 30(1) of the Constitution. The petitioner institution is free to admit the students of its own choice including students of non-minority community and also members of its own community from other states both to a limited extent only and not in a manner and to such an extent that its minority educational status is lost. Findings of the Commission was sent to the respondents for implementation under Section 11(b) of the National commission for Minority Educational Institutions Act.

**Case No. 1554 of 2008**

**Request for opening a new BCA College at Aurangabad, Maharashtra.**

**Petitioner:** 1. Amiable Charitable Trust, Through its Chairman, Mr. Mujtaba Farooq, S/o Sh. Abdul Wahab, Aurangabad, Maharashtra.

**Respondent:** 1. Principal Secretary, Higher and Technical Education Department, Government of Maharashtra, Mantralaya, Mumbai-400 032.  
2. The Registrar, Dr. Babasaheb Ambedkar Marathwada University, Aurangabad, Maharashtra.

The petitioner sought a direction to the State Government to grant permission to the petitioner society for opening a new BCA (Bachelor of Computer Application) college in the name and style of the Scholars College of Management Science. The petitioner society is a public trust registered under Bombay Public Trust Act, constituted by members of the Muslim community. By the order dated 14.7.2008, the competent authority of the State Government had granted minority status certificate to the said trust and as such the trust is entitled to establish educational institutions of its choice guaranteed under Article 30(1) of the Constitution. The petitioner society desired to establish a self financed BCA (Bachelor of Computer Application) college under the name and style of Scholars College of Management Science in terms of the prospective plan prepared by the respondent to start new college for the academic year 2007-2011 for Aurangabad District. The petitioner submitted a proposal and deposited affiliation fee of Rs. 60,000 vide receipt No. 67608 dated 31.10.2007. After receiving the proposal the spot inspection was carried out by a committee constituted by the respondent university. By the order dated 3.1.2008, the Director, Board of College and University Development, Aurangabad intimated the petitioner that the proposal for establishment of the proposed college has been forwarded with recommendation to the Government of Maharashtra. It is also alleged that the petitioner trust has incurred huge expenditure in providing infrastructural and instructional facilities for the proposed college but the State Government has not yet granted permission as sought by the petitioner for

establishment of the proposed college and as such said impugned action of the State Government is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

Despite service of notices, none entered appearance on behalf of the respondents. Hence the case proceeded ex-parte against them.

Mr. Mujtaba Farooq has filed his affidavit on behalf of the petitioner. It is stated in the affidavit that pursuant to the prospective plan prepared by the State Government to start new college for Aurangabad District for the academic session 2007-2011, the petitioner submitted its proposal for establishment of a new BCA (Bachelor of Computer Application) college under the name and style of Scholar College of Management Science, with all the requisite documents and deposited Rs. 60,000 towards affiliation fee vide Receipt No. 67608 dated 31.10.2007. It is also stated that the petitioner has spent huge amount for providing infrastructural and instructional facilities for the proposed college. It is also stated in the affidavit that spot inspection was carried out by a committee constituted by the respondent university and recommendations were made to the State Government by the Director, Board of College and University Development, Aurangabad vide letter No. Sh/Affiliation/New Proposal/2007-08 dated 3.1.2008. There is nothing on record to rebutt the said affidavit of Mr. Mujtaba Farooq. Consequently, we have no hesitation in acting upon it.

Relying on the un rebutted affidavit of Mr. Mujtaba Farooq, we find and hold that the petitioner trust has all the infrastructural and instructional facilities as per the norms prescribed for establishment of new college by the respondent university. The respondent university has also recommended and forwarded the petitioner's proposal for establishment of the proposed college. Needless to add here that it has been held by Division Bench of Bombay High Court in Gram Vikas Shikshan Prasarak Mandal, Sondoli vs. State of Maharashtra 2001 Maharashtra Law Journal 1-776 that the master plan prepared by the State Government is not applicable to the minority's educational institutions covered under Article 30(1) of the Constitution. Article 30(1) of Constitution confers the fundamental rights on the minorities to establish and administer educational institution of their choice. As has been held by their lordships of the Supreme Court in the case of P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537 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 it will make them fit for entering the public service, educational institutions imparting higher education including general secular education. In the instant case the respondent university has recommended the petitioner's proposal for establishment of the proposed college after satisfying itself about the availability of the infrastructural and instructional facilities. Moreover, the affidavit of Mr. Mujtaba Farooq also proves

the said facts. Despite recommendations of the respondent university the State Government has not granted permission for establishment of the proposed college. Consequently, Commission held that the impugned action of the State Government in not considering the proposal of the petitioner college for establishment of the proposed college in terms of the recommendations of the respondent university is violative of the educational rights of the minorities guaranteed under Article 30(1) of the Constitution.

For the foregoing reasons, Commission directed State Government to implement findings of the Commission under Section 11(b) of the National Commission for Minority Educational Institutions Act by considering the proposal submitted by the petitioner and recommended by the respondent university for establishment of the proposed college, at the earliest.

**Case No. 743 of 2007**

**Request for grant of recognition to start and run an Urdu Primary School at Nanded, Maharashtra.**

**Petitioner:** 1. Maulana Azad Urdu Primary School, Tembhorni Tq. Biloli, Dist. Nanded, Maharashtra.

**Respondent:** 1. The Secretary, Govt. of Maharashtra, School Education Department, Mantralaya, Mumbai.  
2. The Director, Directorate of Education, Maharashtra State, Central Building, Pune-1.  
3. The Deputy Director, Divisional Education By Director, Education By Director office, Gadhi Chowk, Latur, Maharashtra.

The petitioner sought a direction to the State Government to grant recognition to start and run an Urdu Primary School under the name and style of “the Maulana Azad Urdu Primary School”, Tembhorni Tq. Biloli, Dist. Nanded, Maharashtra as per the Order dated 31-07-2000 of the Hon’ble High Court Bench at Aurangabad passed in W.P.No.3260/2000. Despite repeated service of notices, the respondents have not filed any reply, hence the case is proceeded exparte.

The Petitioner Society has been formed by the members of the Muslim Community. On 23.6.93 the petitioner Society had applied to the competent authority of the State Government along with all required documents for recognition of an Urdu Primary School, but the District Education Officer (Primary) Nanded turned down the request. Aggrieved by the order of the Education Officer, the petitioner filed a Writ Petition No.1114/97 before the Hon’ble High Court bench at Aurangabad. The Hon’ble High Court vide its order dated 26.03.1997 allowed the Writ Petition directing the State Government to expeditiously decide the case and in

any event within a period of 3 months. The Education Officer (Primary) Nanded in Compliance of the High Court order considered the matter and vide letter dated 31-12-1997 informed the petitioner that, since educational facilities already existed in the area, the request for another primary school cannot be accepted.

The petitioner has submitted another proposal letter in the year 2000 and the rejection of the Education Officer (Primary) Nanded was again challenged in the Hon'ble High Court. The Hon'ble High Court vide its order dated 31.07.2000, directed the State Government to consider the proposal of the petition within a period of 2 months. The Petitioner has stated that the proposal submitted by the petitioner thereafter has also not been considered as the earlier proposal had been rejected. The petitioner has stated that in the locality there is no Urdu Medium School and therefore, the Government should grant permission to the petitioner.

Despite service of notices, none has appeared on behalf of the Respondents. Hence they are proceeded ex-parte.

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

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

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

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

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

“.....the minorities are much children of the soil as the majority and the approach has been to ensure that nothing should be done as might deprive the minorities of a sense of belonging, of a feeling of security, of a consciousness of equality and of the awareness that the conservation of their religion, culture, language and script as also protection of their educational institutions is a fundamental right enshrined in the Constitution. ....It can, indeed be said to be an index of the level of civilization and catholicity of a nation as to how far their minorities feel secure and are not subject to any discrimination or suppression.”

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

Needless to add here that consequent to the increase in demand and inadequate response on the parts of the governments, there has been in recent years a development, the attitude of the governments particularly the Government of Maharashtra towards private participation appears to be one of the disapproval. In a recent judgement in *Superstar Education Society v/s. State of Maharashtra & Ors* 2008 AIR SCW 2052, the Supreme Court has observed that it is the duty of the State Government to provide access for education, unless new schools in the private sectors are permitted it would not be possible for the State to discharge its Constitutional obligation. Their Lordships of the Supreme Court have also upheld

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

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

It needs to be highlighted that on 03.12.2008, following order was passed by this Commission:-

“The case was reserved for orders. Before passing final orders on the petition filed by the petitioner, it would be appropriate to direct Deputy Director, Education, Aurangabad to inspect the petitioner school and submit his report to the Commission on the following points mentioned in the decision rendered by the Supreme Court in Superstar Education Society v/s State of Maharashtra and Others, Appeal (Civil) 1105 of 2008.

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



6. To avoid concentration of schools only in certain areas and to ensure that they are evenly spread so as to cater to the requirements of different areas and regions and to all section of society.

The report shall be submitted within two months of the date of this order. It is made clear that in case of non-submission of the report within the time prescribed therefor, it will be presumed that all the requisite infra-structural and instructional facilities are available in the petitioner school. Copy of the order be given to the respective parties.

List on 4<sup>th</sup> March 2009"

Certified copies of the said order were served on the Deputy Director of Education, Aurangabad and the Education Officer (Primary), Zilla Parishad, Aurangabad and despite service of notices, none of the officials named above submitted the report as sought by the Commission. Consequently, we have no hesitation in presuming that all the requisite infrastructural and instructional facilities as mentioned in the judgment of the Supreme Court in Superstar Education Society (Supra) are available in the petitioner school. Despite availability of these facilities in the petitioner school, the impugned action of the State Government in declining the permission as sought by the petitioner is violative of the rights guaranteed under Article 30(1) of the Constitution.

For the foregoing reasons, Commission held that action of the State Government in declining to grant permission to the petitioner to open the proposed Urdu Medium School is violative of Article 30(1) of the Constitution. Commission, therefore, recommended to the State Government to grant permission to the petitioner society for opening the proposed Urdu Medium School.

**Case No. 773 of 2008**

**Request to allow the management of Maulana Azad Inter College, Siddarth Nagar, Uttar Pradesh, to select teaching staff.**

**Petitioner:** 1. Maulana Azad Inter College, Sakhawatganj, Quadirabad, Siddarth Nagar, Uttar Pradesh.

**Respondent:** 1. The District Inspector of Schools, District Siddharth Nagar, Uttar Pradesh.  
2. Deputy Director of Education, Basti Division, Basti, Uttar Pradesh.

The petitioner sought a direction to the Joint Director, Education, Basti Division, Basti, Uttar Pradesh to allow the management of petitioner college to

select its principal and teachers. By the order dated 15.1.2009 passed in case No. 773/2008, the Commission has held that the petitioner college, being a minority educational institution covered under Article 30(1) of the Constitution, has a right to select its staff (teaching and non-teaching) subject to the rider that the controlling/regulatory authority has a right to scrutinize and find out whether the person selected by the selection committee is eligible and suitable to be appointed as such keeping in view of the minimum qualification of the eligibility prescribed therefor. It appears that after the said order, the management of the petitioner college sought approval from the Joint Director, Education (Basti Division), Basti, U.P. to fill up the vacant posts of Principal and teachers of the college, which was refused on the ground that the posts were not advertised in an English newspaper having wide circulation in the State of Uttar Pradesh vide impugned order dated 2.3.2009. A copy of the said order has also been endorsed to the Commission.

Being aggrieved by the impugned order of the Joint Director, the petitioner college has filed the present petition. The simple question in this application is: Is it mandatory for an educational institution covered under Article 30(1) of the Constitution that selection process for its staff (teaching and non-teaching) must be through advertisement? It transpires from the record that the petitioner college sought approval of the Joint Director, Basti Division, to fill its vacant posts of the principal and teachers. The Joint Director was also informed about publication of advertisement in the newspapers namely, 'Amar Ujala' and 'Rashtriya Sahara' issued by the management of the petitioner college. By the impugned order dated 2.3.2009, the Joint Director disapproved the petitioner's proposal on the ground that the advertisement was not published in accordance with the procedure contained in Section 16-E, 16-F and 16-FF of the Intermediate Education Act, 1921 (for short the Act). According to the Joint Director, the vacant posts should have been advertised in at least one of the English Newspaper having adequate circulation in the State. Thus, the Joint Director has invoked the provisions of Section 16-E, 16-F of the Act to disapprove the petitioner's proposal for selection of the vacant posts.

It is beyond pale of controversy that the petitioner college, being a minority educational institution covered under Article 30(1) of the Constitution is entitled to select its staff in accordance with the procedure prescribed under Section 16-FF of the Act. There is nothing in Section 16-FF to show or suggest that every post of head of institution or teacher of a minority educational institution shall be filled through advertisement. Section 16-FF also does not provide that prior approval of the Regional Director or the Inspector is necessary for publication of an advertisement inviting applications for selection of the staff of such a minority institution. A minority institution, which is protected under Article 30(1) of the Constitution, such a requirement of obtaining prior approval of the Regional Deputy Director of Education or Inspector for publishing advertisement or making selection through advertisement cannot be read by implication. The mere fact that Section 16-E of the Act prescribes for selection of staff to other institutions through advertisement cannot automatically

be made applicable to an educational institution covered by Article 30(1) of the Constitution. Moreover, it has been held by Allahabad High Court in Jagmohan Singh vs. State of Uttar Pradesh and Ors. (2006) UPLBEC 1253, Section 16-E of the Act is not applicable for selection in the minority educational institution. Legislature was conscious of the rights of the minorities seeking protection under Article 30(1) of the Constitution, and, therefore, in its wisdom only made a provision as contained in Section 16-FF of the Act. The said provision clearly does not indicate its applicability to the extent of compelling the management of a minority institution to seek prior approval of the Regional Deputy Director of Education or the Inspector to fill up its vacant posts or to make selection through advertisement in the newspapers of wide circulation. In fact the petitioner college should not have sought prior approval of the Regional Deputy Director, Education, Basti Division for filling up its posts as the Regional Deputy Director does not have right under Section 16-FF to exercise any powers of prior approval for filling up of the vacant posts in accordance with the procedure prescribed therefor.

It has been held by Eleven Judges Bench of the Supreme Court in T.M.A. Pai Foundation vs. Case of Karnataka (2002) 8 SCC 481, that a minority educational institution enjoys complete autonomy in respect of selection and appointment of its teaching and non teaching staff. The only limited scope available to the educational authority to examine the resolution of the committee is to the extent of the qualification and otherwise of eligibility of a candidate selected for appointment. Reference may, in this connection, be made to the provision of Sub Section (4) of Section 16-FF of the Act which clearly commands that the Regional Deputy Director of Education or the Inspector cannot withhold the approval for the selection made where the person selected possesses the minimum qualification prescribed and was otherwise eligible (see Anjana Kumar (Smt.) and Anr. vs. State of U.P. and Ors. (2006) 2 SAC 202).

It has been held by the Supreme Court in the case (N. Ammad vs. Emjay High School (1998) 6 SCC 674) that a minority educational institution enjoys complete freedom to choose the modality for selecting the qualified persons for appointment and it is not necessary that the selection process must be through advertisement.

Bearing in mind, the aforesaid legal position, we are constrained to hold that the Regional Deputy Director, Education was absolutely bereft of any authority to disapprove the petitioner's proposal to fill up its vacant posts of principal and teachers on the ground that the advertisement inviting applications for these posts was not published in one of the English newspapers. That being so, the impugned order dated 2.3.2009 of the Joint Director, Education Basti Division, Basti rejecting the petitioner's proposal to fill up its vacant posts is violative of the rights guaranteed to the minorities under Article 30(1) of the Constitution. The petitioner college can proceed to select and appoint its principal and teachers in accordance with the procedure prescribed under Section 16-FF of the Act. The petitioner college is not required to obtain prior approval of the Joint Director, Basti Division to fill up its vacant posts. The role of the Joint Director, Basti Division is limited to the extent to

ensure that the candidates so selected fulfilled the qualifications prescribed by the State Government.

**Appeal No. 1 of 2009**

**Appeal against rejection of essentiality certificate to establish new medical college by Pushpagiri Medical Society, Tiruvalla, Kerala.**

**Petitioner:** 1. M/s. Pushpagiri Medical Society, Thiruvalla, Kerala

**Respondent:** 1. State of Kerala Through its Secretary, Ministry of Health & Family Welfare, Secretariat, Thiruvananthapuram, Kerala.

2. Union of India Rep. by its Secretary, Ministry of Health & Family Welfare, Department of Health, Nirman Bhawan, New Delhi – 110 001.

3. The Registrar, M.G. University, Kottayam, Kerala.

The appellant Pushpagiri Medical College is being run by Pushpagiri Medical Society, Thiruvalla, Kerala. The appellant college is a minority educational institution covered under Article 30(1) of the Constitution of India. Initially the appellant had filed a petition under Section 11 of the National Commission for Minority Educational Institutions Act (for short the Act) seeking a direction to the State Government to grant Essentiality Certificate for post graduate courses. It is alleged that the appellant college wanted to upgrade itself into a Post Graduate College and for that purpose it applied to the Central Government for grant of permission for starting post graduate courses. The appellant college also applied to the competent authority of the State Government for grant of Essentiality Certificate for its up-gradation into a PG college (Annexure P/3). It is alleged that appellant college has all the infrastructural and instructional facilities in accordance with the norms prescribed by the Medical Council of India for a PG medical college but the State Government chose to sit over the matter and did not pass any order on the said application. (Annexure P/3)

However, during pendency of the present proceedings, the petitioner's said application was rejected by the State Government vide Order No. 44507/S3/08/H&FWD, dated 27.2.2009. Consequently, the appellant filed an appeal purporting to be under Section 12A of the Act against the impugned order dated 27.2.2009. Accordingly, the original case was converted into an appeal and opportunity was granted to the parties to file their pleadings.

According to the appellant, an Essentiality Certificate is required only to consider the desirability and feasibility for starting of new or higher courses in the existing medical college and the State government can't usurp the functions of the Medical Council of India. It is also alleged that the State Government has rejected the appellant's application for grant of Essentiality Certificate on the grounds, which

are wholly unsustainable in law and the command of the State Government as reflected in the impugned order is virtually a negation of the constitutional protection of autonomy to minorities in establishing and administering educational institution of their choice guaranteed under Article 30(1) of the Constitution.

The appeal has been resisted on the ground that the State Government has taken a policy decision to grant Essentiality Certificate to those colleges, which are espousing the cause of social justice, wherein the poor and meritorious students are given admissions by the college. It is alleged that since the appellant college was unwilling to surrender 50% of seats for poor and meritorious students, it was not entitled to grant of Essentiality Certificate. It is also alleged the mode of admission and compliance of Regulation 9(2) (1) of the Medical Council of India can't be ignored while considering the question of grant of Essentiality Certificate.

The point which arises for consideration in this appeal is : whether the impugned order dated 27.2.2009 is violative of the fundamental right enshrined in Article 30(1) of the Constitution. Although Article 30(1) of the Constitution does not speak of the conditions under which an Essentiality Certificate can be granted to a minority education institution yet the Article 30(1) by its very nature implies that when an Essentiality Certificate is asked for, the State Government cannot refuse the same without sufficient reasons or try to impose conditions as would completely destroy the right guaranteed under Article 30(1) of the Constitution. It is beyond the pale of controversy that the Pushpagiri Medical College is a minority educational institution covered under Article 30(1) of the Constitution. As per the Medical Council of India Regulations, following conditions are required to be fulfilled for granting permission for a higher course in the existing medical college:

- I. The Medical College is recognized by MCI for running MBBS course;
- II. Essentiality certificate regarding the desirability and feasibility of starting a higher course in the existing medical college;
- III. Permission from the University for starting the PG courses;
- IV. Applicant has a feasible and time bound programme to provide additional equipment and infrastructure facilities like the number of staff, space, funds etc. for starting the higher courses;
- V. Selection of candidates will be made on the basis of academic merit. The number of teaching staff and students has to be in the ratio of 1:1 for PG degree;
- VI. The application provides a bank guarantee for providing additional infrastructure facilities i.e. Rs. 85 lacs for PG degree.

It is beyond the pale of controversy that the petitioner college has fulfilled all the aforesaid requirements except the Essentiality Certificate to be issued by the

State Government. It is relevant to note here that the State government had issued Essentiality Certificate in favour of the Medical College vide order No. 24039/S3/2001/H&FWD, dated 23.8.2001. The said order is as under:

Government of Kerala  
Form -2  
Subject : Essentiality Certificate  
No. 24039/S3/2001/H&FWD  
Government of kerala  
The Department of health

Dated, the 23<sup>rd</sup> August 2001

To,

Dr. Abraham Kachanat, Secretary, Pushpagiri Medical Society,  
Thiruvalla

Sir,

The desired certificate is as follows:-

- 1) No. of institutions already existing in the State 7 (five Govt. medical colleges + Two Co-operative Medical Colleges)
- 2) No. of sets available or No. of doctors being produced annually -900
- 3) No. of doctors registered with the State Medical Council – 30176 (Sizeable No. of them are working abroad in private hospitals and outside the State of Kerala)
- 4) No. of doctors in Government Service – 5379
- 5) No. of Government posts vacant and those in rural/difficult areas-880
- 6) No. of doctors registered with Employment Exchange – 1500
- 7) Doctors population ratio in the State 1:5523
- 8) The No. of doctors being produced annually now is not sufficient enough to meet the ever increasing demand of the literate population of Kerala. Secondly, more number of brilliant students who are unable to get admission locally go to the neighbouring states and get admission paying hefty capitation fee. Thirdly, there are 880 numbers of vacancies in the Government Health sector as of now. Fourthly, there is a need for reducing the ratio among the population and the no. of doctors.

- 9) As of now, only students domiciled in the state are given admission in the Government Medical Colleges. However, certain number of seats is earmarked for allocation under the Central Pool. The question of imposing restrictions on students who are not domiciled in the state will be decided as per the existing guidelines of government of India and the Medical Council of India.
- 10) The area in which the applicant desires to establish Medical College requires such an institution of this kind. There is a demand for better medical facilities and medical professions as well.
- 11) Doctor-patient ratio proposed to be achieved – 1:2000

The Dr. Abraham Kackanat, Secretary, Pushpagiri Medical Society, Thiruvalla has applied for establishment of a medical college at Thiruvalla. On careful consideration of the proposal, the Government of Kerala has decided to issue an Essentiality Certificate to the applicant for the establishment of a Medical College with 100 seats.

It is certified that:-

- a) The applicant owns and manages a 300 bedded hospital which was established in Thiruvalla;
- b) It is desirable to establish a medical college in the public interest;
- c) Establishment of a medical college at Thiruvalla by (the name of Society/Trust) is feasible;
- d) Adequate clinical materials as per the Medical Council of India norms is available. It is further certified that in case the applicant fails to create infrastructure for the medical college as per MCI norms and fresh admissions are stopped by the Central Government, the State Government shall take over the responsibility of the students already admitted in the College with the permission of the Central Government.

Yours faithfully,  
(SIGNATURE OF THE COMPETENT AUTHORITY)

It needs to be highlighted that the State Government has unequivocally admitted in the said order that the doctor population ratio in the state is 1:5523 and the ratio proposed to be achieved is 1:2000. It has also admitted the number of

doctors produced is not sufficient to meet the increasing demand of the population of Kerala. The State Government has further admitted that location of the Medical College requires such an institution of this kind and there is a demand for better medical facilities and medical professionals as well that the medical college has adequate infrastructure in accordance with the norms prescribed by the MCI. Thus, the aforesaid admitted facts clearly make out a case regarding desirability and feasibility for starting of new or higher courses as the existing medical college.

In the instant case, the State Government has refused to grant Essentiality Certificate on the sole ground of the appellant's failure to execute an agreement in favour of the State Government regarding the sharing of seats and mode of admission. Learned counsel for the appellant has strenuously urged that the appellant college being an unaided minority institution is not bound to surrender of any seat to the State Government. According to him, the condition imposed by the State Government for grant of Essentiality Certificate is virtually a negation of the constitutional protection of autonomy to minorities in establishing and administering educational institutions of their choice guaranteed under Article 30(1) of the Constitution. It has been held by the Eleven Judges Bench of the Supreme Court in T.M.A. Pai Foundation versus State of Karnataka [(2002) 8 SCC 481] that it is not permissible for the State Government to impose a Government quota, its own reservation policy, a lower scale of fee etc on private unaided non-minority and unaided minority professional institutions, only by taking into consideration the interest of students.

At this juncture, a reference to the decision rendered by a Constitutional Bench of the Supreme Court in P.A. Inamdar vs State of Maharashtra(2005) 6 SCC 537 has become inevitable. Following issues arose for decision in the said case:

- I. Fixation of 'quota' of admission / students in respect of unaided professional institutions;
- II. The holding of examinations for admissions to such colleges, that is, who will hold the entrance tests; and
- III. The fee structure.

As regards the first question, their lordships of the Supreme Court have observed as under :

“As per our understanding, neither in the judgment of T.M.A.Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 nor in the Constitution Bench decision in Kerala Education Bill 1957 AIR 1958 SC 956 which was approved by T.M.A. Pai Foundation (supra) 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 nationalization of seats which has been specifically disapproved in T.M.A. Pai Foundation Vs. State of Karnataka . 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.

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 second question, their lordships have observed as under:

“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 fulfillment 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 centralized counseling 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.

T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admission and the procedure therefor subject to its being fair, transparent and non-exploitative. The same principle applies to non-minority unaided institutions. There may be a single institution imparting a particular type of education, which is not being imparted by any other institution, and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. All institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the 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.

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 centralized 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.

Regarding fee structure, their lordships have observed as under :

“Our answer to Question 3 is that every institution is free to devise its own fee structure but the same can be regulated in the interest of preventing profiteering. No capitation fee can be charged.”

The impugned order of the State Government directly stares into the eyes of the aforesaid proposition of law enunciated by the Supreme Court. That being so, the impugned order of the State government is eclipsed by the fundamental right enshrined in Article 30(1) of the Constitution and remains, as it was, in a moribund condition as long as the shadow of fundamental right falls upon it. Needless to add here that no condition should be imposed for grant of Essentiality Certificate which would, in truth and in effect infringe the right guaranteed under Article 30(1) of the constitution or impinge upon the minority character of the institution concerned. If an abject surrender of the right guaranteed under Article 30(1) of the Constitution is made a condition for grant of Essentiality Certificate, the denial of Essentiality Certificate would be violative of Article 30(1).

It is also stated in the impugned order dated 27.2.2009 that on inspection, Director of Medical Education found certain deficiencies in certain faculties of the appellant college. The impugned order does not specify the deficiencies found out by the Director of Medical Education. However, the alleged deficiencies found out by the Director of Medical Education, Government of Kerala falls within the exclusive domain of the Medical Council of India which is a creature of the statutes and the State Government cannot be ascribed with such power so as to reduce the Medical Council of India for nothing of and in respect of area over which the Medical Council of India has statutory mandate and goal assigned to it to be performed. The Medical Council of India is the repository of the power to prescribe course of instruction in medical studies, subject of course, to the control of the Central Government as envisaged in the Medical Council of India Act. Consequently, the impugned order cannot be allowed to stand on the ground that the alleged deficiencies found out by Director, Medical Education disentitle the appellant to claim Essentiality Certificate for its PG courses.

For the foregoing reasons, Commission held that the impugned order dated 27.2.2009 is violative of the fundamental right of the minorities enshrined in Article 30(1) of the Constitution. Consequently, the appeal is allowed under Section 12-A of the Act. The impugned order dated 27.2.2009 is set aside and the Essentiality Certificate is granted to the appellant for starting of new or higher courses as required by the Establishment of New Medical Colleges, opening of higher courses of study and increase of Admission Capacity in Medical Colleges Regulation, 1993.

**Case No. 286 of 2009**

**Challenge against order to reconstitute managing committee of the School.**

**Petitioner:** 1. Ideal Public School, Maulana Azad Nagar, Mollar Thes., 24 Parganas (S) West Bengal.

**Respondent:** 1. The Secretary, School Education Department (Secondary) Government of West Bengal Bikash Bhavan Salt Lake, Kolkata, West Bengal.

Challenge in this petition is to the order dated 15.10.2008 of the Joint Secretary, School Education Department, Secondary Branch, Government of West Bengal directing the petitioner school to reconstitute its managing committee. It is alleged that the petitioner school is a minority educational institution covered under Article 30(1) of the Constitution and the impugned order dated 15.10.2008 of the State Government is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

Despite service of notice, none entered appearance on behalf of the State Government.

It needs to be highlighted that by the certificate dated 3.1.2008 granted by this Commission in Case No. 696/2007, the petitioner institution has been declared as a minority educational institution covered under Article 30(1) of the Constitution. It has been held by Eleven Judge Bench of Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 that the right of minority to establish and administer educational institution of their choice comprises the following rights :-

- “(a) To choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution,
- (b) To appoint teaching staff (Teachers/ Lecturers and Head Masters/ Principals) also non-teaching staff; and to take action if there is dereliction of duty on the part of any of its employees,
- (c) To admit the eligible students of their choice and to setup a reasonable fee structure,

(d) To use its properties and assets for the benefit of the institution.”

By the impugned order dated 15.10.2008, the State Government has directed the petitioner school to reconstitute its managing committee with one or two representative of the Trust. The Principal of the school should not be a Trust member of the Management Committee. He should not be an ex-officio member of the Management Committee. There should be two teacher representatives, two guardian representatives and one non-teaching staff representative (all elected) in the Managing Committee.

It needs to be highlighted that the freedom to choose the persons to be nominated as members of the Governing Body has always been recognized as a vital facet of the right to administer an educational institution. Any rule which takes away this right of the management has been held to be interfering with the right guaranteed by Article 30(1) of the Constitution.

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

Autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institution. The State or any Statutory authority cannot under the cover or garb of adopting regulatory measures destroy the administrative autonomy of a minority educational institution or start interfering with the administration of the management of the institution so as to render the right of the administration of the institution concerned nugatory or illusory. The State Government or any statutory authority cannot regulate the method or procedure for constitution of a managing committee of an educational institution covered under Article 30(1) of the Constitution.

Thus, in view of the proposition of law enunciated by their Lordships of the Supreme Court in T.M.A. Pai Foundation (supra), the State Government or any statutory authority is not empowered to require a minority educational institution to constitute or reconstitute its managing committee according to its direction. That being so the impugned order of the State Government clearly violates the fundamental rights of the minorities enshrined in Article 30(1) of the Constitution. It needs to be highlighted that the fundamental rights enshrined in Part III of the Constitution have always enjoyed a special and privileged place in the Constitution. It is necessary to always bear in mind that fundamental rights have been considered

to be heart and soul of the Constitution. Article 13 of the Constitution declares that the State cannot make any law or rule that is contrary to the fundamental rights enshrined in Part III of the Constitution. That being so the impugned order of the State Government is also hit by Article 13 of the Constitution.

For the foregoing reasons, Commission held that in view of the proposition of law enunciated by their Lordships of the Supreme Court in T.M.A. Pai Foundation (supra) the impugned order dated 15.10.2008 is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution and as such the petitioner school is not bound to reconstitute its managing committee in accordance with the directions contained therein. It has been held by the Supreme Court in State of H.P. vs. Parasram AIR 2008 SCW 373 that declaration of law made by the Supreme Court cannot be forsaken under any pretext by any authority.

**Case No. 1338 of 2006**

**Request for grant of recognition to the Rosary English Primary School at Miraj, District Sangli, Maharashtra.**

**Petitioner:** 1. The Poona Diocesan Educational Society, 1 Todiwala Road, Pune – 411 001.

**Respondent:** 1. The State of Maharashtra, Department of Primary Education, Government of Maharashtra, Mantralaya, Mumbai, (through its Secretary)  
2. The Hon'ble Education Minister, School Education Department, Government of Maharashtra, Mantralaya, Mumbai.  
3. The Director, Primary Education, State of Maharashtra, Central Building, Pune – 411001  
4. The Education Officer, Primary Section, Zila Parishad, State of Maharashtra, District Sangli.

The Poona Diocesan Education Society sought a direction to the State Government to grant recognition to the school established by it namely Rosary English Primary School at Miraj, District Sangli, Maharashtra.

The petitioner, Poona Diocesan Education Society, Pune is a trust constituted by members of the Christian community. It is registered under Bombay Public Trust Act 1950 as well as under Societies Registration Act 1860. The petitioner society has been certified as a minority education society by the State Government vide order No. 2009/798/Pra.Kra.39/2009/Ka-1 dated 30.5.2009. In the year 2005, the petitioner society decided to start two primary schools namely the Mother Teresa English Medium Primary School at Vengurla, District Sindhurg, Maharashtra and

the Rosary English Primary School at Miraj, District Sangli, Maharashtra. Consequently, the petitioner society submitted two separate proposals on 15.7.2009 which were recommended for grant of recognition by the Director of Education, Government of Maharashtra. The Government of Maharashtra published a list of recognized schools on 31.5.2006. One of the institutions established by the petitioner society was given recognition. However, the Rosary English Primary School did not get recognition though it was recommended by the State Selection Committee. According to the petitioner the said school has all the infrastructural as well as instructional facilities but the State Government declined to grant recognition on the grounds which are wholly unsustainable in law. It is alleged that the impugned action of the State Government in not granting recognition to the said school infringes fundamental rights of the minorities enshrined in Article 30(1) of the Constitution.

Two different versions have been assigned by the State Government for rejecting petitioner's application for grant of recognition to the Rosary English Primary School, Miraj. The first reply filed on behalf of the State Government is dated 21.2.2007. It is alleged that by the Government's resolution dated 19.6.2004, the State Government had taken a policy decision to grant permission for opening new primary schools whose cases have been recommended by the District level and the state level committees. Since the petitioner's proposal was recommended by one committee i.e. State level committee, the Government did not grant permission. It is also alleged that pursuant to the orders passed by the Bombay High Court Bench at Nagpur in WP No. 2897/2006 and 3526 of 2006 recognition granted by the State Government for various primary schools in 2005-06 was cancelled. The High Court also directed the State Government to prepare master plan for opening of new primary schools. However, the Government will reconsider the petitioner's proposal after final decision of the Supreme Court in SLP No. 19055/2006 filed by the State Government against the judgment of the Bombay High Court Bench at Nagpur. In the second reply dated 19.1.2009, filed on behalf of the State Government, it is alleged that the Rosary English Primary School has unauthorizedly been started by the petitioner society. It is also alleged that as per information supplied by the Administrative Officer Miraj –Kupwad-Sangli, Municipal Corporation, there are five Government's recognized primary schools already running in the vicinity of the said school. It is further alleged that district as well as state level committees did not recommend the petitioner's proposal for grant of recognition to the said school as a result whereof, the State Government did not grant recognition as sought by the petitioner.

Respondent No. 3, Education Officer (Primary) Zila Parishad, Sangli resisted the petition on the ground that there is no need of new primary school proposed by the petitioner society. Moreover, the petitioner had not submitted no objection certificates from the State Government schools situated in the area. It had also not submitted the certificate of registration granted under the Societies' Registration Act. Despite these deficiencies the petitioner's proposal was forwarded to the State

Level committee. It is further alleged that pursuant to the orders of the High Court in WP No. 2897/2006, the State Government had cancelled permission for establishment of new primary schools in the State. In his supplementary reply dated 6.11.2006, the respondent No. 3 pleaded that the petitioner had submitted no objection certificate dated 23.7.2006 granted by the Headmaster Railway Primary School, Miraj which shows that there is a primary school situated within the radius of half km. Administrative Officer of the Miraj-Kupwad-Sangli Municipal Corporation had furnished details of the student population in the Railway Primary School, Miraj is as under :-

Standard	No. of Students
I	26
II	30
III	26
IV	29

According to the respondent No. 3, strength of students for each standard is allowed up to 50 and keeping in view of the student's population in the railway primary school, Miraj, there is no need for a new school. It is also alleged that there is another school namely the New Apostolic Primary School (English Medium) which is at a distance of 2 kms. from the primary schools established by the petitioner's society. Present strength of students of standard first in the said school is also 16. In the 3<sup>rd</sup> reply dated 15.1.2009 filed by the Education Officer (Primary), it is alleged that by the letter dated 30.12.2008, the Administrative Officer of Miraj-Kupwad & Sangli Municipal Corporation furnished the student's population in Railway Primary School is as under:-

Standard	No. of Students
I	41
II	24
III	25
IV	27
V	27

Bearing in mind rival contentions of the parties the question which arises for consideration is: whether the action of the State Government in not granting recognition to the Rosary English Primary School, Miraj is violative of the fundamental rights guaranteed to the minorities under Article 30(1) of the constitution. It is beyond the pale of controversy that the Rosary English Primary School has been established and is being administered by the Poona Diocesan Education Society, which is a registered trust and the society constituted by members of the Christian community. It is undisputed that by the order dated 30.5.2009, the State Government had certified the said society as a minority institution. It needs to be highlighted that the petitioner's



plea that it has established 12 high schools one senior college and 21 primary schools in the State of Maharashtra has not been disputed by the respondents. All the schools established by the petitioner society are receiving government aid. The petitioner society had applied for recognition of the Rosary English Primary School at Miraj on 25.6.2005 which was admittedly rejected by the State Government.

Rule 107 of the Bombay Primary Education Rules, 1949 provides procedures for grant of recognition to a private school. Rule 107 is as under:-

“Recognition of private school – (1) as soon as may be after the receipt of an application under rule 106, the Competent Authority shall arrange for the inspection of the school referred to in the application, and shall forward the Inspection Report to the School Board, as the case may be, the Education Committee, together with its recommendations relating to the recognition of, and the grant-in-aid, if any, payable to such private school.

- (2) The Inspecting Officer shall, in making his report to the Competent Authority, take the following matters into account, namely :-
  - (a) Whether there is a genuine need in the locality for opening of the proposed primary school;
  - (b) Whether the management is registered, under the Society's Registration Act, 1860, or under the Maharashtra Public Trusts Act, 1950 or under both;
  - (c) Whether the site and premises occupied for the purposes of the school are congenial for educational purposes and are kept neat and clean;
  - (d) Whether the staff engaged is adequate, qualified and competent;
  - (e) Whether the resources of the school are adequate to meet the expenses of the school.
- (3) The Inspecting Officer shall inter alia state in his inspection report –
  - (a) Whether the conditions on which the school is to be recognized are duly fulfilled;
  - (b) Whether the attendance of pupils at the school is regular and satisfactory;

- (c) Whether the school building is well ventilated and provision is made for playground, craft-shed, work-experience; and whether the furniture, books, educational appliances and teaching aids are provided according to the syllabus;
- (d) Whether the arrangement for registering the admission, attendance and age of the pupils are adequate and satisfactory;
- (e) Whether adequate arrangement is made for maintaining accounts of income and expenditure up-to-date, and in accordance with the instructions issued by the Department from time to time; “

It needs to be highlighted that it was nowhere pleaded by the respondents that the petitioner's application for grant of recognition was rejected on account of non-fulfillment of any of the requirements of the said rule. On the contrary different versions have been assigned by the respondents for not granting the recognition to the Rosary English Primary School. In his reply dated 18.11.2007, Mr. Sarjerao Krishna Jadhav, Education Officer (Primary), Zila Parishad, Sangli has stated that the petitioner's proposal for grant of recognition to the Rosary English Primary School was not recommended by the District Level committee on the following grounds:-

1. That there is no need of starting a new school proposed by the petitioner;
2. The petitioner had not submitted no objection certificate from the other schools situated in the area;
3. The petitioner society had not submitted certificate of registration under the Societies' Registration Act 1860;
4. That pursuant to the order passed by the Bombay High Court Bench at Nagpur in WP No. 2897/ 2006 permission granted for establishment of various primary schools in the State was cancelled by the State Government.

In his second reply dated 6.11.2006 , Sh. N. B. Patil, Education Officer (Primary) Zila Parishad, Sangli has added following additional grounds for not recommending the petitioner's proposal for grant of recognition.

1. No objection certificate dated 23.7.2005 issued by the Headmaster, Railway Primary School, Miraj shows that there is a primary school situated within the radius of half km;
2. That the Administrative Officer, Miraj, Kupwad & Sangli Municipal Corporation has supplied the following information regarding students' population in the Railway Primary School, Miraj is as under:-

Standard	No. of Students
I	26
II	30
III	26
IV	39

It is alleged that in view of the said information supplied by the Administrative Officer vide letter dated 6.11.2006 there is no need for starting a new school in that area. Moreover, there is another school namely the New Apostolic Primary School (English Medium) which is situated within the area of 2 kms from the Rosary English Primary School, Miraj.

It is significant to mention that the reply filed by Mr. N. B. Patil, Education Officer (Primary), respondent No. 3 clearly shows that the petitioner had submitted no objection certificate dated 23.7.2005 issued by the Headmaster Railway Primary School, Miraj. Thus, the aforesaid statement of Mr. N.B. Patil clearly contradicts the statement of Mr. Sanjerao Krishna Jadhav that the petitioner had not submitted 'no objection certificate' from other schools situated in the area. It is in admitted position that the petitioner society has been registered as a trust under Maharashtra Public Trust Act 1950. Sub Rule 2 (b) of Rule 107 of the Bombay Primary Education Rule 1949 provides that the management should be registered either under Societies' Registration Act 1860 or under Maharashtra Public Trust Act 1950 or under both. That being so, the stand taken by the respondent No. 3, Education Officer (Primary) Zila Parishad, Sangli that the petitioner's proposal could not be recommended for want of registration certificate under the Societies' Registration Act 1860 cannot be allowed to stand.

It needs to be highlighted that two written statements have been filed on behalf of the State Government. The first reply dated 21.2.2007 has been filed by Sh. B.Y. Manta, Desk Officer to Government of Maharashtra, School Education and Sports Department. It is stated in the reply that the Rosary English Primary School, Miraj is not running unauthorisedly and the only ground for non-recommendation of the petitioner's case by the District Committee is that the petitioner's society is not registered under Societies' Registration Act, 1860. It also contains the recommendations of the State Committee which is of the opinion that there is no need for an English medium school in the proposed area and the petitioner society is a minority institution registered under Bombay Public Trust Act 1950 and its financial position is sound. It is stated in the reply that since the petitioner's proposal for opening of primary school at Miraj, was recommended only by the State Committee, the State Government declined to grant recognition of the said school as sought by the petitioner society. It is also stated in the reply that pursuant to the orders of the Bombay High Court Bench at Nagpur permission granted to various primary schools in the state was cancelled by the State Government. However, the said reply contains an assurance that the petitioner's proposal will be considered after the final decision

of the Supreme Court in SLP No. 19055/2006 filed by the State Government against the said judgment of the Bombay High Court Bench at Nagpur. Copies of the said written statement were also endorsed to the Director of Education (Primary), Deputy Director of Education, Kolhapur Division, Kolhapur, and the Education Officer (Primary), Zila Parishad, Sangli. Strangely enough, even after receipt of the copy of the reply filed by the State Government, the Education Officer (Primary) , Sangli had taken a contradictory stand for non-recommendation of the petitioner's proposal . The second written statement filed on behalf of the State Government, School Education and Sports Department is dated 19.1.2009 which has been filed by Sh. N.U. Raurale, Deputy Secretary to Government of Maharashtra. It is stated in the reply that the Rosary English Primary School has unauthorisedly been started. This is factually incorrect. The said statement of N.U. Raurale directly stares in the face of Sub Rule (2) of Rule 106 of the Bombay Primary Education Rules 1949 which provides that an application for recommendation shall be made after the school has actually started functioning and has been in existence for a period of not less than 3 months. Moreover, the first written statement dated 21.2.2007 submitted on behalf of the State Government clearly states that the Rosary English Primary School has not unauthorisedly been started. Viewing the aforesaid discrepancies in the written statements filed on behalf of the State Government, we are constrained to observe that Sh. N.U. Raurale has made a factually incorrect statement that the said institution has unauthorisedly been started at Miraj. Sh. Raurale is a responsible officer of the State Government and he should not have made such incorrect statement without due verification from the records. Sh. Raurale has also assigned another ground for rejection of the petitioner's proposal for grant of recognition on the ground that there are five government recognized primary schools already running in the vicinity of the said primary school. The petitioner has filed a xerox copy of the letter dated 9.5.2008 of the Administrative Officer, Primary School Board, Sangli, Miraj Muinicipal Corporation addressed to the petitioner society which indicates that out of 7 primary schools at Miraj, there are 4 Marathi and 1 Urdu medium school under the management of Municipal Corporation, Sangli. There is one Marathi private school and there is one English medium school run by the Railway Department. That being so, presence of the aforesaid primary school at Miraj does not disentitle the petitioner for grant of recognition of its school in accordance with the Bombay Primary Education Rules 1949. It is also relevant to mention that by the letter dated 23.7.2005, the Railway Primary School (English medium) has issued a no objection certificate in favour of the Rosary English Primary School. The petitioner has also filed a Xerox copy of the certificate of registration granted by the Registrar of the Societies' Registration Act 1860 certifying that the Poona Diocesan Education Society has been registered under the Societies' Registration Act 1860. As opined by the State Committee, financial position of the petitioner society is sound. The petitioner society has also incurred a sum of Rs. 40 lacs for constructing Rosary English Primary School building. The petitioner society has also submitted a list of qualified teachers of the said primary schools. The total student's population of Rosary English Primary School is 317. These facts have not been controverted by the respondents.

Consequently, we find and hold that Rosary English Primary School has all the infrastructural and instructional facilities for grant of recognition under Rule 106 and Bombay Primary Education Rule 1949.

It is an admitted position that the SLP No. 19055/2006 filed by the State Government against the judgment of the Bombay High Court Bench at Nagpur has been allowed and the judgment of the High Court has been set aside by the Supreme Court. Needless to add here that after the decision of the Supreme Court reported as Superstar Education Society vs. State of Maharashtra & Ors. 2008 AIR SCW 2057, the State Government should have considered the proposal in terms of the assurance given to this Commission vide reply dated 21.2.2007. Surprisingly, the Government did not consider the petitioner's proposal for grant of recognition in the light of the aforescited decision of the Supreme Court. In view of the decision of the Supreme Court, the ground that the petitioner's proposal for grant of recognition cannot be granted due to the judgment of the Bombay High Court does not survive at all. Having regard to the facts and circumstances stated above we are constrained to observe that except the Director Education, Pune all the officials concerned conspired together to deny recognition to the Rosary English Primary School. In order to defeat the petitioner's claim, Sh. N.U. Raurale, Dy. Secretary has gone to the extent of furnishing false information to the Commission. As demonstrated earlier the Director Education, Pune has clearly stated in his report that there is a need for establishment of new primary school at Miraj.

Article 30(1) of the Constitution of India gives linguistic and religious minorities a fundamental right to establish and administer educational institutions of their choice. These rights are protected by a prohibition against their violation. The prohibition is contained in Article 13 of the Constitution which declares that any law in breach of the fundamental rights would be void to the extent of such violation. It is well-settled that Article 30 (1) can not be read in a narrow and pedantic sense and being a fundamental right, it should be given its widest amplitude. The width of Article 30 (1) cannot be cut down by introducing in it considerations which are destructive to the substance of the right enshrined therein. Although Article 30 (1) of the Constitution does not speak of the conditions under which the minority educational institution can be recognized by the State Government yet the Article by its very nature implies that where a recognition is asked for, the State Government cannot refuse the same without sufficient reasons or try to impose such conditions as would completely destroy the autonomous administration of the educational institution.

Recognition is a facility, which the State grants to an educational institution. No educational institution can survive without recognition by the State Government. Without recognition the educational institutions can not avail any benefit flowing out of various beneficial schemes implemented by the Central Government. In Managing Board of the Milli Talimi Mission Bihar & ors. vs. State of Bihar & ors. 1984 (4) SCC 500, the Supreme Court has clearly recognized that running a minority institution is

also as fundamental and important as other rights conferred on the citizens of the country. If the State Government declines to grant recognition or a university refuses to grant affiliation to a minority educational institution without just and sufficient grounds, the direct consequence would be to destroy the very existence of the institution itself. Thus, refusal to grant recognition or affiliation by the statutory authorities without just and sufficient grounds amounts to violation of the right guaranteed under Article 30(1) of the Constitution.

It has been held by the Constitutional Bench of the Supreme Court in P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537 that affiliation or recognition by the State or the Board or the university competent to do so, cannot be denied solely on the ground that the institution is a minority educational institution. A minority educational institution seeking recognition/ affiliation must fulfill the statutory requirements concerning the academic excellence, the minimum qualifications of eligibility prescribed by the statutory authorities for Head Master/ Principal/ teachers/ lecturers and the courses of studies and curriculum. It must have sufficient infrastructural and instructional facilities as well as financial resources for its growth. We have already held that the Rosary English Primary School has all infrastructural and instructional facilities as well as financial resources for its growth. There is a need for establishment of a primary school at Miraj. Needless to add here that the object underlying Article 30(1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services, educational institutions imparting higher instructions including general secular” education.

Since we have held that the petitioner Society has all the Infra-structural and instructional facilities for starting the proposed primary school, the impugned action of the State Government in declining to grant recognition as sought by the petitioner is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. Moreover, Article 21 - A of the Constitution declares the right to education as fundamental right to all children in the age group of 6-14 years and the State is under constitutional obligation to provide affordable and free education to all children in the state. If the State is unable to discharge its constitutional obligation in providing free education to the children in age group 6-14 years, it should encourage managers of private primary schools to discharge its constitutional obligation by providing adequate facilities and treat them as partners in the making Article 21 A, a meaningful reality on the ground. That apart, the Right to Education law promises to empower children through mandatory education till class VIII. The Act aims to bring 8.1 million school children of the total 193 million children in 6-14 age group in the ambit of quality school education. The impugned action of the State Government in declining grant of recognition to the Rosary English Primary School also directly impinges upon the fundamental right guaranteed under Article 21-A of the Constitution. The impugned action of the State Government is not only violative of Articles 30(1) and

21-A of the Constitution but contrary to the very spirit of liberalism and toleration and the obligations towards minorities embedded in our Constitution. As Hon. 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 interfere with their administration.

For the reasons mentioned above Commission was of the opinion that the impugned action of the State Government in not granting recognition to the Rosary English Primary School is violative of the educational rights of the minorities enshrined in Article 30(1) and the fundamental right guaranteed under Article 21-A of the Constitution. The State Government was directed to implement the findings of this Commission in terms of Section 11(a) of the National Commission for Minorities Educational Institutions Act, 2004 by reconsidering the petitioner's case for grant of recognition to the Rosary English Primary School in accordance with the decision rendered by the Supreme Court in Superstar Education Society v/s State of Maharashtra and Ors. 2008 AIR SCW 2052.

### **Case No. 1548 of 2008**

#### **Permission for university to conduct examination for courses in Z.A. Islamia College, Siwan, Bihar.**

**Petitioner:** 1. Z. A. Islamia College, Siwan, Bihar.

**Respondent:** 1. Jai Prakash University, Chapra, (through its Registrar)

The petitioner Z. A. Islamia College, Siwan, Bihar (hereinafter to be referred as the petitioner) seeks a direction to the respondent university to conduct examination in relation to the Career Oriented Programmes introduced by the UGC. The petitioner college has been established and is being administered by members of minority community and as such it is a minority educational institution covered under Article 30(1) of the Constitution. The UGC introduced the scheme of Career Oriented Programmes in universities and colleges. Pursuant to the introduction of the said scheme, the petitioner applied to the UGC for introduction of the said course. The proposal of the petitioner was approved by the UGC on the recommendation of the respondent university. By the order dated 29.3.2004 grant-in-aid was also released in favour of the petitioner for the Career Oriented Programmes. Pursuant to the approval of the courses in the disciplines of the Computer Application, Fashion Designing and Tours and Travels Management under the Career Oriented

Programmes, the petitioner admitted students in the said courses and the syllabus for the said courses was sent to the respondent university for approval. It is provided in the guidelines of the UGC that if the approval of the university concerned is not received within a period of two months of the submission of syllabi of the college, the same shall be treated as approved. On 16.4.2008, the petitioner applied to the respondent university for grant of permission to conduct examination in respect of the aforesaid courses. It is alleged that despite repeated requests, the respondent university has not taken any step in this regard in consequence of which irreparable loss has been caused to the students admitted in the petitioner college for the aforesaid courses.

It is stated in the reply filed on behalf of the respondent university, that it has fulfilled its obligations by framing appropriate Regulations and Ordinances for conducting the examination of the Career Oriented programmes and forwarded the same to the Chancellor's Secretariat on 20.6.2007. According to the respondent University, despite repeated reminders dated 11.4.2008, 17.11.2008 and 24.2.2009 requisite assent of the Chancellor has not been received in consequence of which the examinations in question could not be conducted.

The first question which arises for consideration is as to whether the petitioner college is a minority educational institution covered under Article 30(1) of the Constitution. It is pleaded in the petition that the petitioner is a minority education institution. This fact has not been controverted by the respondent university. Order VIII rule 5 CPC embodies the rule 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. Thus, the petitioner's plea that it is a minority educational institution covered under Article 30(1) of the Constitution has not been denied by the respondent university then the allegation of the petitioner college about its claim for constitutional protection under Article 30(1) of the Constitution should be taken to be admitted.

The next question which arises for consideration is as to whether the impugned action of the respondent university in not conducting examinations of the Career Oriented Courses 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 pursuant to the introduction of the scheme of the Career Oriented Programmes at the degree level in universities and colleges, the petitioner applied to the UGC for introduction of the said scheme, which was approved by the UGC on the recommendation of the respondent university. By the order dated 29.3.2004 grant-in-aid was also released in favour of the petitioner for the said Programmes. It is also admitted that pursuant to the approval of the courses in the disciplines of the Computer Application, Fashion Designing and Tours and Travel Management under the Career Oriented Programmes, the petitioner admitted students, and the syllabus fixed for the said courses was sent to the respondent university for approval. As per guidelines of the UGC if the approval of the university concerned is not received



within a period of two months of the submission of syllabi by the college, the same will be treated as approved.

It is also undisputed that the students enrolled in the Career Oriented Courses have completed the course but the examination could not be conducted as Regulations and Ordinances approved by the different bodies of the respondent university i.e. Academic Council, Syndicate & Senate have not yet been approved by the Chancellor.

Respondent university has produced some of the correspondence exchanged between the Chancellor's Secretariat, Patna. By the letter dated 20.6.2007, the respondent university addressed the following letter to the OSD (University), Governor Secretariat, Patna for approval of the Regulations and Ordinances.

**“Jai Prakash University**

Dak Bunglow Road, Chapra – 841301, Bihar (India)  
Tel. No. 06152-233121(O) 233509 ® Fax – 06152-233507 (O)

Dated 20.6.2007

Letter No. DDE/JPU/294/07

To,

OSD(University)  
Governor's Secretariat  
Raj Bhawan  
Patna

Sub : Approval of Ordinance and Regulation for Vocational Courses

Sir,

With reference to the subject noted above I have to say that the University has proposed to start following Vocational Courses at the undergraduate level:

1. Bachelor of Mass communication (Vocational) Honours.
2. Four year Integrated Course B.A. B.Ed., B.Sc., B.Ed., B.Com., B.Ed. (Vocational) Honours
3. Bachelor of Business Administration (Vocational) Honours.
4. One year Bachelor of Education
5. Career Oriented Add on Programme at first Degree Level (Certificate/ Diploma/ Advanced Diploma) in Arts/Social Science/Commerce/ Science.

After getting it approved by the different bodies of the University viz. Academic council, Syndicate and Senate (Annexure I & II), the proposals were sent to the

Bihar Inter University Board. Reminders (Annexure III & IV) were also sent for the same but till date no communication has been received from the said Board. Now, the Board has been dissolved by a legislation of Govt. of Bihar.

Under the circumstances stated above I am directed to enclose the draft Ordinances and Regulations (Annexure V & VI) for the Vocational courses as listed above in which the assent of the Hon'ble Chancellor is solicited.

The University desires to start these courses in session 2007-08. As such early approval shall help the university in taking suitable action.

Yours faithfully,

Registrar “

It appears that the aforesaid letter of the respondent university remain unattended in the Governor's Secretariat till 11.4.2008. By the letter dated 11.4.2008, the OSD addressed the following letter to the Vice Chancellor of the respondent university.

**“GOVERNOR'S SECRETARIAT, BIHAR**

No.-JPU-23/2001-1265/GS(I)

Dated 11.4.2008

From,

M.P. Srivastava  
Officer on Special Duty (Judl.)

To,

The Vice Chancellor,  
J.P. University, Chapra

Sub : Regarding approval of the draft Ordinance and Regulation for vocational courses

Sir,

I am directed to invite a reference to University letter No. DDE/JPU/294/07, dated 20.6.2007 on the above subject and to request you to kindly furnish the following information at the earliest for further necessary action by this Secretariat:-

1. Fees to be charged
2. What %age of fees collected is to be sent to the University
3. Who will operate the said Bank A/C?

4. Availability of infrastructure of resources/resource persons for occurring Vocational Courses
5. Relevance, suitability and demand for the courses recommended.

Yours faithfully,

(M.P. Srivastava)  
Officer on Special Duty (Judl)”

On 17.11.2008, the respondent university again requested OSD, Governor's Secretariat, Patna reiterating its request for approval of the Chancellor on the Regulations and Ordinances of Career Oriented Courses so that the examinations may be conducted at the earliest. It appears that the letter dated 17.11.2008 was not responded by the officer concerned as a result whereof the Registrar of the respondent university addressed another letter dated 24.2.2009 to the OSD, Governor's Secretariat, Patna reiterating its request for approval of the Governor on the Regulations and Ordinances of the said courses. It would be useful to reproduced the letter as under:-

**“Jai Prakash University**

Dak Bungalow Road, Chapra – 841301, Bihar (India)  
Tel. No. 06152-233121(O) 233509 ® Fax – 06152-233507 (O)

Dated 17.11.2008

Letter No. 680 (R)

To,

Officer on Special Duty (Judicial)  
Governor's Secretariat  
Bihar, Patna

Sub : Regarding approval of the draft Ordinance and Regulation for Career Oriented Add on Courses.

Sir,

Please refer to your letter No. JPU-23/2001-1265/GS(1) dated 11.4.2008. I am directed to say that the University has already received the approved Ordinance and Regulation for degree level vocational courses but those of Career Oriented Add on Courses have not been received. So far as the queries made in the letter under reference I am directed to submit the following :

The Career Oriented Add on Courses have been introduced in few colleges of the University which have been sponsored by the UGC. The fee of the course is determined by the college concerned and faculties are also engaged by the college.

No share of the University has been fixed because the college has to run the course out of the fund received from UGC and fees collected from students.

It is further submitted that the students enrolled into the Add on Courses have already completed the course but the examinations have not been conducted.

You are therefore, requested to obtain the approval of the Hon'ble Chancellor on the Regulation & Ordinances of Career Oriented Add On Courses so that the examination may be conducted at the earliest.

Yours faithfully,

Dr. M.G. Mustafa  
Registrar "

Strangely enough, the said letter has not yet been responded by the OSD, Governor Secretariat. For the reasons best known to the official concerned of the Chancellor's Secretariat, the Regulations and Ordinances submitted by the respondent university have not yet been approved as a result whereof examinations in question could not be conducted by the respondent university.

Commission had demonstrated that the repeated requests of the respondent university for approval of Regulations and Ordinances remained unattended in the Governor's Secretariat in consequence of which examinations for the courses in question could not be conducted by the respondent university. This lackadaisical attitude of the officials concerned of the Chancellor's Secretariat in dealing with the matter has resulted in palpable injustice and hardships to the students admitted in the petitioner's college. It is well settled that every state action in order to survive, must not be susceptible to the vice of arbitrariness, which is the crux of Article 14 of the Constitution and basis to the rule of law, the system which governs us.

Having regard to the facts and circumstances of the case Commission was constrained to come to the conclusion that the impugned action of the Chancellor's Secretariat in not approving the Regulations and Ordinances submitted by the respondent university for conducting examinations for the courses under the Career Oriented Programmes of the UGC has not only jeopardized career prospects of the students admitted in the petitioner college but has also violated the educational rights of the minorities enshrined in Article 30(1) of the Constitution. Commission, therefore, directed that a copy of the order be sent to the Governor's Secretariat for placing it before His Excellency, the Governor for such early action as may be deemed appropriate.

**Case No. 276 of 2008**

**Request for grant of permission for M.Ed. courses in Sant Nischal Singh College of Education, Yamuna Nagar, Haryana.**

**Petitioner:** 1. Sant Nischal Singh College of Education, for Women, Santpura Yamuna Nagar, Haryana.

**Respondent:** 1. National Council of Teachers Education, Through its Chairman, Hans Bhawan, Wing II, 1, Bahadur Shah Zafar Marg, New Delhi.  
2. National Council for Teachers Education, Through its Regional Director, Northern Regional Committee, A-16, Shanti Path, Tilak Nagar, Jaipur.

The Secretary, Education Department, Government of Haryana, Chandigarh.

The petitioner Sant Nischal Singh College of Education for Women, Yamuna Nagar, Haryana sought direction to the respondent NCTE to grant permission for starting M.Ed. course.

The petitioner college is a minority educational institution covered under Article 30(1) of the Constitution. The petitioner college was established in the year 1998-99 and has been successfully running B.Ed. and D.Ed courses. On 22.12.2007, the petitioner institution applied for permission to start M.Ed. course. By the letter dated 26.6.2008, the respondent NCTE pointed out some deficiencies in the application, which were rectified within the stipulated period of 90 days under intimation to the respondent NCTE vide letter dated 25.9.2008. It is alleged that despite rectification of the deficiencies, the respondent NCTE did not grant the requisite permission. It is also alleged that the impugned action of the NCTE in not granting permission to start M.Ed. course is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

Respondent NCTE resisted the petition on the ground that the petitioner had failed to rectify the deficiencies pointed out by it and as such it was not entitled to grant of permission for starting M.Ed. course. According to the respondent NCTE, recommendation of the Government of Haryana was also sought on the application submitted by the petitioner but the State Government declined to recommend the petitioner's application on the ground that it cannot be considered before finalization of new policy regarding establishment of colleges of education in the State. Lastly, it is alleged that the petitioner cannot be permitted to take shelter under the garb of the earlier permission granted by the NCTE as per the norms and standards prescribed vide notification dated 27.12.2005 as certain clauses of the regulations notified thereunder now stands repealed vide notification dated 27.12.2007.

The respondent State of Haryana has stated in its reply that in view of the High Court's decision in CWP No. 14105/2006, once permission is granted by the NCTE to run courses then no further NOC is required from the State Government in this regard. It is also alleged that State Government has taken a policy decision not

to open any Self Financing Teachers Training Institutions in the State of Haryana in the academic year 2009-10 and 2010 – 11.

The point for consideration is as to whether the impugned action of the respondent NCTE in rejecting the application for grant of permission to start M.Ed course is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. Article 30(1) of the Constitution gives linguistic and religious minorities a fundamental right to establish and administer educational institutions of their choice. These rights are protected by a prohibition against their violation. The prohibition is contained in Article 13 of the Constitution which declares that any law in breach of the fundamental rights would be void to the extent of such violation. It has been held by the Supreme Court in the case of P.A. Inamdar vs. State of Maharashtra [2005 (6) SCC 537] that the object underlying Article 30(1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services.

At the outset we must make it clear that this not the case of establishment of a new college for starting M.Ed. course. On the contrary, this is a case of up-gradation of the B.Ed college to the M.Ed. college. It is an admitted position that the petitioner has been certified by this Commission as a minority educational institution. It is also undisputed that in 2002, the petitioner college had applied for increasing the intake of seats from 60 to 100 and the application was rejected on the ground that the legal documents with regard to its ownership were incomplete. The said order of rejection was challenged before the Appellate Authority and by the order dated 27.12.2002 passed in Appeal No. F-42-125/2002/Appeal/27101, the order of rejection set aside by the Appellate authority and the case was remanded with the direction to verify the documents relating to the ownership of the land. Pursuant to the direction of the Appellate Authority the respondent NCTE considered the petitioner's application, accepted the claim of ownership of the land and granted recognition to the petitioner college for an additional intake of 40 seats vide orders dated 15.12.2003. Thereafter, by the order dated 5.2.2005, the respondent NCTE granted recognition to the petitioner college for an annual intake of 50 seats in the first year and the same for the second year in ETE course of two year duration with effect from 29.1.2005. It is also relevant to mention that by the order dated 5.9.2007, passed by the NCTE, the petitioner college's annual intake of seats was further increased to 100 seats.. However, the issue relating to the ownership of the land in question was directly and substantially in issue before the Appellate Authority and the proceedings before the Appellate Authority was between the same parties. Pursuant to the direction of the Appellate Authority, the said issue was heard and finally decided by the respondent NCTE in favour of the petitioner college. In this view of the matter, the respondent NCTE cannot be permitted to raise the issue of ownership of the land in question as the same was finally decided in accordance with the directions of the Appellate Authority. It is well settled that the principle of

res-judicata being founded on general principle of law applies outside Section 11 CPC. Even where Section 11 does not apply, the principle of res-judicata has been applied for the purpose of achieving finality in litigation (Satyadhan vs. Deorajin AIR 1960 SC 941).

This issue can also be examined from another angle. Admittedly, the respondent NCTE had granted recognition for additional intake of seats treating Sant Nischal Singh Trust as the de jure owner of the land and building in which the college is located. That being so, the doctrine of estoppel as embodied in Section 115 of the Evidence Act is also applicable to the facts of the present case. It is well settled that estoppel is a rule of equity flowing out of fairness striking on behavior deficient in good faith. It is invoked and applied to aid the law in administration of justice. Consequently, the respondent NCTE is now stopped in the present proceeding from disputing or questioning its earlier decision on the merits of the case relating to ownership of the land in question.

As regards the remaining two grounds of rejection of the petitioner's application, namely non-submission of CLU and non-approval of the building plan by Gram Panchayat, it is relevant to mention that the petitioner college is located in urban area and as such no certificate for change in land use is required. The very fact that the certificate has been issued by the Municipal Committee, Yamuna Nagar clearly shows that the institution is located in Yamuna Nagar Town which is District Head Quarter and as such the question of approval of the building plan by Gram Panchayat does not arise at all.

For the foregoing reasons Commission constrained to observe that the respondent NCTE has rejected the petitioner's application for grant of permission to start M.Ed. course on false and frivolous grounds. Consequently, the impugned action of the respondent NCTE in rejecting the petitioner's application is violative of educational rights of the minorities enshrined in Article 30(1) of the Constitution. Commission, therefore, recommended to the respondent NCTE to implement the findings of this Commission in terms of the Section 11 (a) of the National Commission for Minority Educational Institutions Act by reconsidering the petitioner's application for grant of permission to start M.Ed course in the light of observations made above.

#### **Case No. 284 of 2009**

#### **Permission to fill up vacant posts in Narainpur Mission girls Junior Basic School, District Birbhum, West Bengal.**

**Petitioner:** 1. Narainpur Mission Girls Junior Basic School, P.O. Narayanpur, District Birbhum, West Bengal.

**Respondent:** 1. The Secretary, School Education Department, Secondary Branch, Government of West Bengal, Bikash Bhawan, Salt lake, Kolkata, West Bengal.

The petitioner Narainpur Mission Grils' Junior Basic School, Narayanpur, Distt. Birbhum, West Bengal, which is a minority educational institution covered under Article 30(1) of the Constitution, seeks direction to the respondent to grant permission to fill up vacant posts of teachers in its school.

It is alleged that out of 7 posts of teachers in the petitioner school, 4 posts are lying vacant since 1994, as a result whereof the academic interest of school children is being hampered. According to the petitioner the strength of students in the school for the period 2004-2009 was in the range of 650 to 725. Despite repeated efforts and reminders the educational authorities of the State Government are not granting permission to fill up the vacant posts of teachers and as such the impugned action of the said authorities is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

Despite service of notice none entered appearance on behalf of the respondent. Hence the case is proceeded ex-parte.

The point which arises for consideration is whether the impugned action of the educational authorities of the State Government in not granting permission to the petitioner school to fill up vacant posts of teachers is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. It is alleged that the petitioner school has been declared as a minority educational institution by the competent authority of the State Government. Since the petitioner school is a minority educational institution, it is entitled to claim constitutional protection under Article 30(1) of the Constitution. Article 30(1) gives linguistic and religious minorities a fundamental right to establish and administer educational institutions of their choice. These rights are protected by a prohibition against their violation. The prohibition is contained in Article 13 of the Constitution which declares that any law or rule in breach of the fundamental rights would be void to the extent of such violation. It has also been held by the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 and P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537, "mere receipt of aid does not annihilate the right guaranteed under Article 30(1). A minority institution does not cease to be so, the moment grant-in-aid is received by the institution. An aided minority educational institution would be entitled to have the right of administration. Autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institution. The State or any Statutory authority can not under the cover or garb of adopting regulatory measures destroy the administrative autonomy of a minority educational institution or start interfering with the administration of the management of the institution so as to render the right of the administration of the institution concerned nugatory or illusory. It has also been held by the Supreme Court that the State Government or statutory authority cannot regulate the method or procedure for appointment of Teachers/ Lecturers/ Headmasters/ Principals of a minority educational institution. Once a Teacher/ Lecturer/ Headmaster/ Principal possessing the requisite qualifications



prescribed by the State or statutory authority has been selected by the management of the minority educational institution by adopting any rational procedure of selection, the State Government or the University would have no right to veto the selection of those teachers etc. Their Lordships of the Supreme Court have further held that the State government or statutory authority is not empowered to require a minority educational institution to seek its approval in the matter of selection/appointment or initiation of disciplinary action against any member of teaching or non-teaching staff. The role of the State Government or the statutory authority is limited to the extent of ensuring that teachers/lecturers/Headmaster/Principal selected by the management of minority educational institution fulfill the requisite qualifications or eligibility prescribed therefor.

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

As regards to the policy of reservation relating to employment, it is well settled that reservation policy of the State Government cannot be made applicable to an educational institution covered under Article 30(1) of the Constitution Reference may, in this connection, be made to the following observations of their Lordships of the Supreme Court in case of P.A. Inamdar vs. State of Maharashtra [2005 (6) SCC 537] :

“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 also relevant to mention that a minority educational institution is also exempted from the policy of reservation relating to admission of students. Reference may, in this connection, be made to Sub Article (5) of Article 15 of the Constitution, which is as under:-

“(5) Nothing in this article or in sub-clause (g) of clause (1) of Article 19 shall prevent the State from making any special

provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, or other than the minority educational institutions referred to in clause (1) of article 30”.

For the foregoing reasons Commission was constrained to observe that the impugned action of the respondent in not granting permission to the petitioner school to fill up its vacant posts is violative of educational rights of the minorities enshrined in Article 30(1) of the Constitution. Consequently, Commission directed the respondent to implement the findings of this Commission in terms of Section 11(a) of the National Commission for Minority Educational Institutions Act, 2004 by granting permission to the petitioner school to fill up its vacant posts of teachers.

### **Case No. 1216 of 2008**

#### **Request for grant of permission for establishment of a new women’s science college at Wad, Distt. Thane, Maharashtra.**

**Petitioner:** 1. Janata Shikshan Prasarak Mandal, Buldhana, Jahagirdar colony Railway Station Road, Aurangabad, (Maharashtra)

**Respondent:** 1. The Principal Secretary, Higher & Technical Education Department, Government of Maharashtra, Mantralaya, Mumbai – 32.

The petitioner Janata Shikshan Prasarak Mandal, Buldhana, Maharashtra sought direction to the Government of Maharashtra for grant of permission for establishment of a new women’s science college at Wada, Tq. Wada, Distt. Thane, Maharashtra from the academic year 2008-2009.

The petitioner society is a registered society constituted by members of Muslim community. The society has been granted minority status by the Government of Maharashtra. The society submitted an application to the Registrar, SNDT Women’s University, Mumbai for establishment of the aforesaid college from the academic year 2008-09. They had deposited requisite fees of Rs. 50,000/- for the college. Thereafter, the SNDT University, Mumbai recommended to the Principal Secretary, Higher & Technical Education, Govt. of Maharashtra for grant of permission for establishment of the aforesaid women’s college vide letter Nos. Affi-Gen-1/Govt.letter/2007-08/1964 dated 29.2.2008. Despite recommendations of the SNDT University, Mumbai, the State Government has not granted permission for establishment of the aforesaid college. On the contrary, the State Government had granted permission to other societies/trusts for establishment of new colleges. It is alleged that the

impugned action of the State Government in not granting permission to the petitioner society for establishment of the proposed women's college is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

In the reply, the Joint Director, Higher Education, Aurangabad has submitted that the grant of permission to new college is prescribed under Section 82 of Maharashtra University Act, 1994 (for short the University Act). Section 82 prescribes procedure for submission of applications for permission and Section 82 (5) confers discretion on the State Government to grant permission for establishment of new college taking into account of its financial resources, its state-level priorities with regard to the location of the proposed institutions, infrastructure and financial capacity of the institutions. The State Government had received proposals for the academic years 2007-08, 2008-09 from the concerned universities regarding establishment of new colleges of Arts, Science and Commerce, which were scrutinized by the Task Force Committee constituted by the Government. It is alleged that on consideration of the report of the said Committee, the State Government has taken a policy decision to grant permission for establishment of senior colleges for the academic year 2008-09. The petitioner's society was denied permission for establishment of proposed women's college on the basis of state-level priorities with regard to the requirement of availability of the existing colleges in the area. The criteria of minority dominated or religious district is not the part of procedure prescribed for granting permission to the institutions. It is not obligatory for the State Government to grant permission for establishment of new college as a matter of course but it is the absolute discretion of the State Government as per Section 82(5) of the University Act to grant permission regarding establishment of new colleges. It is alleged that the impugned action of the State Government in not granting permission to the petitioner society for establishment of new college is not violative of the Article 30(1) of the Constitution.

In view of the rival contentions of the parties, the question which arises for consideration is; whether the impugned action of the State Government in not allowing the petitioner to start a new college is violative of the constitutional right guaranteed by Article 30(1) of the Constitution? It needs to be highlighted that the petitioner has specifically pleaded that the State Government had granted permission to other societies/trusts for establishment of new colleges of Science, Commerce and Arts for the academic year 2008-09 but the same yardstick had not been applied to the petitioner's case. Obviously, the petitioner society has made out the case of hostile discrimination. Strangely enough, the aforesaid averments have not been denied specifically by the State Government. Since the aforesaid averments have not been denied by the respondent, they had to be taken as admitted by the respondent in terms of the Order 8 Rule 5 CPC. This clearly proves that the petitioner has been discriminated against in the matter of grant of permission for establishment of the proposed girls college. That being so, impugned action of the State government is hit by Article 14 and 16 of the Constitution.

At the outset I must make it clear that this Commission is a substitute of a Civil Court on the matters enumerated in the National Commission for Minority Educational Institutions Act (for short 'the Act') and Section 12-F of the Act bars jurisdiction of the Civil Court in respect of any order made under Chapter III of the Act. It would not be out of place to mention here that Section 11(b) of the Act empowers the Commission to enquire 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.

A stream 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 a way or abridge that right.

It is relevant to mention here that the petitioner wants to establish the proposed women's college at Wada, Tq. Wada, Distt. Thane, Maharashtra which have a sizeable Muslim population. The petitioner wants to impart higher education to girls of the Muslim community. It is beyond pale of controversy that the petitioner had already paid a sum of Rs. 50,000/- to the SNDT University as affiliation fees. The University on being satisfied about the availability of infrastructural and instructional facilities, had recommended to the State Government to accord permission for establishment of the proposed women's degree college. The so called policy decision of the State Government not to grant permission for establishment of the proposed college is totally irrational. 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). As stated earlier the impugned action of the State Government in not granting permission to the petitioner society for establishment of the proposed women's degree college is also hit by Article 14 and 16 of the Constitution.

Mahatama Gandhiji had said decades ago that “the education of women is far more crucial for the progress, health and dynamism of a community than the education of men though latter too needs to be promoted.” The importance of the spread of girls education is an intrinsic part of the State Policy designed to ensure the reach of education to the population at large in general and Muslims in particular. The primary duty to ensure spread of education is one that the Constitution requires the State to perform. In the case of *Unnikrihanan vs. the State of Andhra Pradesh*, AIR 1993 SC 2178 , the Supreme Court has recognized the role of the state in achieving the spread of education. There is a significant need to spread girls' education among Muslims where poverty, underdevelopment and social disability have to be overcome by making available the benefits of education to the widest strata of Muslim society. The Supreme Court has held in *TMA Pai Foundation* case (supra) that the grant of permission for setting up educational institutions by the

minorities will be in accordance with the rights guaranteed under Article 30(1) of the Constitution. In the present case, the impugned action of the State government in not granting permission to the petitioner for establishment of women's degree college is eclipsed by the fundamental right enshrined in Article 30(1) of the Constitution and remains, as it were in a moribund condition as long as the shadow of fundamental right falls upon it.

In the wake of globalization, the new orientation of outlook on the part of our leaders is therefore called for and they are expected to conduct themselves with an eye on the expanding glorious future and not in the inward looking insular past. With a view to consolidating the inclusive democracy, they are supposed to develop an inclusive vision also. The visionary architects of our Constitution adopted a liberal and farsighted attitude towards the minorities by engrafting Article 30(1) of the Constitution. The functionaries of the State who swear and owe allegiance to the Constitution are, therefore, required to adopt and exercise the same proactive and empowering attitude in redressing the grievances of the minorities as well as upholding their educational rights. The Supreme Court has also observed that "sworn allegiance to the Constitution of India implies a sacred duty to ensure that the constitutional ideals of equality and justice are upheld. The rights envisaged in the Constitution are given effect to, and all citizens are enabled to participate in our shared pursuit of realizing the "India of our dreams".

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 women's college at Beed and Aurangabad.

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 establish new college for girls and the applications submitted by the petitioner to the respondent university were duly forwarded to the State Government for according permission under sub Section (5) of Section 82 of the Universities Act. The State Government while granting permission to establish a new degree college acts as a sovereign and discharges its constitutional obligation. The State Government, however, having regard to its financial constraints is not always in a position to discharge its duties. The function of imparting education has been, to a large extent, taken over by the citizens themselves. 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 community for imparting higher/professional education of its children. It appears that the SNDT University, Mumbai, on being satisfied about availability of infrastructural and instructional facilities of the proposed girls' degree college, had recommended to the State Government for grant of permission for their establishment. The refusal of the State Government to grant permission to the petitioner for establishment of the proposed girls' degree college at Wada, Distt. Thane virtually makes the petitioner to surrender and loose its right to establish and administer educational institution of its choice guaranteed under Article 30(1) of the Constitution.

For the foregoing reasons, Commission held and hold that the impugned action of the State Government in not granting permission to the petitioner to start the proposed college is arbitrary and is hit by Article 30 (1) of the Constitution. The State Government was directed to implement the finding of the Commission in terms of Section 11(b) of the NCMEI Act by reconsidering the recommendations of the SNDT University, Mumbai regarding establishment of the proposed women's degree college at Wada by the petitioner.

**Case No. 1212 of 2008**

**Request for grant of permission for establishment of a new women's science college at Shirur Kasar, Distt. Beed, Maharashtra.**

**Petitioner:** 1. Ekta Shikshan Prasarak Mandal, Georai, Jahagirdar colony, Railway Station Road, Aurangabad, (Maharashtra).

**Respondent:** 1. The Principal Secretary, Higher & Technical Education Department, Government of Maharashtra, Mantralaya, Mumbai – 32.



The petitioner Ekta Shikshan Prasarak Mandal, Auragabad, Maharashtra sought direction to the Government of Maharashtra for grant of permission for establishment of a new women's science college at Shirur Kasar Tq. Shirur Kasar, Distt. Beed, Maharashtra from the academic year 2008-2009.

The petitioner society is a registered society constituted by members of Muslim community. The society has been granted minority status by the Government of Maharashtra. The society submitted an application to the Registrar, SNDT Women's University, Mumbai for establishment of the aforesaid college from the academic year 2008-09. They had deposited requisite fees of Rs. 50,000/- for the college. Thereafter, the SNDT University, Mumbai recommended to the Principal Secretary, Higher & Technical Education, Govt. of Maharashtra for grant of permission for establishment of the aforesaid women's college vide letter Nos. Affi-Gen-1/Govt.letter/2007-08/1964 dated 29.2.2008. Despite recommendations of the SNDT University, Mumbai, the State Government has not granted permission for establishment of the aforesaid college. On the contrary, the State Government had granted permission to other societies/trusts for establishment of new colleges. It is alleged that the impugned action of the State Government in not granting permission to the petitioner society for establishment of the proposed women's college is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

In the reply, the Joint Director, Higher Education, Aurangabad has submitted that the grant of permission to new college is prescribed under Section 82 of Maharashtra University Act, 1994 (for short the University Act). Section 82 prescribes procedure for submission of applications for permission and Section 82 (5) confers discretion on the State Government to grant permission for establishment of new college taking into account of its financial resources, its state-level priorities with regard to the location of the proposed institutions, infrastructure and financial capacity of the institutions. The State Government had received proposals for the academic years 2007-08, 2008-09 from the concerned universities regarding establishment of new colleges of Arts, Science and Commerce, which were scrutinized by the Task Force Committee constituted by the Government. It is alleged that on consideration of the report of the said Committee, the State Government has taken a policy decision to grant permission for establishment of senior colleges for the academic year 2008-09. The petitioner's society was denied permission for establishment of proposed women's college on the basis of state-level priorities with regard to the requirement of availability of the existing colleges in the area. The criteria of minority dominated or religious district is not the part of procedure prescribed for granting permission to the institutions. It is not obligatory for the State Government to grant permission for establishment of new college as a matter of course but it is the absolute discretion of the State Government as per Section 82(5) of the University Act to grant permission regarding establishment of new colleges. It is alleged that the impugned action of the State Government in not granting permission to the petitioner society for establishment of new college is not violative of the Article 30(1) of the Constitution.

In view of the rival contentions of the parties, the question which arises for consideration is; whether the impugned action of the State Government in not allowing the petitioner to start a new college is violative of the constitutional right guaranteed by Article 30(1) of the Constitution? It needs to be highlighted that the petitioner has specifically pleaded that the State Government had granted permission to other societies/trusts for establishment of new colleges of Science, Commerce and Arts for the academic year 2008-09 but the same yardstick had not been applied to the petitioner's case. Obviously, the petitioner society has made out the case of hostile discrimination. Strangely enough, the aforesaid averments have not been denied specifically by the State Government. Since the aforesaid averments have not been denied by the respondent, they had to be taken as admitted by the respondent in terms of the Order 8 Rule 5 CPC. This clearly proves that the petitioner has been discriminated against in the matter of grant of permission for establishment of the proposed girls' college. That being so, impugned action of the State Government is hit by Article 14 and 16 of the Constitution.

At the outset I must make it clear that this Commission is a substitute of a Civil Court on the matters enumerated in the National Commission for Minority Educational Institutions Act (for short 'the Act') and Section 12-F of the Act bars jurisdiction of the Civil Court in respect of any order made under Chapter III of the Act. It would not be out of place to mention here that Section 11(b) of the Act empowers the Commission to enquire 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.

A stream 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 a way or abridge that right.

It is relevant to mention here that the petitioner wants to establish the proposed women’s college at Shirur Kasar, Tq. Shirur, Maharashtra which has a sizeable Muslim population. The petitioner wants to impart higher education to girls of the Muslim community. It is beyond pale of controversy that the petitioner had already paid a sum of Rs. 50,000/- to the SNTD University as affiliation fees. The University on being satisfied about the availability of infrastructural and instructional facilities had recommended to the State Government to accord permission for establishment of the proposed women’s degree college. The so called policy decision of the State Government not to grant permission for establishment of the proposed college is totally irrational. 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). As stated earlier the impugned action of the State

Government in not granting permission to the petitioner society for establishment of the proposed women's degree college is also hit by Article 14 and 16 of the Constitution.

Mahatama Gandhiji had said decades ago that “the education of women is far more crucial for the progress, health and dynamism of a community than the education of men though latter too needs to be promoted.” The importance of the spread of girls education is an intrinsic part of the State Policy designed to ensure the reach of education to the population at large in general and Muslims in particular. The primary duty to ensure spread of education is one that the Constitution requires the State to perform. In the case of Unnikrishanan vs. the State of Andhra Pradesh, AIR 1993 SC 2178, the Supreme Court has recognized the role of the state in achieving the spread of education. There is a significant need to spread girls' education among Muslims where poverty, underdevelopment and social disability have to be overcome by making available the benefits of education to the widest strata of Muslim society. The Supreme Court has held in TMA Pai Foundation case (supra) that the grant of permission for setting up educational institutions by the minorities will be in accordance with the rights guaranteed under Article 30(1) of the Constitution. In the present case, the impugned action of the State government in not granting permission to the petitioner for establishment of women's degree college is eclipsed by the fundamental right enshrined in Article 30(1) of the Constitution and remains, as it were in a moribund condition as long as the shadow of fundamental right falls upon it.

In the wake of globalization, the new orientation of outlook on the part of our leaders is therefore called for and they are expected to conduct themselves with an eye on the expanding glorious future and not in the inward looking insular past. With a view to consolidating the inclusive democracy, they are supposed to develop an inclusive vision also. The visionary architects of our Constitution adopted a liberal and farsighted attitude towards the minorities by engrafting Article 30(1) of the Constitution. The functionaries of the State who swear and owe allegiance to the Constitution are, therefore, required to adopt and exercise the same proactive and empowering attitude in redressing the grievances of the minorities as well as upholding their educational rights. The Supreme Court has also observed that “sworn allegiance to the Constitution of India implies a sacred duty to ensure that the constitutional ideals of equality and justice are upheld. The rights envisaged in the Constitution are given effect to, and all citizens are enabled to participate in our shared pursuit of realizing the “India of our dreams”.

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 women's college at Beed.

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 establish new college for girls and the applications submitted by the petitioner to the respondent university were duly forwarded to the State Government for according permission under sub Section (5) of Section 82 of the Universities Act. The State Government while granting permission to establish a new degree college acts as a sovereign and discharges its constitutional obligation. The State Government, however, having regard to its financial constraints is not always in a position to discharge its duties. The function of imparting education has been, to a large extent, taken over by the citizens themselves. 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 community for imparting higher/professional education of its children. It appears that the SNDT University, Mumbai, on being satisfied about availability of infrastructural and instructional facilities of the proposed girls' degree college, had recommended to the State Government for grant of permission for their establishment. The refusal of the State Government to grant permission to the petitioner for establishment of the proposed girls' degree college at Shirur Kasar, Tq. Shirur, Distt. Beed, Maharashtra virtually makes the petitioner to surrender and loose its right to establish and administer educational institution of its choice guaranteed under Article 30(1) of the Constitution.

For the foregoing reasons, Commission held that the impugned action of the State Government in not granting permission to the petitioner to start the proposed

college is arbitrary and is hit by Article 30 (1) of the Constitution. The State Government was directed to implement the finding of the Commission in terms of Section 11(b) of the NCMEI Act by reconsidering the recommendations of the SNTD University, Mumbai regarding establishment of the proposed women's degree college at Shirur Kasar, Tq. Shirur, Distt. Beed by the petitioner.

**Case No. 423 of 2009**

**Approval to the appointment of the teachers in Shri Ajit Nath Jain Inter College, Baghpat, Uttar Pradesh.**

**Petitioner:** 1. Shri Ajit Nath Jain Inter College, Sherpur Luhara, Baghpat, Uttar Pradesh.

**Respondent:** 1. The Director of Education (Secondary), Government of Uttar Pradesh, 18<sup>th</sup> Park Road, Lucknow, Uttar Pradesh.

2. The District Inspector of Schools, Baghpat, Uttar Pradesh.

The petitioner sought a direction to the Educational Authorities to grant approval for appointment of five teachers which were duly selected by the management of the petitioner college against the sanctioned posts. According to the petitioner, the petitioner college has been declared as a minority educational institution by this Commission and as such it is entitled to the constitutional protection under Article 30(1) of the Constitution. It is also alleged that the teachers have been selected in accordance with the procedure prescribed under Section 16FF of the Intermediate Education Act 1921(for short the Education Act). The requisite documents relating to selection and appointment of these teachers were submitted to the Distt. Inspector of Schools, Baghpat, who forwarded them to the Joint Director, Pratham Mandal, Meerut for approval. It is alleged that the Joint Director, Pratham mandal, Meerut has wrongfully withheld approval for selection and appointment of these teachers. According to the petitioner, the impugned action of the Joint Director is violative of Article 30(1) of the Constitution.

Despite service of notice, the Director of Education, Government of Uttar Pradesh did not file any response. The District Inspector of Schools, Baghpat has submitted a copy of his letter No. Ma-2/3546-48/2009-10 dated 2.9.2009 addressed to the Joint Director, Pratham Mandal, Meerut recommending for approval of appointment of the teachers selected by the petitioner college. The Joint Director, Sh. V. K. Saxena has submitted the reply stating that unless the petitioner college is declared as a minority educational institution by the Minority Welfare and Muslim (Waqf) Department, Government of Uttar Pradesh, provision of Section 16FF of the Education Act cannot be applied to the petitioner college. It is further alleged that he has referred the matter to the Special Secretary, Government of Uttar Pradesh for guidance.

The point which arises for determination is as to whether the impugned action of the Joint director, Pratham Mandal, Meerut is violative of Article 30(1) of the Constitution and the provision of sub-Section (4) of Section 16FF of the Education Act?

It is beyond pale of controversy that by the order passed in Case No. 616/2008, the Commission has granted minority status certificate to the petitioner college and as such it is entitled to the constitutional protection under Article 30(1) of the Constitution. The Joint Director, Pratham Mandal, Meerut has stated in his reply that unless the petitioner college is declared as a minority educational institution by the Minority Welfare and Muslim (Waqf) Department, Government of Uttar Pradesh, provision of Section 16FF of the Education Act cannot be applied to the petitioner college. In other words he is not willing to act upon the certificate granted by this Commission declaring the minority status of the petitioner college. It appears that the Joint Director is totally ignorant about the provisions of the National Commission for Minority Educational Institutions Act (for short, the Act) conferring powers on the commission to grant minority status certificate to a minority institution. It is also relevant to note here that Section 2(f) of the Central Educational Institutions (Reservation in Admission) Act, 2006, defines a minority educational institution as under:-

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

(emphasis supplied)

It needs to be highlighted that by the judgment rendered by the Division Bench of Allahabad High Court in Special Appeal No. 903 of 2006 decided on 24.08.2006 it was held that the State Government does not have power to issue minority status certificate to a minority educational institution. Thus, the stand taken by the Joint Director, Pratham Mandal, Meerut that the Minority Welfare and Muslim (Wakf) Department, Government of Uttar Pradesh is the only competent authority to grant a minority status certificate to a minority institution is not only hit by Section 2(f) of the Central Educational Institutions (Reservation in Admission) Act, 2006 but it is also contrary to the aforesaid decision of the Allahabad High Court. As ruled by the Allahabad High Court the State Government does not have power to grant a minority status to a minority institution. In view of the aforesaid decision, the Commission intervened and granted minority status certificate to the petitioner in accordance with the provisions of the Act. Since the petitioner college is covered under Article 30(1) of the Constitution, it enjoys the complete autonomy in respect



of selection and appointment of its teaching and non-teaching staff in accordance with the provision of Sec. 16 FF of the Education Act. . In this view of the matter I am fortified by the decisions of the Constitutional Benches of the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 and P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537. The only limited scope available to the educational authorities is to examine the resolution of the managing committee of the petitioner college to the extent of qualification and otherwise of eligibility of a candidate selected for appointment. Reference may, in this connection, be made to the provision of Sub Section (4) of Section 16 FF of the Education Act which clearly commands that Regional Director of Education or the Inspector cannot withheld the approval for the selection made where the person selected possesses the minimum qualifications prescribed and was otherwise eligible. (Anjana Kumar (Smt.) and another vs. State of U.P. & Ors(2206) 2 SAC 202).

Bearing in mind the aforesaid legal proposition, I am constrained to hold that the Joint Director, Pratham Mandal, Meerut was absolutely bereft of any authority to approve the selection and appointment of teaching staff of the petitioner college. As stated the role of the Joint Director, Pratham Mandal, Meerut is limited to the extent to ensure that the candidate so selected fulfils the qualification prescribed by the State Government. That being so, the impugned action of the Joint Director, Pratham Mandal, Meerut in withholding approval for the selection and appointment of teachers is not only violative of the Article 30(1) of the Constitution but it is also violative of the mandatory provision of sub-Section (4) of Section 16FF of the Education Act.

For the foregoing reasons, Commission was of the opinion that the petitioner college being an educational institution covered under Article 30(1) of the Constitution, is entitled to select and appoint its teaching staff in accordance with the provision of Section 16FF of the Education Act and the Joint Director Education, Meerut cannot withhold the approval for the selection made where the person selected possesses the minimum qualifications prescribed and was otherwise eligible. Consequently, the impugned action of the Joint Director, Education, Pratham Mandal, Meerut in withholding the approval for appointment of the teachers selected by the petitioner college is not only violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution but it is also violative of the mandatory provisions of Sub Section (4) *ibid*. Accordingly, the Joint Director was directed to implement findings of this Commission in terms of Section 11(b) of the Act by according approval to the appointment of the teachers selected by the management of the petitioner college in accordance with the provisions contained in Section 16FF of the Education Act.

**Case No. 1546 of 2008**

**Request for permanent affiliation to the I-com education branch of Z.A. Islamia College, Siwan, Bihar.**

**Petitioner:** 1. Z.A. Islamia College, Siwan, Bihar.

**Respondent:** 1. The Principal Secretary, H.R.D. Department, Government of Bihar, Patna.  
2. The Secretary, Bihar School Examination Board (Senior Secondary), Patna.

The petitioner Z.A. Islamia College, Siwan, Bihar sought direction to the competent authority of the State Government to grant permanent affiliation to the I-Com education branch of the college. The petitioner college is a minority educational institution covered under Article 30(1) of the Constitution. On 4.8.1998, the Governing Body of the college resolved to commence intermediate level education in commerce stream in the petitioner college and accordingly the college submitted an application before the Secretary of the Bihar Intermediate Education Council, Patna (hereinafter to be referred as "the Council") seeking grant of affiliation to the college to impart I-Com education. The petitioner college deposited a bank demand draft of Rs. 25,000/- as the reserve fund for the Council. Thereafter, under the direction of the Council, an inspection team conducted inspection of the college and submitted its report dated 26.12.1999 to the Council giving an elaborate description of the infrastructure and instructional facilities available in the college and made recommendation for grant of affiliation to the college for the intermediate education in commerce stream. Despite favorable recommendation made by the inspection team, no action was taken by the Council for granting affiliation to the college in relation to I-Com education. By the letter dated 15.9.2000, the Council again directed the college to deposit a further amount of Rs. 25,000 and accordingly, the college submitted a bank demand draft dated 16.9.2000 of the said amount.

Thereafter, the petitioner college has been pursuing the matter with the Council but despite repeated reminders dated 6.1.2001 and 9.8.2001, the Council did not take any action in this regard. The petitioner college also furnished a No Objection Certificate issued by the Registrar of J.P. University, Chapra. By the letter dated 25.8.2002, the Council wrote to the Registrar of J.P. University, Chapra stating that the forms etc. of the students of the petitioner college will be accepted and the decision in relation to extension of other facilities and financial status would be decided by the State Government and the University.

The Council again constituted a new inspection team vide letter dated 9.2.2005 and this inspection team, after conducting inspection, submitted a comprehensive report dated 21.3.2005 making recommendation for grant of permanent affiliation to the I-Com branch of the college. Thereafter, the State Government in the Department of HRD repeatedly directed the Commissioner, Saran Division to constitute an inspection committee for inspection of the college but it did not evoke any response from him. Even though, the college pursued the matter, the Commissioner, Saran Division did not constitute any inspection team, in consequence

of which the petitioner college was not given affiliation by the Council and the students admitted in the college are being treated as private candidates. It is alleged that even though the petitioner college fulfills all norms and standards prescribed for the purposes of affiliation, the concerned authorities have deliberately violated the educational rights of the minorities enshrined in Article 30(1) of the Constitution by delaying grant of the affiliation for more than a decade now.

In the reply, the Director, Secondary Education, Department of HRD, Government of Bihar has stated that the Government of Bihar under the provisions of Rule 15(i) of Bihar Intermediate Education Council (Establishment & Examination) Rules, 1994 directed the Commissioner, Saran to get an inspection team constituted as per Notification No. 646 dated 26.7.2001 issued by the State Government to make necessary inspection to ascertain feasibility and suitability of the college for grant of affiliation in the specified stream, but this direction was not complied with by the Commissioner. The Department of HRD again directed the Divisional Commissioner, Saran vide letter No. 153 dated 2.2.2006 to constitute an inspection team and submit a report at the earliest. Despite reminders dated 2.2.2006 and 27.8.2009, the Divisional Commissioner, Saran did not constitute an inspection team in terms of the Notification No. 646 dated 26.7.2001. The Special Secretary, Department of HRD, Government of Bihar has again reminded the Divisional Commissioner, Saran for expediting the report vide a letter 23.9.2009.

The petitioner in his rejoinder submitted that the Inspection team constituted by the erstwhile Bihar Intermediate Education Council has clearly recommended affiliation of the I-Com course on the basis of fulfillment of all norms and standards including infrastructural and instructional facilities. Despite repeated recommendations, the Council failed to grant affiliation to the college. It is alleged that the authorities have now become hostile after the petitioner has approached the Commission. The petitioner college is being harassed by these authorities by asking to submit additional proof in relation to the other courses run by the college for the purpose of extension of affiliation notwithstanding the fact that the petitioner college has already obtained permanent affiliation in the said courses since 1991 in terms of approval issued by Education Department of the State Government. The petitioner college has permanent affiliation in the B.Sc. and B.A. level courses. It is further alleged that the petitioner college has again been asked to deposit a sum of Rs. 1,50,000/- in the name of Reserve fund in favour of the Council so that students of the college may be permitted to appear in the Intermediate Examination in the year 2007 even though reserve fund has already been deposited prior to grant of affiliation in 1973 itself.

The Secretary of Bihar School Education (Senior Secondary Board), Patna has, in his counter affidavit, stated that Rule 14(1) of the Bihar Intermediate Education Council (Establishment of College and Conduct of the Examination) Rules, 1994 (for short the Rules) gives power to the Council, to grant, on previous approval of the State Government, recognition or to refuse the same to institutions of intermediate

standard. Rule 41 of the Rules lays down that no institution imparting intermediate education shall be run or established unless prior approval of the Council had been obtained. Rule 41(7) further provides that in case the Council refuses to grant recognition to any institution or it is dissatisfied with the decision of the Council then the institution may appeal to the State government within 30 days and the decision of the State Government would be final. Rules 6 of the Rules provide for grant of recognition by the Council in one or more faculties subject to the provisions of Rule 41(3) of the Rules. Rule 7 of the Rules provides that the institution has to make an application for recognition in the prescribed form before the Council stating therein the faculty or faculties alongwith the subject and it has also to furnish certain information to the Council such as having a building and land of its own, proper arrangement having been made for supervision and physical welfare of the students, library, proper arrangement having been made for tutorial, practical and lecture classes, deposit reserve fund with the Council etc. Rule 11 of the Rules provides that on such application having been made, the Council will make a local inquiry as regard the matter specified in the said rules and thereafter on completion of such inquiry and any further inquiry the Council may decide whether to grant recognition or not on the recommendation of its Recognition Committee. Rule 7(12)(b) of the 1994 Rules commands that all cases of recognition allowed by the Council shall be forwarded to the State Government for approval and recognition will be granted by the Council on receipt of the approval from the State Government.

The point which arises for determination is whether the impugned action of the concerned authorities in not granting affiliation as sought by the petitioner college 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 college is a minority educational institution covered under Article 30(1) of the Constitution. A stream 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 the fundamental rights guaranteed 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 a way or abridge that right.

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

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

**“10A. Right of a Minority Educational Institution to seek affiliation.** - (1) A Minority Educational Institution may seek affiliation to any University of its choice subject to such affiliation

being permissible within the Act under which the said University is established.

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

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

Recognition is a facility, which the State grants to an educational institution. No educational institution can survive without recognition by the State Government. Without recognition the educational institutions can not avail any benefit flowing out of various beneficial schemes implemented by the Central Government. Affiliation is also a facility which a university grants to an educational institution. In Managing Board of the Milli Talimi Mission Bihar & ors. vs. State of Bihar & ors. 1984 (4) SCC 500, the Supreme Court has clearly recognized that running a minority institution is also as fundamental and important as other rights conferred on the citizens of the country. If the State Government declines to grant recognition or a university refuses to grant affiliation to a minority educational institution without just and sufficient grounds, the direct consequence would be to destroy the very existence of the institution itself. Thus, refusal to grant recognition or affiliation by the statutory authorities without just and sufficient grounds amounts to violation of the right guaranteed under Article 30(1) of the Constitution.

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

Reference may also be made to Section 10A of the Act, which confers a substantive right on a minority educational institution to seek affiliation to any University of its choice subject to such affiliation being permissible within the Act under which the said University is established. Section 12 of the Act confers power on this Commission to decide any dispute relating to affiliation to such University.

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

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

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

[(3) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).]”

It needs to be highlighted that the Act provides that the Commission will be guided by the principles of natural justice and subject to the other provisions of the Act have the power to regulate its own procedure. Sub Section (2) of Section 12 empowers the Commission to exercise the specified powers under the Code of Civil Procedure like summoning of witnesses, discovery, issue of requisition of any public record, issue of commission etc. Sub Section (3) of Section 12 specifies that every proceeding before the Commission shall be deemed to be a judicial proceeding



in terms of the Indian Penal Code and the Commission shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure. Sections 12A and 12B confer right of appeal to this Commission and they also provide that orders passed by the Commission shall be executable as a decree of a civil court. Section 12F of the Act indicates that no civil court has jurisdiction in respect of any matter with the Commission is empowered by or under the Act to determine. Thus, the conspectus of the provisions of the Act clearly indicates that the disputes between the university and a minority institution relating to affiliation is within the purview of the Act. A plain reading of Section 10A of the Act in the light of the preamble to the Act and the objects and reasons for enacting the Act, indicates that the dispute relating to affiliation between the concerned parties is to be determined by a specialized tribunal constituted for that purpose. There is also an ouster of jurisdiction of the civil court to entertain any suit or proceeding in respect of any matter with the Commission is empowered by or under the Act to determine. The constitution of the Act itself indicates that it is chaired by a retired Judge of the High Court. Thus, the Act is a self-contained code intended to deal with all disputes arising out of recognition/ affiliation of the educational institutions of the minorities covered by Article 30 (1) of the Constitution. That being so, this Commission has jurisdiction to adjudicate upon the dispute relating to affiliation of a minority educational institution to a university. Sub Section (1) of Section 12 declares that the decision of the Commission on such dispute shall be final. It can not be disputed that the present dispute falls within the ambit of Section 12 of the Act. Section 11(b) of the National Commission for Minority Educational Institutions Act declares that the findings of the Commission on any dispute relating to affiliation to a University shall be implemented by the appropriate Government.

In the instant case, following facts have been admitted by the parties;

- (a) that the petitioner college has already obtained permanent affiliation from the university in the BSc. And B.A. level course;
- (b) that on 17.8.1998, the petitioner college had deposited a bank demand draft of Rs. 25,000 as reserve fund for the Council;
- (c) that the inspection team constituted by the Council conducted the inspection of the college and made recommendation for grant of affiliation to the college by the Council for the intermediate education in commerce stream;
- (d) that despite favourable recommendation made by the inspection team no action was taken by the Council towards grant of affiliation to the college;
- (e) that by the letter dated 15.9.2000, the Council again demanded a bank draft of Rs. 25,000 which the college deposited vide bank demand draft dated 16.9.2000;

- (f) that the petitioner college furnished No Objection Certificate issued by the Registrar of J.P. University, Chapra and despite repeated reminders dated 6.1.2001 and 9.8.2001, no action was taken by the Council towards grant of affiliation to the petitioner college;
- (g) that the Council vide letter dated 25.8.2002 wrote to the Registrar of the J.P. University, Chapra stating that the forms etc. of the students of the college will be accepted and the decision in relation to extension of other facilities would be decided by the State government and the University;
- (h) that the Council again constituted a new inspection team vide letter dated 9.2.2005 and this inspection team after conducting inspection submitted a detailed report dated 21.3.2005 making recommendation for grant of permanent affiliation to the I-Com branch of the college;
- (i) that the State Government in the Department of HRD vide letter dated 2.1.2006 directed the Commissioner, Saran Division to constitute an inspection team for inspection of the petitioner college;
- (j) that despite the repeated reminders dated 2.2.2006 and 27.8.2009 and 23.9.2009 from the Department of HRD, Government of Bihar, the Divisional Commissioner, Saran did not constitute an inspection team in terms of the Notification No. 646 dated 26.7.2001;
- (k) that the petitioner college has been directed by the Council to deposit a further sum of Rs. 1,50,000 in the name of Reserve fund in favour of the Council;

The aforesaid admitted facts clearly prove the hostile attitude and apathy of the concerned authorities of the State Government in general and the Commissioner, Saran Division in particular to deprive the Management of the petitioner college of its educational rights guaranteed under Article 30(1) of the Constitution. It needs to be highlighted that there was no justification for repeated inspections of the college specially when no deficiency was noticed by the inspection teams constituted by the Council. All the inspection teams constituted by the Council, on being satisfied about the college being eligible for being affiliated to the Council recommended for grant of affiliation but for reasons best known to the officials concerned of the Council, the Council did not grant affiliation. This clearly shows that management of the petitioner college was harassed by the Council by subjecting the college to repeated inspections and the demand of reserve funds.

In the wake of globalization, the new orientation of outlook on the part of our leaders is therefore called for and they are expected to conduct themselves with an eye on the expanding glorious future and not in the inward looking insular past. With a view to consolidating the inclusive democracy, they are supposed to develop an inclusive vision also. The visionary architects of our Constitution adopted a liberal

and farsighted attitude towards the minorities by engrafting Article 30(1) of the Constitution. The functionaries of the State who swear and owe allegiance to the Constitution are, therefore, required to adopt and exercise the same proactive and empowering attitude in redressing the grievances of the minorities as well as upholding their educational rights. The Supreme Court has also observed that “sworn allegiance to the Constitution of India implies a sacred duty to ensure that the constitutional ideals of equality and justice are upheld. The rights envisaged in the Constitution are given effect to, and all citizens are enabled to participate in our shared pursuit of realizing the “India of our dreams”.

Admittedly, the Commissioner, Saran Division, despite repeated reminders from the Ministry of HRD, Government of Bihar vide letters dated 2.2.2006, 27.8.2009 and 23.9.2009, did not constitute the inspection team in terms of the Notification No. 646 dated 26.7.2001. The atrocious conduct of the Commissioner, Saran Division in ignoring the repeated directions of the State Government in the Ministry of HRD for constituting the inspection team in terms of the Notification No. 646 dated 26.7.2001 speaks volumes against him. This further shows that the Commissioner, Saran Division has also flagrantly violated educational rights of the management of the petitioner college guaranteed under Article 30(1) of the Constitution, by deliberately ignoring the directions of the State Government for constituting the inspection team to decide the question of grant of affiliation in question. I fail to understand as to why the State Government did not take appropriate action against the Commissioner, Saran Division for his contumacious disobedience of its orders. In the present case, the impugned inaction of the concerned authorities of the State Government in not granting affiliation to the petitioner college is eclipsed by the fundamental right enshrined in Article 30(1) of the Constitution and remains, as it were in a moribund condition as long as the shadow of fundamental right falls upon it.

For the foregoing reasons, Commission held that the impugned inaction of the concerned authorities clearly violates educational rights of the minorities enshrined in Article 30(1) of the Constitution. Having regards to the facts and circumstances of the case, Commission would appreciate if the State Government grants permanent affiliation to the I.Com education as sought by the petitioner college treating it as a special case. Commission therefore, recommended to the State Government to implement findings of this Commission in terms of Section 11(b) of the National Commission for Minority Educational Institutions Act by granting permanent affiliation as sought by the petitioner college. Commission would also appreciate if State Government takes suitable action against the erring official and specially the then Commissioner, Saran Division, who deliberately violated the fundamental right of the minorities guaranteed under Article 30(1) of the Constitution and the repeated orders of the State Government in the HRD Department to constitute a inspection team in terms of Notification No. 646 dated 26.7.2001.

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

1. During the period, few references were received from the Central Government and State Governments. The references from the Central Government related to forwarding of petitions received from some parties which have been registered as cases by the Commission and dealt with accordingly. The references received from State Governments related to seeking clarifications on criteria for Minority Status. Since the Commission has already published a booklet containing Guidelines for determination of Minority Status, Recognition, Affiliation and related matters in respect of Minority Educational Institutions under the Constitution of India, the references have been dealt with accordingly.
2. A reference was received from the Minority Department, Government of Maharashtra requesting for advice on the issue whether students from other States can be admitted to the Minority Educational Institutions against the quota reserved for minority students of Maharashtra State and if so the extent to which they can be so admitted. On this reference the Commission has given the following advice :-

### **ADVICE ON THE REFERENCE**

The Government of Maharashtra has invoked the advisory jurisdiction of the Commission under Section 11(a) of the National Commission for Minority Educational Institutions Act by making a reference relating to the question: whether minority students from other states can be admitted to the minority educational institutions against the quota reserved for minority students of the State? At the outset we must make it clear that Section 12C(b) of the National Commission for Minority Educational Institutions Act empowers the State Government to prescribe minimum percentage governing admissions of students belonging to the minority community in a minority institution during an academic year and prescribing such a minimum percentage governing admissions is binding on a minority educational institution.

An educational institution is established to subserve or advance the purpose of its establishment. Whereas the minorities have a right under Article 30(1) of the Constitution to establish and administer educational institutions of their own choice with the desire that their children should be brought up properly and be eligible for higher education and go all over the world fully equipped and with such intellectual attainment as it will make them fit for entering the public service, surely then there must be implicit in such a fundamental right the corresponding duty to cater to the needs of the children of their own community. The beneficiary of such a fundamental right should be allowed to enjoy it in the fullest measure. Therefore, the educational institutions of their choice will necessarily cater to the needs of the minority community, which has established the institution.

It has been held in the case of P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537 that “a minority institution does not cease to be so the moment grant-in-aid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and at the same time, would be required to admit a reasonable extent of non-minority students, so that the rights under Article 30 (1) are not substantially impaired and further the citizens’ right under Article 20 (2) are not infringed. What would be a reasonable extent, would vary from the types of institution, the courses of education for which admission is being sought and other factors like educational needs. The State Government concerned has to notify the percentage of the minority students to be admitted in the light of the above observations.”

As regards the prescription of percentage governing admissions in a minority educational institution, it would be useful to excerpt the following observations of their lordships of the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 “..... the situation would vary according to the type of institution and the nature of education that is being imparted in the institution. Usually, at the school level, although it may be possible to fill up all the seats with the students of the minority group, at the higher level, either in colleges or in technical institutions, it may not be possible to fill up all the seats with the students of the minority group. However, even if it is possible to fill up all the seats with students of the minority group, the moment the institution is granted aid; the institution will have to admit students of the non-minority group to a reasonable extent, whereby the character of the institution is not annihilated, and at the same time, the rights of the citizen engrafted under Article 29 (2) are not subverted.”

Thus the State Government can prescribe percentage of the minority community to be admitted in a minority educational institution taking into account the population and educational needs of area in which educational institution is located. There cannot be common rule or regulation or order in respect of types of educational institutions from primary to college level and for the entire State fixing the uniform ceiling in the matter of admission of students in minority educational institutions. Thus a balance has to be kept between the two objectives – preserving the right of the minorities to admit students of their own community and that of admitting “sprinkling of outsiders” in their institutions subject to the condition that the manner and number of such admissions should not be violative of the minority character of the institution.

A careful reading of the judgment of the Supreme Court in T.M.A. Pai Foundation (supra) clearly indicates that a minority educational institution must primarily cater to the needs of that minority of that State in which the educational institution is located. It has also been held in the clarificatory judgment rendered by the Supreme Court in P.A. Inamdar case (supra) that the minority educational institutions are free to admit students of their choice including students of non-minority community and also members of their own community from other states,

both to a limited extent only and not in a manner to such an extent that their minority status is lost. It has been held in Kerala Education Bill AIR 1958 SC 956 that “Articles 29(2) and 30(1) read together clearly contemplate a minority institution with a “sprinkling of outsiders” admitted in it. By admitting a member of non-minority into the minority institution it does not shed its character and cease to be a minority institution.” Thus, a minority educational institution is under an obligation to admit the bulk of the students fitting into the description of the minority community. Therefore, the students of that minority community residing in the state in which the minority institution is located have to be necessarily admitted in a larger measure because they constitute the religious minority group as far as that state is concerned. In other words the predominance of religious minority students hailing from the state in which the minority educational institution is located should be present. Sprinkling of the non-minority students in the student population of minority educational institution is expected to be only peripheral either for generating additional financial source or for cultural courtesy. Thus, a substantive section of student population in minority educational institution should belong to the minority of the state in which such an educational institution is located.

Bearing in mind the aforesaid proposition of law enunciated by their lordships of the Supreme Court in the aforesaid cases, we may answer the question under reference as under: -

- (1) That under Section 12C(b) of the National Commission for Minority Educational Institutions Act, the State Government can prescribe percentage of the minority community to be admitted in a minority educational institution taking into account the population and educational needs of the area in which the institution is located. There cannot be a common rule or regulation or order in respect of types of educational institutions from primary to college level and for the entire state fixing a uniform ceiling in the matter of admission of students in minority educational institutions.

As has been held by the Supreme Court in T.M.A. Pai Foundation (supra) “what would be a reasonable extent would depend upon variable factors, and it may not be advisable to fix any specific percentage. The situation would vary according to the type of institution and the nature of education that is being imparted in the institution. Usually, at the school level, although it may be possible to fill up all the seats with students of the minority group, at the higher level, either in colleges or in technical institutions, it may not be possible to fill up all the seats with the students of the minority group. However, even if it is not possible to fill up all the seats with students of the minority group, the moment the institution is granted aid, the institution will have to admit students of non-minority group to a reasonable extent whereby the character of the institution is not annihilated and at

the same time, the rights of the citizen engrafted under Article 29 (2) are not subverted. It is for this reason that a variable percentage of admission of minority students depending on the type of institution and education is desirable and indeed necessary, to promote the Constitutional guarantees enshrined in both Article 29(2) and Article 30". Thus, a balance has to be kept between the two objectives – preserving the right of the minorities to admit students of their own community and that of admitting "sprinkling of outsiders" in their institutions subject to the condition that the manner and number of such admissions should not be violative of the minority character of the institution.

- (2) That the minority educational institution must primarily cater to the requirements of the minority of that state in which the institution is located. However, to borrow the words of Chief Justice S.R. Dass in Kerala Education Bill, "a sprinkling of that minority from the other States on the same footing as a sprinkling of non-minority students would be permissible and would not deprive the institution of its essential character of being a minority institution, determined by reference to that State as a unit".
- (3) That substantive section of student population in the minority educational institution should belong to the minority. Sprinkling of non-minority students in the student population of minority educational institution is expected to be only peripheral either for generating additional financial resources or for cultural courtesy. The predominance of religious minority students hailing from the State in which the minority educational institution is located should be present. If it is not possible to fill up all the seats of the students reserved for minority group of the state in which the institution is located, then it can admit students of minority group of the adjoining states.
- (4) That as has been held by the Supreme Court in P.A. Inamdar's case (supra) that "neither the policy of reservation can be enforced nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority educational institution". In other words, a minority educational institution cannot be forced to submit to seat sharing and reservation policy of the State.
- (5) That management of a minority educational institution can exercise its right to admit students of its choice guaranteed under Article 30(1) of the Constitution by selecting students of the minority community from out of the list of successful candidates prepared at Central Entrance Test without altering the order of merit *inter se* of the students so chosen.

## CHAPTER 9 – STUDIES UNDERTAKEN BY THE COMMISSION

Sub-sections (d) and (g) of Section 11 of the National Commission for Minority Educational Institutions Act, 2004 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 Sections the 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 project due to inadequate staff. The Commission has requested the Government to provide additional staff and projects would be undertaken after additional staff is in position. Large number of applications were received during the year and the Commission gave priority for disposal of the cases. After making analysis of complaints/petitions received and on the basis of examination of various rules and regulations notified by the State Governments the Commission has issued guidelines for determination of Minority Status, Recognition, Affiliation and related matters in respect of Minority Educational Institutions under the Constitution of India. Copies of these guidelines are available in the Commission's Office and its website.

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 and those belonging to the backward castes and classes of our society. The Commission also found that the dismal state of affairs of educational facilities available for the poorer sections of all the minority communities has to be addressed properly. Education of girl child has been found to be one of the priority area especially with the backwardness and social taboos attached. The girl child in the Muslim community has become worst sufferer. For addressing this disturbing scenario, Commission constituted a committee of eminent women educationists to recommend ways and means for ameliorating the bleak situation.

2. The Commission therefore constituted a Committee on Girl's Education to study the inadequacies in girl's education especially belonging to the muslim community. The Committee was constituted on 7<sup>th</sup> January, 2010 and consisted of the following six members :-



- (1) Dr. Shabistan Gaffar, Honorary Chairperson
- (2) Mrs. Abeda P. Inamdar, Honorary Member
- (3) Mrs. Atiya Mushtaque, Honorary Member
- (4) Dr. Seema Wahab, Honorary Member
- (5) Dr. Sheeba Aslam, Honorary Member
- (6) Dr. Karan Gabriel, Honorary Member

Later on the Commission added following three Members to the Committee :-

- (1) Dr. Sumayaa, Honorary Member
  - (2) Prof. Najma Akhtar, Honorary Member
  - (3) Dr. P.A. Fathima, Honorary Member
3. 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 appropriately.

## **CHAPTER 10 – RECOMMENDATION FOR THE 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 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. Muslims 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.

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

interest of the particular community but also by the contributions made by the institution towards improving academic excellence and the quality of life and social harmony of all people in the locality.

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

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

The index of the educational development of a community is, perhaps, the most significant factor in shaping public perceptions about its participation in nation building which, in turn, defines its image and respectability in public life. The obverse of participation is alienation. To fail to promote integration and empowerment is to effect, albeit unwittingly, developmental paralysis and emotional alienation. Education has been widely recognized as a powerful tool for unity and 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 involve and 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".

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

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

Article 30 of the Constitution is the bedrock on which stands the rights of the minorities to establish educational institutions of their choice.

A stream 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."

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.

It has been observed by the Supreme Court in a judgment reported in AIR 1958 SC 956 at page 990, the Constitution gives minorities two distinct rights, one a positive and the other a negative one, viz. (i) the State is under a positive obligation to give equal treatment in the matter of aid, recognition to all educational institutions including those of minorities, religious or linguistic; and (ii) the State is under a negative obligation as regards those institutions not to prohibit their establishment or interfere with their administration.

The right to administer in terms of Article 30(1) of the Constitution means the right to manage and conduct the affairs of the institution. It includes the right to choose its governing body and the right to selection of teaching and non-teaching staff and the right to admit students of its choice. All these rights together form the integrated concept of right to administer. The concept of administration within the meaning of Article 30(1) of the Constitution includes the choice in admitting the students. The right to admit the students of its choice is perhaps the most important facet of the right to administer educational institution and the imposition of any trammel thereon except to the extent of prescribing requisite qualification of eligibility is constitutionally impermissible. The right under Article 30(1) of the Constitution can neither be taken away nor abridged by the State on account of the injunction of Article 13 of the Constitution. The power of regulation of the authorities cannot render these core rights a teasing illusion or a promise of unreality.

It has to be borne in mind that through Article 13 of the Constitution it is provided that State cannot make any laws, rules and regulations that are contrary to part III of the Constitution. The framers of the Constitution have build a wall around certain parts of the fundamental rights which have to be remained forever, limiting ability of majority to intrude upon them. That wall is the basic structure adopted. In other words Article 13 declares that any law in breach of the fundamental right would be void to the extent of such violation. The impact of the impugned action shall have to be tested on the touchstone of rights and freedom guaranteed by Part IIIrd of the Constitution.

An educational institution is established to subserve or advance the purpose for its establishment. Whereas the minorities have the right to establish and administer educational institutions of their choice with the desire that their children should be brought up properly and be eligible for higher education and go all over the world fully equipped with such intellectual attainments as it will make them fit for entering

the public service, surely then there must be implicit in such a fundamental right the corresponding duty to cater to the needs of the children of their own community. The beneficiary of such a fundamental right should be allowed to enjoy it in the fullest measure. Therefore, the educational institutions of their choice will necessarily cater to the needs of the minority community which had established the institution.

The right under Article 30 of the Constitution is preferential right of minority educational institution to admit students of its choice. This obligation is intended to ensure that the institution retains its minority character by achieving the twin objects of Article 30(1), enabling the minority community to conserve its religion and language and to give a thorough, good general education to children belonging to such minority community. So long as the institution retains its essential character by achieving the said objectives, it would remain a minority institution. The T.M.A. Pai Foundation and P.A. Inamdar case (supra) unanimous on the view that in order to retain its minority character, it is essential for a minority educational institution to admit sufficient number of students from the minority community which has established it. Emphasizing the need for preserving its minority character so as to enjoy the privilege of protection of Article 30(1), it is necessary that the objective of establishing the institution was not defeated. In other words, a minority educational institution must primarily cater to the requirements of that minority else its character of minority institution is lost. That being so, bulk of majority of admission of students has to be from minority community which has established the institution. It has been held in St. Stephen College vs. University of Delhi (1992) 1 SCC 558 that the minorities have the right to admit their own candidates to maintain minority character of their institution. That is a necessary concomitant right which flows from the right to establish and administer educational institutions under Article 30(1) of the Constitution. There is also a related right to the parents in the minority communities. The parents are entitled to have their children educated in institutions having an atmosphere congenial to their own religion.



## CHAPTER 12 – CONCLUSIONS

1. The primary responsibility for 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 States, the approach has been lethargic. Commission has also found that the officials concerned have not been sensitized about the rights guaranteed to minorities 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 laid 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 has brought out appropriate guidelines for the determination of minority status. The Guidelines relate to determination of Minority Status, Recognition, Affiliation and related matters in respect of Minority Educational Institutions under the Constitution of India. These guidelines have been sent to all the State Governments and Union Territories for their guidance and have also been uploaded on the website of the Commission. These guidelines have been prepared on the basis of the pronouncements made in various judgments of the apex courts. It is hoped that these guidelines are taken into consideration by the various State Government authorities for making appropriate changes in the rules and regulations notified by them.
2. It is the duty of all the State Governments and Union Territories to establish a single-window system for grant of minority status certificate. Decentralisation can be considered for receipt of applications at District/ Zilla Parishad/ Taluka levels where, after receipt of application, scrutiny/ inspection can be done within a time-bound period before forwarding the application to the nodal authority for grant of minority status certificate. All State Governments and Union Territories should set up such a mechanism and give wide publicity to it.
3. Some State Government authorities grant minority status certificate only for a temporary period. Commission has clearly pointed out that minority status certificate cannot be granted for a short period.

As has been held by the Madras High Court in T.K.V.T.S.S. Medical Educational & Charitable Trust vs. State of Tamil Nadu AIR 2002 Madras 42 that minority status can not be conferred on a minority educational institution for particular period to be renewed periodically like a driving license. It is not open for the State

Government to review its earlier orders conferring minority status on a minority educational institution unless it is shown that the institution concerned has suppressed any material fact while passing the order of conferral of minority status or there is fundamental change of circumstances warranting cancellation of the earlier order. Reference may, in this connection, be made to the following observations of their lordships : -

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

(emphasis supplied)

Accordingly, Commission recommends to the State Governments that minority status certificate should be granted on a permanent basis which can be withdrawn or cancelled only after following due process of law.

4. Many instances have been brought to the notice of the Commission where statutes, rules and regulations made by the State Government are inconsistent with the provisions of Article 30. The Apex Court in its various judgements has 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 ensure that amendments are carried out, if necessary, to bring them in consonance with the rights enshrined under Article 30 of the Constitution.
5. Instances have also been brought to the notice of the Commission about the inconsistencies of the rules and regulations made by many regulatory authorities which are not in tune with the provisions of Article 30 (1). The apex court in its various judgments have clearly pointed out the rights enshrined in Article 30 (1). Commission requests the Central Government to

look into the rules and regulations made by the Central regulatory authorities in education like U.G.C., AICTE, N.C.T.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.

6. Many instances have been brought to the notice of the Commission where the State Governments are reluctant to grant recognition to new educational institutions established by minority communities. Commission has observed that such tendency is primarily based on reluctance to provide grant-in-aid. There were instances where the State Government wanted to withdraw from its role to provide grant-in-aid. While grant-in-aid is not a constitutional imperative, Commission has observed that in many cases the minority educational institutions located in rural, remote and tribal areas cannot be asked to fend for themselves as it is impossible to collect fee from the poorer sections of the society. Without the financial aid from the State Government, it will be difficult for such educational institutions to sustain themselves and provide reasonable standards of education. Needless to mention here, that the teachers at least should be paid a subsistence salary. In many remote and under-developed areas educational institutions run by the minority communities are the only rays of hope for the poor people. The State has a duty to support and strengthen such institutions especially with reference to the constitutional mandate to provide free and universal education for all children in the age group of 6-14 years enshrined under Article 21 A. In the context of the operationalisation of the 'Right of Children to Free and Compulsory Education Act 2009', it is imperative that more educational institutions have to be set up in remote and rural areas for easy accessibility to students. States should not shy away from this constitutional responsibility. It is, therefore, recommended that State Governments should be directed to provide grants-in-aid to minority educational institutions located in far flung, remote, tribal and under-developed areas.
7. Commission has recommended to the Central Government to establish a Central Madarsa Board for coordinating and standardizing the Madarsa system of education and also for its integrated development and mainstreaming. The Board to be established as autonomous body, should be through an Act of Parliament, which would be duly insulated from the Governmental 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

room whatsoever for any reasonable anxiety on the part of the clerics and the self-styled custodians 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 at the earliest as it will certainly bring a qualitative change in the given situation.