महाराष्ट्र शासन

क्रमांक: शासकीय तंत्रनिकेतन/[illegible]/
प्रति-५
प्राचार्य व सदस्य सचिव, जागा
तंत्रनिकेतन विकास
शिवाजीनगर, विद्यानगर, पुणे
पुणे ४११००५
दिनांक: २८ जुलै, १९९७

प्रति,

मुख्याधिकारी,
नेमाणी मिश्रधातू,
कोल्हापूर.

विषय - आयोगाकडे शिक्षक संकेतांक मागणी प्रस्ताव.
मी. ऐ.-तिं.नि. मार्गदर्शक, कोल्हापूर.

महोदय,

मी येथील मान्यताप्राप्त [illegible] शासकीय तंत्रनिकेतनची शैक्षणिक [illegible] - शिक्षक [illegible] / महाविद्या. दिनांक [illegible] पासून [illegible] आजपर्यंत [illegible] सेवेत [illegible] - सेवा [illegible] - शिक्षक [illegible] / शाखा-[illegible]. दिनांक [illegible] पासून [illegible] मान्यताप्राप्त [illegible] - [illegible] शाखा सुरू - [illegible] आवश्यकता [illegible] शिक्षक [illegible] - [illegible] शाखा [illegible] - [illegible] आहे. सदरील [illegible] या अनुषंगाने आपल्या [illegible] संकेतांक खालील [illegible] - [illegible] शिक्षक [illegible] मान्यता [illegible] आहे :-

[१] [illegible] - [illegible] - [illegible], कोल्हापूर
[२] [illegible] - [illegible] - [illegible]

आपला विश्वासू,

[illegible]

([illegible])
[illegible] - [illegible]

प्रत - [illegible], [illegible], [illegible] [illegible] पुणे [illegible] - [illegible]
[illegible] [illegible] [illegible]

[illegible] - [illegible]

[illegible]

महाराष्ट्र शासन

पुलिस(परीक्षण १८८/५२४८/प्रा.वि-२(३)
विभाग व जिल्हामोल विभाग,
मंत्रालय विस्तार भवन,मुंबई-४०० ०३२.
दिनांक:- फेब्रुवारी, १९८८.

प्रति,
विनती,
श्री.विलास बन्नाजीराव पिंपळे वि
राजाराम,वार्ताहर,नागपुर-१

विषय:- अपर जिल्हाधिकारी जिल्हा स्थापन करणेबाबत अभिप्राय.

महोदय,

आपला दिनांक २८.६.१९८८ चा पत्र ज्यामध्ये अपर जिल्हाधिकारी नागपुर यांच्या अभिप्राय मिळणेबाबत विनंती केली होती, महाराष्ट्र शासन (गृह विभाग) यांच्याकडील ज्ञापन क्रमांक १८७० दिनांक ३(१२) यामधील आपल्या मागणीचे अनुषंगाने जिल्हा स्थापन करण्याबाबत शासन दिनांक ३(१) या आदेशान्वये शासनाने निर्णय घेतलेला असल्याने आपली मागणी शासनाने विचारात घेतली असल्याची नोंद घ्यावी.

आपला विश्वासू,

[वी. व्यंक० पिंपे]
उप सचिव, महाराष्ट्र शासन

प्रत माहितीस्तव:
जिल्हा कोषागार,महाराष्ट्र राज्य,पुणे
जिल्हा उपकोषागार,पुणे जिल्हा,पुणे यांना त्यांच्या ज्ञापन:संकीर्ण-३/पुणे ४९-८७/प्रकरण, दि. २०.१२.१९८६ च्या संदर्भात माहितीस्तव.
जिल्हा कोषागार(संकलित), जिल्हा परिषद, नागपुर यांना त्यांच्या ज्ञापन:जिपो जिकरा/लेखा-६/१९९८, दि. ७.१.८७ च्या संदर्भात रवाना.

विश्वासू/

[illegible]

अंशदायी पेंशन खात्याच्या मान्यतेचे प्रमाणपत्र

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

ITEM NO.2X COURT NO.4 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 28287/2018
(Arising out of impugned final judgment and order dated 12-10-2017 in WP No. 1726/2001 passed by the High Court Of Judicature At Bombay)

THE STATE OF MAHARASHTRA Petitioner(s)

VERSUS

ST. XAVIER'S COLLEGE & ORS. Respondent(s)

WITH Diary No(s). 23418/2018 (IX)

Date : 13-07-2018 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE KURIAN JOSEPH
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Petitioner(s) Mr. P.S. Narsimha,ASG
Mr. Navin Prakash, AOR
Mr. Rui Rodrigues,Adv.
Ms. Neelu Singh,Adv.
Mr. Rahul Tanwani,Adv.
Mr. V.C. Shukla,Adv.

Mr. Atmaram N.S. Nadkarni,ASG
Mr. Nishant Ramakantrao Katneshwarkar, AOR

For Respondent(s) Mr. Darius Khambata,Sr.Adv.
Mr. C. Rashmi Kant,Adv.
Mr. Mahesh Agarwal,Adv.
Mr. Rishi Agrawala,Adv.
Mr. Ankur Saigal Adv.
Mr. Jay Chhabaria,Adv.
Ms. Gunika Gupta,Adv.
Mr. E.C. Agrawala, AOR

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

We find no reason to entertain these special leave petitions, which are, accordingly, dismissed.

Pending application(s), if any, shall stand disposed of.

(NARENDRA PRASAD)
COURT MASTER

(RENU DIWAN)
ASSISTANT REGISTRAR

vdj

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.68 OF 2013
IN
WRIT PETITION NO.1515 OF 2013

Maharashtra Association of Minority
Education Institutions & Anr. ..Applicants /
..Petitioners

IN THE MATTER OF :

Maharashtra Association of Minority
Education Institutions & Anr. ..Petitioners
V/s.
The State of Maharashtra & Ors. ..Respondents

Mr.Aspi Chinoy, Senior Counsel with Mr.Gaurav Joshi, Mr.Piyush Raheja, Mr.Jal Chinoy & Mr.R.P. Carvalho i/b M/s.Federal & Rustomkant for the Petitioners.

Ms.Geeta Shastri, Additional Government Pleader for the State - Respondent Nos.1 and 2

Mr.Rui Rodrigues for Respondent Nos.3 and 4

CORAM : S.J. VAZIFDAR &
R.Y. GANOO, JJ.
DATE : 24TH APRIL, 2013.

P.C. :-

1. The above writ petition was filed on 05.07.2012. By an order dated 01.11.2012 the Division Bench directed it to be placed for final hearing on 13.12.2012. We would normally not have

entertained the issue of notice for interim relief and would have directed the parties to await the final hearing of the writ petition itself. We are however satisfied that during the interim period even this day to day functioning of the petitioners' members who are minority education institutions is being considerably hampered and prejudiced. As the petitioners have a strong *prima-facie* case in view of several judgments of the Supreme Court and a judgment of a Division Bench of the Madras High Court in respect of the provisions impugned in this petition, we have granted the interim reliefs sought. Moreover the conditions which we have imposed protect the respondents' interests in the event of the petition being dismissed.

2. The petitioners have essentially sought a declaration that Government Resolutions dated 11.02.2011 and 30.01.2012 and a University Circular dated 22.02.2012 are ultra-vires the Constitution of India, and are not applicable to minority institutions covered by Article 30 of the Constitution of India. The petitioners have made out more than just a strong prima-facie case that the impugned provisions impinge upon the rights of their members – minority aided institutions – to appoint principals and teachers of their choice.

3. In force tailor to the impugned G.R's and the circular were Statute Nos.412 and 417 dated 14.08.2008 issued by respondent No.2 – University of Mumbai. They prescribed the mode and manner

of the appointment of principals and the selection of teachers in colleges. The proviso to each of the Statutes however provided that the colleges established and administered by the minority managements covered by Article 30(1) of the Constitution of India could form their own selection committees and the provisions of the Statutes would not be applicable to their cases.

4. On 30.06.2010 respondent No.3 – University Grants Commission in supersession of the Regulations of 2000 framed the University Grants Commission (Minimum qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2010. The petitioners have challenged Regulations 5.1.4, 5.1.5 and 5.1.6 thereof, which read as under :-

> **"5.1.4 Assistant Professor in Colleges including Private Colleges:**
>
> (a) The Selection Committee for the post of Assistant Professor in Colleges including Private Colleges shall have the following composition:
>
> 1. Chairperson of the Governing Body of the college or his/her nominee from among the members of the Governing body to be the Chairperson of the Selection Committee
>
> 2. The Principal of the College
>
> 3. Head of the Department of the concerned subject in the College

4 Two nominees of the Vice Chancellor of the affiliating university of whom one should be a subject expert. In case of colleges notified/declared as minority educational institutions, two nominees of the Chairperson of the college from out of a panel of five names, preferably from minority communities, recommended by the Vice Chancellor of the affiliating university from the list of experts suggested by the relevant statutory body of the college, of whom one should be a subject expert.

5. Two subject experts not connected with the college to be nominated by the Chairperson of the governing body of the college out of a panel of five names recommended by the Vice Chancellor from the list of subject experts approved by the relevant statutory body of the university concerned. In case of colleges notified/declared as minority educational institutions two subject experts not connected with the University to be nominated by the Chairperson of the Government Body of the college out of the panel of five names, preferably from minority communities, recommended by the Vice chancellor from the list of subject experts approved by the relevant statutory body of the college.

6. An academician representing SC/ST/OBC/Minority/Women/ Differently abled categories if any of candidates representing these categories is the applicant, to be nominated by the Vice Chancellor. If any of the above members of the selection committee do not belong to this category.

(b) To constitute the quorum for the meeting, five of which at least two must be from out of the three subject experts shall be present.

(c) For all levels of teaching positions in Government colleges the State Public Services Commissions / Teaching Recruitment Boards must invite these subject experts for which the concerned University, be involved in the selection process by the State PSC.

(d) For all levels of teaching positions in Constituent college(s) of a university, the selection committee norms shall be similar to that of the posts of departments of the university.

5.1.5 Associate Professor in Colleges including Private Colleges

(a) The Selection Committee for the post of Associate Professor in Colleges including Private Colleges shall have the following composition:

1. The Chairperson of the Governing Body or his or her nominee, from among the members of the Governing body to be the Chairperson of the Selection Committee.

2. The Principal of the College.

3. The head of the Department of the concerned subject from the college.

4. Two University representatives nominated by the Vice Chancellor, one of whom will be the Dean of College Development Council or equivalent position in the University and the other must be expert in the concerned subject. In case of College notified/declared as minority educational institutions, first nominee of the Chairperson of the College from out of a panel of five names preferably from minority communities, recommended by the Vice-Chancellor of the affiliating university, from the list of experts suggested by the relevant statutory body of the college of whom one should be a subject expert.

5. Two subject experts not connected with the college to be nominated by the Chairperson of the governing body of the college, out of a panel of five names recommended by the Vice Chancellor from the list of subject experts approved by the relevant statutory body of the university concerned. In case of colleges notified/declared as minority educational institutions, two subject experts not

connected with the University to be nominated by the Chairperson of the Governing Body of the College out of the panel of five names preferably from minority communities recommended by the Vice Chancellor from the list of subject experts approved by the relevant statutory body of the College.

(c) An academician representing SC/ST/OBC/ minority/Women Differently-abled categories, if any of candidates representing these categories is the applicant to be nominated by the Vice Chancellor. If any of the above members of the selection committee do not belong to this category.

(b) The quorum for the meeting should be five of which, not less than two must be from out of the three subject experts.

5.1.6 College Principal

(a) The Selection Committee for the post of College Principal shall have the following composition:

1. Chairperson of the Governing Body as Chairperson.

2. Two nominees of the Governing Body of the college to be nominated by the Chairperson of whom one shall be an expert in academic administration.

3. One nominee of the Vice Chancellor who shall be a Higher Education expert in case of Colleges notified/declared as minority educational institution, one nominee of the Chairperson of the College from out of a panel of five names, preferably from minority communities, recommended by the Vice-Chancellor of the affiliating university of whom one should be a subject expert.

4. Three experts consisting of the Principal of a college, a Professor and an accomplished educationist not below the rank of a Professor to be nominated by the Governing Body of the college) out

of a panel of six experts approved by the relevant statutory body of the university concerned.

5. An academician representing SC/ST/OBC/Minority/Women/ Differently-abled categories. If any of candidates representing these categories is the applicant, to be nominated by the Vice Chancellor if any of the above members of the selection committee do not belong to that category.

(b) At least five members including two experts should constitute the quorum

(c) All the selection procedures of the selection committee shall be completed on the day of the selection committee meeting itself, wherein, minutes are recorded along with the scoring proforma and recommendation made on the basis of merit with the list of selected and waitlisted candidates/Panel of names in order of merit, duly signed by all members of the selection committee.

(d) The term of appointment of the college principal shall be FIVE years with eligibility for reappointment for one more term only after a similar selection committee process."

8. On 05.01.2011, a Division Bench of the Madras High Court decided the case of *Forum of Minority Institutions and Associations vs. State of T.N.* [2011] 2 M.L.J. 641. We will refer to the judgment in detail later. Suffice it to note at this stage that in that case the petitioners had challenged the 2000 Regulations. The Division Bench, however, noted in detail the 2010 Regulations and remarked that the same had also been challenged. After referring to the judgments, some of which we will also refer to, the Division Bench declared that the impugned Regulations for constitution of the

selection committees shall not be applied to the minority institutions and issued a writ of mandamus directing the respondents to approve the selection made by the minority institutions without reference to clause 8 of the 2000 Regulations subject to the applicant candidates having the prescribed qualifications, experience etc.

8(A) By paragraph 3 of the impugned G.R. dated 05.12.2011, respondent No.1 passed an order accepting inter-alia the above recommendations and directives contained in the UGC notification dated 30.06.2010 without any change.

(B) The impugned G.R Dated 30.01.2012 provided inter-alia as follows:

> "4. In view of the facts mentioned in above Preface, Government is taking decision as under :-
>
> (1) As per University Grants Commission's Notification dated 30.6.2010 in the Selection Committee prescribed for selection of teachers/Principals in Non-agricultural Universities, Colleges and institutions and in the Selection Committee prescribed for Career Advancement Scheme (CAS) concerned Joint Director of Education to included the Government representative.
>
> (2) Selection of Teachers in the absence of Government Representative be held as invalid.
>
> (3) Regional Joint Director of Education should remain present in person for meetings of Selection Committee. Under exceptional circumstances a representative nominated by the Regional Joint Director of Education may remain present for the meeting.

(4) Points mentioned in the Government Circular dated 15.1.2001 in this regard be strictly followed

(5) This Government Resolution has been made available on Government of Maharashtra web site – www.maharashtra.gov.in and its code number is 201201310440451405001.

(c) By the impugned circular dated 22.02.2012 the University of Mumbai – respondent No.4 informed all the Principals about the G.R. dated 30.01.2012.

7. Mr.Dhody, the learned senior counsel appearing on behalf of the petitioners members submitted that the above provisions impinge upon the rights of the petitioners members to select candidates of their choice.

8. In *T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 at page 557* a bench of 11 learned Judges of the Supreme Court referring to the judgment of the Supreme Court in *Ahmedabad St. Xavier's College Society v. State of Gujarat (1974) 1 SCC 717* held as under :-

> "116. While considering the right of the religious and linguistic minorities to administer their educational institutions, it was observed by Ray, C.J. at SCR p. 734, as follows: (SCC pp. 745-46, para 19)
>
> "The right to administer is said to consist of four principal matters. First is the right to choose its managing or governing body. It is said that the founders of the minority institution have faith and

confidence to their own committee or body consisting of persons elected by them. Second is the right to choose the teachers. It is said that minority institutions want teachers to have sympathy with the ideals, aims and aspirations of the institution. ——"

123. After referring to the earlier cases in relation to the appointment of teachers, it was noted by Khanna, J., that the conclusion which followed was that a law which interfered with a minority's choice of qualified teachers or its disciplinary control over teachers and other members of the staff of the institution was void as it was violative of Article 30(1). While it was permissible for the State and its educational authorities to prescribe the qualifications of teachers, it was held that once the teachers possessing the requisite qualifications were selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The selection and appointment of teachers by an educational institution was regarded as one of the essential ingredients under Article 30(1). The Court's attention was drawn to the fact that in *Kerala Education Bill, 1957 case* [1959 SCR 995] the Court had opined that clauses 11 and 12 made it obligatory for all aided schools to select teachers from a panel selected from each district by the Public Service Commission and that no teacher of an aided school could be dismissed/ removed or reduced in rank without the previous sanction of the authorised officer. At SCC p. 792, Khanna, J. observed that in cases subsequent to the opinion in Kerala Education Bill, 1957 case the Court had held similar provisions as clause 11 and clause 12 to be violative of Article 30(1) (as in the case of the minority institutions. He then observed as follows: (SCC p. 792, para 119)

"The opinion expressed by this Court in Re Kerala Education Bill, 1957 was of an advisory character and though great weight should be attached to it because of its persuasive value, the said opinion cannot override the opinion subsequently expressed by this Court in contested cases. It is the law declared by this

Court in the subsequent contested cases which would have a binding effect. The words as at present advised as well as the preceding sentence indicate that the view expressed by this Court in *Re Kerala Education Bill* 1957 in this respect was hesitant and tentative and not a final view in the matter.

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

Q.5. (c) 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, teachers and principals including their service conditions and fixation of fees etc. would interfere with the right of administration of minorities?

4. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimum and the conditions of recognition as well as the conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management like the appointment of staff, teaching and non-teaching and administrative control over them, the management should have the freedom and

there should not be any external consulting agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

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 of 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.

Fees to be charged by unaided institutions cannot be regulated but an institution should charge capitation fee." (emphasis supplied)

In *Sindhi Education Society & Anr. vs. Chief Secretary, Government of NCT of Delhi & Ors. (2010) 8 SCC 49*, the Supreme Court clarified that the majority judgment in T.M.A. Pai Foundation was only upto paragraph 161.

In (2007) 1 SCC 358, it was clarified that paragraphs 72 and 73 of the judgment in *T.M.A. Pai Foundation* do not apply to the minority institutions.

9 The impugned provisions impinge upon the rights of

minority institutions to select the principals and teachers of their choice. The impugned provisions clearly do not permit the minority aided institutions a free hand in selecting the persons of their choice. Even assuming that the nominees of the selection committee are chosen by the petitioners' members, it would make no difference for by the impugned provisions, the persons of the petitioners' choice may well not be appointed. As held in T.M.A. Pai Foundation, a law which interferes with the majority institutions' choice of qualified teachers is void. So long as the teachers have the prescribed qualifications, they must be left to select the persons of their choice.

10. This brings us back to the judgment of the Division Bench of the Madras High Court in *Forum of Minority Institutions & Associations vs. State of T.N. (2013) 2 MLJ 640*. The petitioners had challenged the UGC Regulations 2000. Clause 3 of the Annexure to the UGC Regulations 2000 pertained to the minimum qualification for appointment and career advancement of teachers in universities and colleges. Clause 6 thereof provided for selection committees recommended by UGC for posts of lecturer, university lecturer, reader, professor and principal. Although the provisions of clause 6 were different from the provisions impugned in the present case, they also provided for selection committees which included the nominees of the Vice Chancellor and subject experts not connected with the

colleges nominated by the Chairperson of the governing body within the panels of the names approved by the Vice Chancellor. In paragraph 10, the Division Bench noted that during the pendency of the writ petition UGC Regulations of 2010 impugned before us had been framed. After setting out the same, the Division Bench noted that these regulations had also been challenged on the facts and grounds stated therein.

It was contended on behalf of the respondents, as noted in paragraphs 33 and 37 of the judgment that the amended Regulations of 2010 did not take away the rights of the administration of institutions as all the members of the selection committees would be from the panel of the names suggested by the concerned minority institutions.

After considering various judgments including the above judgment in *T.M.A. Pai Foundation* and the judgment of the Supreme Court in *Ahmedabad St. Xaviers College Society vs. State of Gujarat & Anr.* AIR 1974 SC 1389, the Division Bench held as under:-

> "38. In view of the settled proposition of law, the contention of learned counsel for the University Grants Commission that by way of amendment of regulations, independence has been given to the minority institutions to select their own people within & outside maintenance as the right of appointment of teachers and qualified teachers is to be left to the minority institutions alone cannot be accepted, as the process of selection of teachers cannot be fully regulated, as it would amount to interference to

administration of minority institutions.

63. The contention of the learned counsel for the respondents that regulations are in public interest to maintain standard of education also cannot be accepted as the appointment of qualified teachers as per the qualification prescribed by the University Grants Commission by the minority institutions cannot be said to violate the public interest, nor it can be said that the educational standard would not be maintained.

62. The right of minority institutions under Section 30 is absolute right being basic structure of the Constitution and therefore any legislation interfering with the right of administration would not be applicable to the minority institutions, being violative of Article 30(1) of the Constitution.

63. The contention that right to administration does not include right to maladministration also cannot be accepted as the minority institutions would be bound by qualification laid down for appointment of teachers and also would be bound to follow other statutory laws necessary for running their institutions to maintain educational standard. The only restriction placed is with regard to the right to interfere in the selection of staff of the minority institutions.

64. Once the right of appointment of teachers is taken to be the right of administration which is not even disputed by the respondents, no other conclusion than the one that the impugned legislations would not apply to minority institutions can be arrived at.

65. This Court is bound by the law laid down by the Hon'ble Supreme Court even in case where the question is referred to Constitutional Bench as in the case of *State of Rajasthan v. R.S. Shahnis and Co.* [1985] 4 SCC 353 the Hon'ble Supreme Court was pleased to consider question with regard to the applicability of law when the matter was referred to the Constitutional Bench and it was held as under:

"7. It was contended before us that the question whether on the ground of absence of reasons, the award is bad per se is pending consideration by a Constitution Bench of this Court in C.A. Nos. 3137-39 of 1988, 3148 of 1988 – *Jaipur Development Authority v. Ram Chiklhamal Contractor*. It was hence urged that this should await adjudication on the point by the Constitution Bench. We are unable to accept this contention. In our opinion pendency of this question should not postpone all decision by this Court. One of the cardinal principles of the administration of justice is to ensure quick disposal of disputes in accordance with law, justice and equity. In the instant case, the proceedings have been long protracted. Indeed, the learned Judge of the High Court, after narrating the incidents from 1975 to 1985 concluded in his judgment in March 1988 that was the end of the journey. He was wrong. That was only the end of a chapter in the journey and the appellant went to begin another chapter in the journey on the plea that the award is not a reasoned one. The bargaining between the parties was entered into in 1974-75 but the award was made on 9.12.1985 i.e. a decade after the beginning of the transaction.

For the reasons stated, the writ petitions are allowed and declaration is issued, that the impugned regulations for constitution of selection committee shall not be applicable to the minority institutions. Consequently writ in nature of *mandamus* is issued directing the respondents to approve the selection made by the minority institutions without reference to Clause 3 of annexure to UGC Regulations, 2000, subject to the selected candidates fulfilling other qualifications, experience etc. No costs. Consequently all the connected miscellaneous petitions are closed."

11. The Division Bench expressly noted in paragraph 11 that the 2010 Regulations had also been challenged. The operative part of the judgment specifically refers only to clause 3 of the Annexure to

the UGC Regulations of 2000 for the 2010 Regulations were brought into force during the pendency of the writ petition. Even assuming that the operative part of the judgment does not affect 2010 Regulations the judgment read in a whole supports the petitioners' case even regarding the 2010 Regulations.

12. Of the other judgments relied upon by Mr Chinoy, we need only mention that paragraphs 89, 90, 97 to 101 and 111 of the judgment of the Supreme Court in Sindhi Education Society v. Government (NCT of Delhi) (2010) 8 SCC 49, support the petitioner's case.

13. The judgment of a Division Bench of the Delhi High Court dated 30.11.2006 in *Jesus & Mary College, Delhi Vs University of Delhi & Anr. [Writ Petition (C) No.552/2006 & CM 4548/2006 (Stay)]* takes a contrary view. The impugned provision in that case was clause 7(4A) of Chapter XVIII of the Delhi University Ordinance, which provided that the selection committee should consist of :-

> "(i) The Chairperson of the Governing Body.
>
> (ii) The Principal of the concerned college.
>
> (iii) Two nominees of the Vice-Chancellor of whom one should be a subject expert.
>
> (iv) Two subject experts not connected with the college to be nominated by the Chairperson of the governing body out of a panel approved by the Vice Chancellor.

(v) One senior teacher/Head of the Department of the concerned subject."

After referring to some of the judgment on the point the Division Bench held as under:

"26: We now turn to examine the impugned provision in order to test the petitioner's contentions. At the outset it requires to be understood that the impugned clause 7(4A) of Chapter XVIII envisages the Vice Chancellor nominating two persons on the Selection Committee of whom one is to be a subject expert. Further the Chairperson of the Governing Body of the minority college such as the petitioner nominates two subject experts not connected with the college out of the panel of names approved by the Vice Chancellor. As regards the first category, the University had proposed two names in subjects of Computer Science, Economic, English, Maths, Sociology, Psychology &DE, one of whom was to be the subject expert. As regards the second category, the University has prepared a panel of four names of professors. The choice of nominating two persons from the panel in the second category is still with the Chairperson of the Governing Body and it cannot be said that there is no freedom of choice with the petitioner in this regard. Two nominees nominated by the Vice-Chancellor out of a total of seven cannot be said to give such member any unfair advantage. As regards the first category even though both nominees of are of the Vice Chancellor one is the subject expert who can only ensure a better quality of selection. This can by no means be said to be detrimental to the interests of the minority or their institution. The petitioner has not been able to demonstrate how two persons nominated by the Vice Chancellor from amongst nine persons constituting the Selection Committee can actually override the decisions of the Selection Committee which otherwise is comprised of persons nominated by the petitioner itself, and the nominees of the management command a healthy and overwhelming majority.

> 27. The petitioner has not been able to discharge its onus of proving that Clause 7 (4A) actually infringes the rights of minorities. In our view there is nothing to show that Clause 7(4A) actually violates Article 30(1)."

14. We are however inclined to follow of the single, the judgment of the Division Bench of the Madras High Court for more than one reason.

Firstly, the judgment of the Division Bench deals with the very provisions that fall for our consideration in the present writ petition. If we were not to follow the judgment, it would lead to a situation where the provisions impugned in the writ petition would be applicable to certain States although they have been held to be ultra vires the Constitution of India. Mr.Chinoy relied upon the judgment of the Supreme Court in *Kesoram Inpats & Alloys Ltd. vs. Union of India* (2004) 6 SCC 254. The Supreme Court held as under :-

> "**22.** *The Court must have the requisite territorial jurisdiction. An order passed on a writ petition questioning the constitutionality of a parliamentary Act, whether interim or final, keeping in view the provisions contained in Clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act.*"

In any event such a situation ought, at least ordinarily, to be void.

15. Secondly, the Division Bench of the Delhi High Court has refused to follow the judgment delivered by Mathew, J. and

Chandrachud J. (as their Lordships then were) in The *Ahmedabad St. Xavier's College Society Vs. State of Gujarat (1974) 1 SCC 717*, a judgment of a bench of 9 learned Judges of the Supreme Court. Mathew J. speaking for himself and Chandrachud J. delivered a separate judgment which, agreed with the majority view. In paragraph 182, Mathew J. held as under :-

> "182. It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the principal and to have the teaching conducted by teachers approved by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution. We can perceive no reason why a representative of the University nominated by the vice-Chancellor should be on the Selection Committee for recruiting the Principal or for the existence of head of the department besides the representative of the University being on the Selection Committee for recruiting the members of the teaching staff. So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management. That is part of the fundamental right of the minorities to administer the educational institution established by them."

The judgment of the Division Bench of the Delhi High Court refused to follow the observations on the ground that the view of Mathew J. and Chandrachud J. was not in view of the other five Judges. The Division Bench held as under :-

> "15. Beg J. (as His Lordship then was)

> dissented on this aspect and observed in para 211 (SCC, p.825) that "the mere presence of the representatives of the Vice-Chancellors, the teachers, the members of the non-teaching staff and students of the college would not impinge upon the right to administer." Here again although there is no separate discussion on Section 33A(1)(b), it is clear in para 232 (SCC, p.835) that the provision was not held to be inapplicable to minority institutions. The other dissenting Judge, Beloved J., noted that (para 287, SCC, p.860) that the counsel for the petitioner "abandoned the attack against this provision."
>
> 16. Therefore, by a majority of 7:2, the Hon'ble Supreme Court in St. Xavier's held Section 33A(1)(b) of the Gujarat University Act was violative of Article 30(1). However, of the seven that constituted the majority, only two (Mathew and Chandrachud JJ.) have subscribed to the view in para 182 that there was no reason why there should be a representative of the Vice-Chancellor on the selection committee or a head of the department for recruiting members of the teaching staff. Four of the seven judges (Ray CJ, Palekar J, Jaganmohan Reddy J. and Alagiriswami J.) came to the same conclusion for the reason that there was no indication and guidance in the Act "as to what types of persons could be nominated as the representative." Therefore, it would not be correct to proceed on the footing that the reasoning of Mathew and Chandrachud JJ. in para 182 of the judgment was also the reasoning that weighed with the four of the seven judges constituting the majority."

18. We are with great respect unable to adopt this process of reasonings. The judgment of Mathew J. and Chandrachud J. constituted part of the majority judgment. We seriously doubt whether a High Court can ignore concurring judgment of three Lordships of the Supreme Court on the ground that the other Judges

along with whom they constituted the majority had decided the case on different point. We are therefore, not inclined to ignore the observations of Mathew, J. and Chandrachud, J. in the Ahmedabad St. Xaviers case (supra)

17. The petitioners challenged the judgment of the Delhi High Court before the Supreme Court. The appeal - Civil Appeal No.747 of 2007 was disposed of by the following order of the Supreme Court dated 15.02.2011 -

> "Learned counsel for the appellant submits that in view of the 2010 UGC Regulation, this appeal has become infructuous and may be dismissed as such keeping the question of law open. He further submits that the posts of reader may now be filled in accordance with the 2010 UGC Regulation.
>
> We order accordingly."

The matter was therefore, not decided by the Supreme Court in view of the statement on behalf of the appellants that they would fill in the posts in accordance with the 2010 Regulations.

18. We intend staying the operation of the impugned provisions as a refusal to do so seriously hampers the functioning of the petitioners' members even on a day to day basis. The balance of convenience is in their favour especially having regarding to the conditions upon which we intend granting interim relief.

19. However, as this order is passed only at the interim stage, it is necessary to protect the rights and interests of the respondents

and that parties in the event of the petition being decided against the petitioners.

20 We are inclined to grant the protection sought on behalf of the respondents.

21. In the circumstances, the Notice of Motion is disposed of by the following order :-

i) The notice of motion is made absolute in terms of prayer (a) and (b), which read as under :-

> "(a) that pending the hearing and final disposal of the Petition, this Hon'ble Court be pleased to restrain Respondent Nos.1 and 4 from acting upon para 5.1.4, 5.1.5 and 5.1.6 of the UGC Regulations dated 30th June 2010 relating to "Selection Committees and Selection Procedures" and Government Resolutions dated 15.02.2011 and 30.01.2012 (Exhibits 'D' and 'E' respectively) and University Circulars dated 22.02.2012 and 07.06.2012 accepting the same whilst considering appointments made by Minority educational institutions.
>
> (b) that pending the hearing and final disposal of the Petition, this Hon'ble Court be pleased to Direct the Respondent Nos.4 to reconsider the applications for approval of staff submitted by minority educational institutions which have been disapproved only on the ground of non compliance with the selection procedure stipulated in the UGC regulation dated 30th June 2010 and the Government Resolution dated 15.02.2011 Government Resolution dated 30.01.2012 and/or University Circulars dated 22.02.2012 and 07.06.2012 accepting the same."

ii) The petitioners institutions shall inform each of the persons seeking appointment and appointed that their appointments would be

subject to the result of the writ petition.

iii) The respondents however, shall be at liberty to ratify the appointments even in the event of the petition being dismissed.

iv) By availing of the benefit of this order the petitioners and their members agree and undertake to refund any amounts as may be directed by the Court at the final hearing of the petition.

v) Even in the event of the petitioners being required to refund / return the grant-in-aid in respect of persons appointed pursuant to this order the petitioners shall not in turn seek a refund thereof from them.

Stand over to 24.06.2013 for directions when the parties are at liberty to apply for a fixed date for the final hearing of the Writ Petition.

(R.Y. GANOO, J.) **(S.J. VAZIFDAR, J.)**

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1728 OF 2003

1 St. Xavier's College
through its Principal
Fr. D.M. Dias
Mahapalika Marg,
Mumbai 400 001

2 Maharashtra Association of Minority
Educational Institutes,
a Society registered under the
Societies Registration Act, 1860
through its President and having
its office at Kashinma Road
Thane - 401 104 ..Petitioners

..V/S

1 University of Mumbai
Through its Vice Chancellor
Fort, Mumbai 400 023.

2 The Registrar
University of Mumbai
Fort, Mumbai - 400 023

3 State of Maharashtra
through Government Pleader
Annexe Building, High Court,
Bombay ..Respondents

Dr.Birendra Saraf with Mr.Jai Chhabria, Mr. Vishesh Malpani and Ms.Ayushi Khandpara i/by Federal & Reshmiwala for Petitioners.
Mr.Rui Rodrigues for Respondent Nos.1 & 2.
Mr.Abhay Patki, Addl.Govt.Pleader for Respondent No.3.

CORAM

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CORAM : A.A. SAYED &
M. S. KARNIK, JJ
DATE : 12 OCTOBER 2017

JUDGMENT (Per A A Sayed J)

The challenge in this Petition under Article 226 of the Constitution is to the Circular dated 30-05-2001 issued by the Respondent No.1 University directing reservation for students belonging to backward classes in educational institutions conducting courses in Arts, Commerce, Science and other professional courses, affiliated to the Respondent No.1 University including such educational institutions established and administered by minorities.

2 The Petitioner No.1 is a College established by the Bombay St Xaviers College Association which imparts education to students pursuing degree courses in Arts, Science and Commerce streams, registered under the Societies Registration Act, 1860 and the Bombay Public Trust Act 1950. The Petitioner No.2 is the

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Association of the Educational Institutions registered under the Societies Registration Act, 1860, which are stated to have either religious or minority status. It represents the Colleges enumerated in the list annexed at Exh.A to the Petition. Respondent No.1 is a University constituted under the Bombay Universities Act, 1974 which was replaced by the Maharashtra Universities Act, 1994. Respondent No.2 is the Registrar of the Respondent No.1 University. Respondent No.3 is the State of Maharashtra.

3 The impugned Circular stipulates reservation for students belonging to backward classes for admission to various courses to the extent of 50% of seats by implementing the reservation policy of the Government of Maharashtra as notified vide Government Resolution dated 11-07-1997. The percentage of reservation prescribed is as under:

1	S.C.	13%
2	S.T.	7%
3	D.T. (A)	3%
4	N.T. (B)	2.5%
5	N.T. (C)	3.5%
6	N.T. (D)	2%
7	O.B.C.	19%

The impugned Circular makes a reference to the judgment of the Apex Court in the case of **Shahat H. Musalia and anr. Vs. State of Kerala & ors. JT 1993(4) S.C. 584** and lays down the following criteria for admission and reservation of seats in minority colleges:

> (a) Fifty per cent of the total intake in the minority colleges shall be permitted to be filled up by candidates selected by the agencies of the State Government/University on the basis of centralised admission scheme.
>
> (b) The remaining fifty per cent of the intake may be appropriated by the minority colleges to admit candidates belonging to the particular religious or linguistic minority. However, the selection shall be made strictly on the basis of merit among the candidates seeking admission to the institutions. Such merit shall be determined on the basis of the academic performance at the qualifying examination or on the basis of any objective test that the institution might itself apply to determine such relative and comparing merits or on the basis of performance of the results of the selection tests if such test is held by the State Government/University. It is optional for the minority colleges to adopt any one of these three modes and apply it uniformly.

2. On 15-05-2003 when the Petition came up for admission, the learned Counsel on behalf of the Respondent No.2 University stated before the Court that the impugned Circular relates only to seats other than minority quota and therefore various instructions contained in the impugned Circular will not apply to the minority

quota of 50% as per the decision of the Supreme Court in **St. Stephen's College vs. University of Delhi, 1992 (1) SCC 558**. On 06 June 2002 in a Notice of Motion No. 230 of 2002 taken out by the Petitioners, this Court passed the following order:

> "The Petitioners are permitted to admit minority students to 42 per cent quota of seats strictly on the basis of merits amongst the minority students and 8 per cent seats are reserved for the categories namely (i) Handicapped Students (ii) Children/Children of Freedom Fighters (iii) Children of Defence Personnels ex-servicemen (iv) Children of Parents transferred while working with Central/State Government (v) Sports Domain, State and National (vi) Students having distinguished and exceptional performance in cultural activities mostly on merits. The balance 50 per cent seats should be filled in either through a common entrance test held by the University/State or any such agency or in the event no such common entrance test is provided, the admissions will be based on the merit of performance at the qualifying examination for the admission in such seats by non-minority students. It is made clear that there will be no reservation whatsoever with regard to balance 50 per cent seats (i.e. non-minority quota) however, the candidate from reserved category would be entitled to compete with the other students strictly on merits for merit seats. The learned counsel for the petitioner submit that if some of the minority institutions already reserved category students have been admitted on the basis of reservation to non-minority quota, if any such admissions were granted to reserved category made in the yesterday, the same shall not be disturbed."

The aforesaid order was operated by Court on 25 June 2002 and it was clarified that the 8% reservations for the categories will be out

of the 50% seats in open category and not in the 50% seats meant for minority quota.

5 We called upon learned Additional Government Pleader to state the stand of the Respondent No.3 State of Maharashtra as to whether reservation policy mentioned in the Government Resolution dated 11/07/1997 applied in the minority institutions also. Learned AGP on instructions submits that there is nothing in the Government Resolution dated 11/07/1997 which states that the reservation policy is applicable to minority Educational Institutions.

6 The issue for consideration before the Court essentially is whether there can be any reservation for backward class of students in minority colleges. There is an averment in the Petition whether the Petitioner No.1 or the member concern of the Petitioner No.2 Association is / is not relevant is amended to Petition. We noted or minded. Though the Petition which was filed in the year 2001 proceeds on the basis that there cannot be any reservation for backward class students in the 50% minority quota, this issue will also be required to be considered in the backdrop of the

subsequent events after filing of the Petition and in particular on the backdrop of Article 15(5) which was inserted to the Constitution of India vide the Constitution (Ninety-third Amendment) Act 2005 and the decisions of the Apex Court.

7 We have heard learned Counsel for the parties. We have perused the following judgments cited by the learned Counsel on behalf of the Petitioners:

i) Khan Abdul Samad Abdul Razzak Vs. Mohamed Haji Saboo Siddik Polytechnic 1985 Mh.L.J. 406

ii) St.Stephens College vs. University of Delhi (1992) 1 SCC 558;

iii) St.Francis Ltd Sahitik Education Society Nagpur & Anr. Vs State of Maharashtra (2000) 3 Mh.L.J 281

iv) T.M.A. Pai Foundation & anr. Vs State of Maharashtra & Ors. (2002) 8 SCC 481.

v) P.A. Inamdar & Ors. Vs State of Maharashtra & Ors. (2005) 6 SCC 537

vi) Ashoka Kumar Thakur Vs. Union of India and Ors. (2008) 6 Supreme Court Cases 1.

vii) Secretary, Malankara Syrian Catholic College Vs. T. Jose & Ors. (2007) 6 SCC 386.

viii) Sindhi Education Society & Anr. Vs. Chief Secretary, Government of NCT of Delhi & Ors. 2010 (8) SCC 49.

(a) Pramati Educational and Cultural Trust Vs. Union of India (2003) 8 SCC 1

8 Article 30 of the Constitution provides for right of minorities to establish and administer educational institutions. It reads thus:

> "30 (1) All minorities whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
>
> (1A) ...
>
> (2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language."

Article 29 of the Constitution deals with protection of interests of minorities. It reads as under:

> "29 (1) ...
>
> (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."

Article 15 of the Constitution prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. Article 15(4) is relevant for our purposes. It reads thus:

...

"Article 15(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."

The legal position prior to insertion of Article 15(5) of the Constitution

9 In **St.Stephen's College Vs. University of Delhi** (supra), the 5-Judge Constitution Bench of the Supreme Court by majority held as follows:

> "[9] The right to select students for admission is a part of administration. It is indeed an important facet of administration. This power also could be regulated but the regulation must be reasonable just like any other regulation. It should be conducive to the welfare of the minority institution or for the betterment of those who resort to it. ...
>
> [8] Section 25 of the Act does not impair the rights in Article 30(1). The State can lay down reasonable conditions for obtaining grant-in-aid and for its proper utilisation. The State has no power to compel minority institutions to give up their rights under Article 30(1). (See Re. Kerala Education Bill case [1959 SCR 995 : AIR 1958 SC 956] and Sidhajbhai case [(1963) 3 SCR 837 : AIR 1963 SC 540]) In the latter case, the Court observed (at SCR pp. 856-57) that the regulation which may lawfully be enacted as a condition of receiving grant must be directed to making the institution an effective vehicle of secular education. The regulation cannot change the character of the minority institution. Such regulations must satisfy a dual test, the test of reasonableness, and the test that it is regulation of the educational character of the institution. It

must be conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it. It is thus evident that the rights under Article 30(1) remain unaffected even after allowing Regional Autonomy from the government.

102. In the light of all these principles and factors, and in view of the importance which the Constitution attaches to protective measures to minorities under Article 30(1), the minority aided educational institutions are entitled to admit their community candidates to maintain the minority character of the institution subject of course to conformity with the University pursuant. The State may regulate the admission in the ordinary with due regard to the need of the community in the area which the institution is intended to serve. But in no case such regulation should exceed 50 per cent of the annual admission. The minority institutions shall make available at least 50 per cent of the annual admission to students of non-minority other than the minority community. The admission of other community candidates, shall be done strictly on the basis of merit."

(emphasis supplied)

10 In **T.M.A. Pai Foundation & Anr vs. State of Maharashtra & Ors.** [supra], eleven Judges were referred to the 11-Judge Constitution Bench of the Supreme Court. Some of the questions and answers framed in the majority judgment which are material in the context of the present case are enumerated hereinbelow:

"Q. 4. Whether the admission of students to minority educational institution whether aided or unaided can be regulated by the State Government or by the University to which the institution is affiliated?

A. Admission of students to minority educational institutions viz. schools and undenominational colleges where the scope for merit based selection is practically nil cannot be regulated by the State or university except to ensure the prescribing the qualifications and antecedents of eligibility in the interest of academic standards.

(con)

The right to admit students being an essential part of the right to administer educational institutions of their choice as contemplated under Article 30 of the Constitution, the State Government or the university may not be competent to prescribe [illegible] this right. In fact, in the admission to the unaided educational institutions, to an extent, [illegible] and the merit is completely taken care of. The merit to safeguard, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions.

A minority institution does not [illegible] the [illegible] granted-aid is enjoyed by the institution. An aided minority educational institution, therefore, cannot be allowed 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 amount of non-minority students so that the rights under Article 30(1) are not substantially impaired and further the citizens' rights under Article 29(2) are not infringed. What would be a reasonable extent, would vary from the types of institution, the course of education for which admission is being sought and other factors [illegible] educational needs. The State Government concerned has to notify the percentage of the non-minority students to be admitted in the light of the above observations. Obviously, out of merit [illegible] amongst the applicants belonging to the minority group called for entrance by the rest of the professional institutions, it can also be stipulated that passing of the common entrance test held by the State agency is necessary to seek admission. As regards non-minority students who are eligible to seek admission for the remaining seats, admission should normally be on the basis of the common entrance test held by the State agency followed by counselling wherever it exists.

Q. 5.(a) Whether the minority rights in relation to admission and admission procedure of their choice will include the procedure and method of selection and admission of students?

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 for selection made in the interview must be transparent to maximum extent. Even an unaided minority institution ought not to ignore the merit of the students for

[illegible]

[illegible] [illegible]

affiliated with increasing its role in admission to the colleges although as to that extent the institute will fail to achieve excellence.

Q. 5(b) Whether the minority institutions right of admission of students and to lay down procedure and method of admission if any would be affected in any way by the impact of State aid?

A. While giving aid to professional institutions it would be permissible for the authority giving aid to prescribe the rules & regulations, the conditions on the basis of which admission will be granted to aforesaid colleges by virtue of right coupled with the reservation policy of the State but non-minority students. The merit may be determined either through a common entrance test conducted by the university or the Government concerned thereof by counselling or on the basis of an entrance test conducted by individual institutions — the method to be followed is for the authority or the Government to decide. The authority may also devise other means to ensure that admission is granted to an adult professional institution on the basis of merit. In the case of such institutions, it will become possible for the Government or the university to provide that reservation should be drawn in the weaker sections of the society.

Q. 5. (c) 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?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and

[illegible] teaching and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a fair and formal procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

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 remedy could be constituted, any fit case such grievance could be presented first by a fellow citizen of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualifications, 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.

Fees to be charged by unaided institutions cannot be regulated but the institution should charge capitation fee

Q. 1. Whether the ratio laid down by the Court in *St. Stephen's case* ((1992) 1 SCC 558) (*St. Stephen's College v. University of Delhi*) is correct? If not, what ratio?

A. The ratio was laid down by the Court in *St. Stephen's College case* ((1992) 1 SCC 558) is correct as relevant in the [illegible] Minority might percentage cannot be stipulated. It has to be left to authorities to prescribe a reasonable percentage having regard to the local conditions and educational needs of minorities.

Q. 2. Whether the decision of this Court in *Unni Krishnan, J.P. v. State of A.P.* ((1993) 1 SCC 645) (except where it holds that primary education is a fundamental right) and the scheme framed thereunder require reconsideration/modification and if yes, what?

1[illegible]

[illegible] [illegible] [illegible] [illegible]

> A. The scheme framed by this Court in Unni Krishnan case [(1993) 1 SCC 645] and the direction to impose the same, except where it holds that primary education is a fundamental right is unconstitutional. However, the principle that there should not be capitation fee for professional or similar Recognition implies to mere cost of admission and augmentation of facilities does not however amount to profiteering."
>
> (emphasis supplied)

11. In **Islamic Academy of Education vis. State of Karnataka & Ors.** [supra], the 3-Judge Constitution Bench of the Supreme Court has observed that the Bench was constituted so that doubts/anomalies, if any, in the judgment of the 11-Judge Bench in **T.M.A. Pai Foundation & Anr. Vs. State of Maharashtra & Ors.** could be clarified.

12. In **P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors.** [supra], the 7-Judge Constitution Bench of the Apex Court observed as under:

> "**2.** The eleven-Judge Bench in Pai Foundation [(2002) 8 SCC 481] pronounced their views on the main question, have remained unsettled even after the exercise undertaken by the Constitution Bench in Islamic Academy [(2003) 6 SCC 697] in clarification of the seven-Judge Bench decision in Pai Foundation [(2002) 8 SCC 481]. A few of those unsettled questions on which some aspects of clarification are before us calling for answers by this Bench of seven Judges which we hopefully proceed to do.
>
> ***The questions spelled out by orders of reference***
>
> **27.** In the light of the two orders of reference referred to hereinabove, the progress of debate and discussion in the

question set for reference which, according to us, arise for decision:

(1) To what extent can the State regulate admissions made by unaided (minority or non-minority) educational institutions? Can the State enforce its policy of reservation and/or interfere to ensure some measure of such admissions?

(2) Whether unaided (minority and non-minority) educational institutions are free to devise their own admission procedure or whether the directive made in Islamic Academy [(2003) 6 SCC 697] for compulsorily holding an entrance test by the State or association of institutions and to devise therefrom the students' eligibility for admission in such institutions, can be reframed in light of the law laid down in Pai Foundation [(2002) 8 SCC 481]?

(3) Whether Islamic Academy [(2003) 6 SCC 697] calls for any further guidelines in the matter of regulating the fee payable by the students in the educational institutions?

(4) Can the admission procedure and fee structure be regulated or taken over by the Committee appointed to be constituted by Islamic Academy [(2003) 6 SCC 697]?

C. *Unaided educational institutions' appropriation of goals by the State and enforcement of reservation policy*

116. First, we shall deal with minority unaided institutions.

117. We have in the earlier part of the judgment referred to Kerala Education Bill [1959 SCR 995 : AIR 1958 SC 956] and noted the three categories of minority educational institutions as classified and dealt with therein. The seven-Judge Bench decision in *Kerala Education Bill* [1959 SCR 995 : AIR 1958 SC 956] still holds the field and has met the approval of the seven-Judge Bench in *Pai Foundation* [(2002) 8 SCC 481]. We shall not also miss what *Pai Foundation* [(2002) 8 SCC 481] has to say about such category of institutions:

(i) Minority educational institution, unaided and unrecognised

118. *Pai Foundation* [(2002) 8 SCC 481] is unanimous on the view that the right to establish and administer an institution the object 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

[attaching any real meaning] and [it is] not open to [the] exercise of duty on the part of any of the employees. [Para 58]

119. A minority educational institution may choose not to take any aid from the State and may not seek any recognition or affiliation. It may be imparting such knowledge and may have such learning with knowledge that do not stand in need of any recognition. Such institutions would be those where admissions are imparted for the sake of researches and learning is only for the sake of learning and acquiring knowledge. Obviously, such institutions would fall in the category of those who would exercise their right under the protection and privilege conferred by Article 30(1) "in their hearts content" unfettered by any restrictions excepting those which are in national interest based on considerations such as public safety, national security and national integrity or are violent or promoting extremism or hostility of the teaching community. Such institutions cannot indulge in the activity which is violative of any law of the land.

120. They are free to admit all students of their own minority community if they so choose to do. [Para 145 The Pramati (2002) 8 SCC 481].]

(ii) Minority unaided educational institutions asking for affiliation or recognition

121. Affiliation or recognition by the State or the Board of the university competent to do so, cannot be denied only on the ground that the institution is a minority educational institution. However, the regulations for affiliation or recognition cannot be in the concept of regulation by way of laying down conditions consistent with the requirement of securing high excellence of education and preventing maladministration. For example, provisions can be made indicating the quality of the teachers by prescribing the minimum qualifications that they must possess and the conditions of service and salaries. The existence of infrastructure sufficient for the growth but not for excellence is a permissible test for grant of recognition or affiliation. However, there cannot be maintenance in the day-to-day administration. The essential ingredients of the minority character including administration of and the meaning of shall and the question of how to be given, cannot be regulated. [Para 55, the Pramati (2002) 8 SCC 481].]

[cont]

122 Apart from the preliminary point of law that the right to administer does not include the right to maladminister, an additional source of power to regulate by enacted provisions accompanying allowance or recognition exists. A balance has to be struck between the two objectives: (i) that of ensuring the standard of excellence of the institution and (ii) that of preserving the right of the majority to maintain and administer its educational institution. Success in a reconciliation of the two objectives, any restrictions accompanying allowance or recognition must satisfy the eight tests: (i) the test of reasonableness and fairness; (ii) the test that the regulation would be conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it; and (iii) that there is no conflict with the protection conferred by Article 30(1) of the Constitution, that is by framing the regulation the essential character of the institution being a minority educational institution is not taken away. (From 12A. *TMA Foundation* (supra) at page 481.)

(iii) Minority educational institutions receiving State aid

123 Conditions which can normally be permitted to be imposed on the educational institution receiving the grant must be related to the proper utilisation of the grant and fulfilment of the objectives of the grant, without eroding the minority status of the educational institution. As held in *TMA Foundation* ((2002) 8 SCC 481) (see para 143 thereof) All India Judges are not famous as they are not called upon to deal with them unless we leave the Constitution all that only

124 So far as regulation of grant by the State and enforcement of its reservation policy is concerned, see the very nature of a relationship between the minority and minority educational institutions. We find great force in the submissions made on behalf of the petitioners that the State has no power to enact any law stating in one or other words professional educational institutions by having a vessel of wars 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 of reservation for granting admission or to make appointments in any manner except merit.

[illegible]

[illegible] [illegible]

125. As per our understanding, neither in the judgment in Pai Foundation[(2002) 8 SCC 481] nor in the Constitution Bench decision in Kerala Education Bill[1959 SCR 995; AIR 1958 SC 956] which was approved by Pai Foundation [(2002) 8 SCC 481] is there anything which would stop the State to provide in certain circumstances, in the smallest pocket of unaided institutions, so as to compel them to grant up a share of the available seats to the candidates chosen by the State in it if it was found that 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 [(2002) 8 SCC 481]. Such imposition of quota by State could be enforcing reservation policy of the State but whether such imposition would be unaided private institutions' constitutional right to establish and administer educational institutions of their choice, such imposition of quota 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. Highly trained manpower of the State in including professional education are limited private educational institutions which intend to provide them 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 admission procedure [subject to regulations as laid down in para 44 of the Pai Foundation case].

126. The observations in para 44 of the Pai Foundation [(2002) 8 SCC 481], on which the learned counsel for the parties have much of reliance in their submissions, according to us, are not to be read separately from other parts of the main judgment. A true construction contained in certain paragraphs of the judgment in Pai Foundation [(2002) 8 SCC 481] is said in relation, where considered in accordance with such other parts of the observations made and the conclusions arrived at, as a whole the judgment nowhere has down that unaided private educational institutions of minorities and non-minorities are to be kept in totally free of reservation policy of the State. Reading relevant parts of the judgment on which learned counsel have made comments and duly considered and having the whole judgment in the light of previous judgments of this Court, which have been approved in Pai

Pai Foundation [(2002) 8 SCC 481] in our considered opinion observations at para 69 namely denial unaided private institutions to maintain itself as the consent of admission by voluntarily agreeing for such taking with the State or allowing seats to be filled by students selected by the State. There are also observations saying that they have their own policy of admissions 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 deprived sections of the society.

127. However, in Pai Foundation [(2002) 8 SCC 481] cited in the majority of by the minority opinion have we found any justification for imposing seat sharing quota by the State on unaided private professional educational institutes and reservation policy of the State or State quota and management quota.

128. We make it clear that the observations in Pai Foundation [(2002) 8 SCC 481] in para 69 and other paragraphs mentioning fixation of percentage of quota are to be read and understood as positive constitutional arrangements which can be reached between unaided private professional institutions and the State.

129. In Pai Foundation [(2002) 8 SCC 481] 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 promote fairness and transparency in Admission procedure and to check exploitation of the students by charging exorbitant amount or capitation fees.

130. For the aforesaid reasons, we cannot approve of the actions involved in Islamic Academy [(2003) 6 SCC 697] to the extent it allows the States to fix quota for seat sharing between the management and the State as the basis of the result of such State in the unaided private educational institutes of both minority and non-minority categories. That part of the judgment in Islamic Academy [(2003) 6 SCC 697] as per considered opinion does not flow from the correct law and runs counter to Pai Foundation [(2002) 8 SCC 481].

> 122 Our answer to the first question is that neither the policy of reservation can be enforced by the State nor any kind of permission of admission can be granted or be encouraged 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 stands to lose its character and the very purpose of its establishment is lost. If they do so, they lose the protection of Article 30(1).
>
> (emphasis supplied)

13 From the enunciation of law discussed above, what emerges is that prior to the insertion of Article 15(5) to the Constitution so far as aided minority institutions were concerned the reservation policy of the State could be enforced only to the extent of non-minority quota of students as prescribed by the Authorities.

The legal position post insertion of Article 15(5) of the Constitution (w.e.f. 20-01-2006)

14 The judgments in **T.M.A. Pai Foundation & Anr. vs. State of Maharashtra & Ors.** (supra) and **P.A. Inamdar & Ors. vs. State of Maharashtra & Ors.** (supra) clearly laid down that the State cannot enforce its reservation policy and insist on reservation quota for

Backward Class citizens in privately aided educational institutions (minority and non-minority). The above rulings disabled the State from imposing reservation policy on aided institutions as observed in paragraph 54 of the Constitution Bench Judgment of the Apex Court in **Ashoka Kumar Thakur vs. Union of India** (supra). The Constitution was accordingly amended by adding sub-clause (5) in Article 15 by Constitution (Ninety-Third Amendment) Act, 2005 which came into effect from 20.01.2006. Article 15(5) reads as follows:-

> "Article 15 (5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30."

The Statement of Objects and Reasons of the Constitution (Ninety-third Amendment) Act, 2005 reads as follows:

> "At present, the number of seats available in select or State-maintained institutions, particularly in respect of professional education, is small in comparison to those in private unaided institutions.

"[illegible]

[illegible] [illegible]

> To promote the educational advancement of the socially and educationally backward classes of citizens i.e. the OBCs or the Scheduled Castes and Scheduled Tribes, in matters of admission of students belonging to these categories in unaided private educational institutions, other than the minority educational institutions referred to in Clause (1) of Article 30 of the Constitution, it is proposed to insert Article 15. The new Clause (5) shall enable Parliament as well as the State Legislatures to make appropriate laws for the purposes mentioned above.
>
> (emphasis supplied)

15 In **Ashoka Kumar Thakur Vs. Union of India** (supra) the Constitution (Ninety-third Amendment) Act, 2005 was challenged (apart from the challenge to the Central Educational Institutions (Reservation in Admission) Act, 2006). The 5-Judge Constitution Bench by majority held as follows:

> **"108.** The Constitution (Ninety-third Amendment) Act, 2005, by which Clause (5) was added to Article 15 of the Constitution, is an enabling provision which states that nothing in Article 15 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 insofar as such special provisions relate to their admission to the educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in Clause (1) of Article 30 are concerned. Thus, the newly added Clause (5) of Article 15 is sought to be applied to educational institutions whether aided or unaided by other sources. The newly added constitutional provision would enable the State to frame any special provision by law for admission in private educational institutions whether aided or unaided.
>
> **125.** It is a well-settled principle of constitution interpretation that while construing the provision of the Constitution, effect shall be given to all the provisions of the Constitution and no provision shall be interpreted in a manner as to render any other provision in the Constitution inoperative or otiose. If the intention of Parliament

will in include Article 15(1), they could have very well omitted Article 15(4) of the Constitution. Minority institutions are also entitled to the exercise of fundamental rights under Article 19(1)(g) of the Constitution, whether they be aided or unaided. But in the case of aided [illegible] the minority educational institutions cannot be compelled to admit students in the manner in Article 15(5) of the Constitution.

127. Another contention raised by the petitioners counsel is that the provision of minority institutions under Article 15(5) itself is violative of Article 14 of the Constitution, it was submitted that the institution by itself is not excluded from the ken of the provision. This plea also is not tenable because the minority institutions have been given a constitutional treatment in view of Article 30(1) of the Constitution. Such classification has been held to be in accordance with the provisions of the Constitution. The exemption of minority educational institutions has been allowed to continue under Article 15(5) with the mandate of Article 30 of the Constitution. Moreover, both Article 15(4) and (5)(a) are operative and the plea of non-severability is not applicable.

128. The learned Senior Counsel Sri Rajeev Dhavan and learned counsel Shri Sushil Kumar Jain appearing for the petitioners contended that the Constitution (Ninety-third Amendment) would violate the equality principles enshrined in Articles 14, 19 and 21 and thereby the "Golden Triangle" of these three articles could be smoothly resolved. The learned counsel also contended that exclusion of minorities from the operation of Article 15(5) is also violative of Article 14 of the Constitution. We do not find much force in this contention. It has been held that Article 15(4) and Article 16(4) are not exceptions to Article 15(1) and Article 16(1) respectively. It may also be noted that if at all there is any violation of Article 14 by any other equality provision the affected Affected institutions should have approached the Court to vindicate their rights. No such petition has been filed before this Court. Therefore, we hold that the exemption of minority educational institutions from Article 15(5) is not violative of Article 14 of the Constitution as the minority educational institutions by themselves are a separate class and their rights are protected by other constitutional provisions.

129. The Constitution (Ninety-third Amendment) Act, 2005 does not violate the "basic structure" of the Constitution in so far as it

relates to the State maintained institutions and aided educational institutions. Question whether the Constitution (Ninety-third Amendment) Act, 2005 would be constitutionally valid or not so far as 'private unaided' educational institutions are concerned, is left open to be decided in an appropriate case.
[Paras 120 to 123 and 186 to 222]"

(emphasis supplied)

Thus, the 5-Judge Constitution Bench in the aforesaid case of **Ashoka Kumar Thakur vs. Union of India** (supra) by majority (4:1) upheld the constitutional validity of Article 15(5) as far as State maintained and aided educational institutions are concerned. However the constitutional validity of Article 15(5) insofar as private unaided education institutions are concerned, was not considered and was left open to be decided in an appropriate case. His Lordship Justice Dalveer Bhandari in his judgment (minority view) however went into the said issue and held that Article 15(5) was not constitutionally valid even so far as private unaided education institutions are concerned which view was overruled in **Pramati Educational and Cultural Trust vs. Union of India** (supra). So far as minority educational institutions are concerned, the Constitution Bench has held that such minority educational institutions whether aided or unaided, are excluded from the purview of Article 15(5) of the Constitution.

"14. [illegible]

[illegible]

15. In **Pramati Educational and Cultural Trust vs. Union of India** (supra) the constitutional validity of Article 15(5) was again mentioned. That was by private unaided educational institution. The 5 Judge Constitution Bench of the Apex Court in the said judgment observed as follows:

> "This is a reference made by a three-Judge Bench of this Court by order dated 8.9.2010 in *Society for Unaided Private Schools of Rajasthan v. Union of India* (2012) 6 SCC 102 to a Constitution Bench. As per the aforesaid order dated 8.9.2010, [2012] 6 SCC 102, we are called upon to decide on the validity of clause (5) of Article 15 of the Constitution inserted by the Constitution (Ninety-third Amendment) Act, 2005 with effect from 20.1.2006 and on the validity of Article 21-A of the Constitution inserted by the Constitution (eighty-sixth Amendment) Act, 2002 with effect from 1-4-2010.
>
> 4. Article 21-A of the Constitution reads as follows:
>
> **"21-A. *Right to education*.**—The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may by law determine."
>
> Thus Article 21-A of the Constitution provides that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may by law determine. Parliament has made the law contemplated by Article 21-A by enacting the Right of Children to Free and Compulsory Education Act, 2009 (for short "the 2009 Act"). The constitutional validity of the 2009 Act was considered by a three-Judge Bench of this Court in *Society for Unaided Private Schools of Rajasthan v. Union of India* (2012) 6 SCC 1. Two of the then Judges have held the 2009 Act to be constitutionally valid but they have also held that the 2009 Act is not applicable to unaided minority schools protected under Article 30(1) of the Constitution. In the aforesaid case, however, this three-Judge Bench did not go into the question whether

clause (5) in Article 15 or Article 21-A of the Constitution is valid and does not violate the basic structure of the Constitution in the teeth of well defined limit by the recent judicial pronouncements, the constitutional validity of clause (5) of Article 15 and of Article 21-A has to be decided by the Constitution Bench.

5. Hence we are called upon to decide in this reference the following two substantial questions of law:

5.1 (i) Whether by inserting clause (5) in Article 15 of the Constitution by the Constitution (Ninety-Third Amendment) Act, 2005 Parliament has altered the basic structure or framework of the Constitution?

5.2 (ii) Whether by inserting Article 21-A of the Constitution by the Constitution (Eighty-sixth Amendment) Act, 2002 Parliament has altered the basic structure or framework of the Constitution?

21. We have considered the submissions of learned counsel for the parties and we find that the object of clause (5) of Article 15 is to ensure the State to take measures to socially and educationally backward classes of citizens or to the Scheduled Castes and the Scheduled Tribes in the educational institutions, other than minority educational institutions referred to in clause (1) of Article 30 of the Constitution. This will be clear from the Statement of Objects and Reasons of the Bill, which after enactment became the Constitution (Ninety-Third Amendment) Act, 2005 provides reproduction.

"1. Greater access to higher education including professional education by a larger number of students belonging to the socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes has been a matter of major concern. At present the number of seats available in most of the educational institutions, particularly in respect of professional education, is limited in comparison to those in private unaided institutions.

...(2)

38 We accordingly hold that none of the rights under Articles 14, 19(1)(g) and 21 of the Constitution have been violated by clause (5) of Article 15 of the Constitution and the view taken by Bhagwati J. in Ahmedabad Women Welfare Association v. Union of India that the imposition of reservation upon unaided institutions by the Ninety-third Amendment has damaged Article 29(1)(c), a basic feature of the Constitution is not correct. Instead, we hold that the Constitution (Ninety-third Amendment) Act, 2005 inserting clause (5) in Article 15 of the Constitution is valid.

55. ... In our view, if the 2009 Act is made applicable to minority schools, it would be violative of the rights of the minorities under Article 30(1) of the Constitution. We are, therefore, of the opinion that the 2009 Act cannot be made applicable to minority schools, referred to in clause (1) of Article 30 of the Constitution, since it would violate the Constitution. We are fortified in our view by the majority judgment of this Court in Society for Unaided Private Schools of Rajasthan v. Union of India, 2 (2012) 6 SCC 1 insofar as it holds that the 2009 Act is applicable to aided minority schools is not correct.

56. In the result, we hold that the Constitution (Ninety-third Amendment) Act, 2005 inserting clause (5) of Article 15 of the Constitution and the Constitution (One Hundred and Second Amendment) Act, 2002 inserting Article 21-A of the Constitution do not alter the basic structure or framework of the Constitution and are constitutionally valid. We also hold that the 2009 Act is not ultra vires Article 29(2)(g) of the Constitution. We, however, hold that the 2009 Act is not applicable to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution as it violates the Constitution.

(emphasis supplied)

The 5-Judge Constitution Bench in the aforesaid case of **Pramati Educational Trust vs. Union of India** (supra) has thus held that Minority educational institutions, aided or unaided, are not outside the ambit of the term under Article 12[3] of the Constitution.

...(6)

17 To sum up, upon insertion of Article 15(5) to the Constitution, the minority educational institutions (both aided and unaided) are exempted from enforcement of the reservation policy of the State in respect of backward class of citizens, as interpreted by the judgments of the Constitution Benches of the Apex Court in **Ashoka Kumar Thakur vs. Union of India** (supra) and **Pramati Educational and Cultural Trust vs. Union of India** (supra), while upholding the validity of Article 15(5) of the Constitution.

18 The upshot of the above discussion is that the impugned Circular to the extent it provides for reservation of seats for students of backward class for admission in minority colleges, cannot be sustained. The impugned Circular is violative of Article 30(1) read with Article 15 (5) of the Constitution of India. Hence, the following order:

ORDER

i) The Writ Petition is allowed.

ii) The impugned Circular dated 30/05/2003 to the extent it provides 50% reservation of seats for backward class

...3/30

students for admission to all courses as mentioned in the impugned Circular in minority colleges is quashed and set aside.

iii) Rule is made absolute accordingly. There shall be no order as to costs.

iv) It is clarified that we have not gone into the issue whether the provisions of the Petitioners' Association Act, whereof is annexed to the Petition, and in his minority institutions and the verification in that regard is left to the Respondents.

(M.S.KARNIK, J.) (A.A.SAYED,J.)