***Before Sudhir Mittal, J.***

**THE DIRECTOR, SCHOOL EDUCATION, DEPARTMENT OF EDUCATION, CHANDIGARH ADMINISTRATION, CHANDIGARH**—*Petitioner*

*versus*

**NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTION AND OTHERS**—*Respondents*

**CWP No.4211 of 2018**

March 20, 2020

***Capital of Punjab (Development and Regulations) Act, 1952—Ss.3 and 22—National Commission of Minority Educational Institution Act, 2004—S. 11 (b)—Jurisdiction—Dispute with regard to whether respondent school is a minority educational institution within the meaning of Article 30(1) of the Constitution of India—Show cause notice was a threat of resumption of the land and building of the school for violation of a direction of the Chandigarh Administration to reserve 15% seats for students belonging to economically weaker sections of the society—Once it is established that within a particular State a community is a religious/linguistic minority, it has the right to establish and administer an educational institution of its choice Imparting of secular education and admission of students belonging to other communities, does not denude it of its minority character—Further, an institution established by a minority can possess a secular character to start with and it can opt for a minority status subsequently.***

*Held that* the law crystallized in the above noted judgments is that to be classified as a minority, the unit to be taken into consideration is the State concerned. Once it is established that within a particular State a community is a religious/linguistic minority, it has the right to establish and administer an educational institution of its choice. Imparting of secular education and admission of students belonging to other communities, does not denude it of its minority character. Further, an institution established by a minority can possess a secular character to start with and it can opt for a minority status subsequently.

(Para 45)

Pankaj Jain, Senior Standing counsel with

Anil Mehta, Additional Government Pleader,
U.T.,Chandigarh
*for the petitioner.*

Rajiv Atma Ram, Senior Advocate with
Bhagoti Singh, Advocate,
for respondents No.2 to 4.

**SUDHIR MITTAL, J.**

(1) The primary dispute between the parties is whether respondent No.3-school is a minority educational institution within the meaning of Article 30(1) of the Constitution of India. The other issues on which a decision is sought are related to the said primary issue and arise on account of actions taken in respect of the said core issue.

(2) A society known as The Kabir Educational Society-respondent No.2 was incorporated vide Memorandum of Association dated 15.09.1976 and the same was registered as a 'Society' under the Societies Registration Act, 1860 (hereinafter referred to as the 1860 Act) on 30.11.1976. It was set up for advancing knowledge and education and for setting up and managing public schools for fulfilling this aim. Hereinafter, The Kabir Educational Society-respondent No.2 shall be referred to as the 'Society'. It applied for allotment of land for establishing a school and land was allotted to it vide allotment letter dated 13.10.1988 issued by the Chandigarh Administration. A building was constructed on this land for which a completion and occupation certificate was obtained in the year 1990. A school-respondent No.3 (hereinafter referred to as the school) has been functioning from the said building since the academic session 1991. The society was incorporated as a secular entity as is evident from the objects thereof enumerated in the Memorandum of Association dated 15.09.1976. The same are reproduced below:-

"2. Objects of the Society:

The objects for which the Society is established are:-

(i) The advancement of knowledge and education in all its forms.

(ii) The management of public schools especially in Chandigarh and generally in whole of India for imparting such education as said,

(a) the mental, physical, moral, cultural and general development of children,

(b) the fostering in children the higher values of life, such as good character, purity of thought, word anddeed, discipline, espirit-de-corps, comradeship, spirit of service and a sense of duty;

(c) the training and grooming of the taught for the service of the Nation, the Country and humanity at large;

(d) the promotion of arts science and technology for its application to the progress, peace and prosperity of the country.

(iii)The taking of measures of providing scholarships to the deserving children,

(iv) To hire, purchase, acquire, hold and dispose of property and to do generally all such acts and things which may be necessary for the accomplishment of the aforesaid objects.

(v) The Society will be a non-profit earning Organization. Its income and property shall strictly and exclusively be used towards the promotion of the aforesaid objects of the Society. No member shall be entitled to receive any share from the profits."

(3) The Memorandum of Association was amended vide amendment dated 24.12.1994. By the said amendment, an introductory paragraph was inserted in the objects of the society which is as under:-

"2. **Objects of the Society**:-

The objects for which the Society is established are: Kabir Educational Society being essentially an organization of Minority holding St. Kabir Public School, Chandigarh as its functional wing where the Punjabi Language, Punjabi Culture, History of Prophets and Gurus are being taught on top priority and is based on Articles 29 and 30 of the Constitution of India (Cultural and Educational Rights of Minorities). But, admission into the school will be open to all irrespective of caste, creed, community and religion. All religions will be fully respected. This concept of the Society is based on the social and secular philosophy of the great mystic St. Kabir."

(4) An application dated 07.05.2012 was filed by the school before the National Commission for Minority Educational Institutions (hereinafter referred to as the 'NCMEI') for declaration of minority status. Along with this application, the President of the society filed an affidavit declaring that the school had been established and managed by the society which comprises of members of the Sikh community and that the school is being run for benefit of members of the Sikh minority community. Along with application another affidavit dated 05.05.2012 of the Principal of the school was also filed declaring that 20.1% of the students of the school belonged to the Sikh minority community. A chart taken from the census for the year 2001 was also annexed to show that Sikhs were a minority in the Union Territory of Chandigarh. Additional affidavit dated 11.04.2013 was filed on behalf of the school stating that the Memorandum of Association of the society had been further amended vide amendment dated 31.01.2013 and was ratified by the society on 16.02.2013. The amendment had been made to make the Memorandum of Association consistent with the inherent tenets of the society i.e. benefit, betterment and upliftment of the Sikh community which includes establishment and administration of educational institutions for the benefit of members of the Sikh community, but not limited to the same. The NCMEI decided the application of the school vide order dated 10.09.2014 and declared it to be minority educational institution.

(5) Meanwhile, the Chandigarh Administration notified a scheme titled 'The Allotment of Land to Educational Institutions (Schools), etc. on Leasehold basis in Chandigarh Scheme, 1996 (hereinafter referred to as the 1996 Scheme) vide Notification dated 31.01.1996. A perusal of the said notification shows that the Scheme was framed under Sections 3 and 22 of the Capital of Punjab (Development and Regulations) Act 1952 (hereinafter referred to as the 1952 Act) and Rules made thereunder for regulating the allotment of sites to schools as private sectors schools were required for maintenance of educational standards. Clause 18(ii) of this Scheme required an allottee to reserve 15% or more seats as may be determined by the Chandigarh Administration from time to time for students belonging to economically weaker sections of the society and charging of nominal fee from such students. This Scheme was amended vide notification dated 29.07.2005. The amendment relevant for the purposes of this case was to Clause 18. A proviso was added stating that in case a school is unable to fill up the 15% reserved seats, the

fact shall be brought to the notice of the Chandigarh Administration and an order obtained from it in writing that the reservation for that particular academic year had been reduced.

(6) Another development took place during the aforementioned period. The National Commission for Minority Educational Institution Act, 2004 (hereinafter referred to as the 2004 Act) was notified on 06.01.2005. The Chandigarh Administration appointed Director Public Instruction (Schools) as the competent authority for grant of No Objection Certificatefor establishing a minority educational institution in U.T. Chandigarh vide order dated 12.09.2006. This order was modified vide order dated 24.02.2016 changing the designation of the competent authority to Director School Education. Another enactment known as the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the 2009 Act) came into being vide notification dated 26.08.2009.

(7) A show cause notice dated 26.08.2015 was issued to the Principal of the school alleging violation of conditions of allotment of land under the 1996 Scheme. The violation alleged was that the school had not reserved 15% seats for students belonging to economically weaker sections of the society and thus, it was asked to show cause why proceedings for resumption of land and building under the 1952 Act be not initiated. This was challenged by the school before NCMEI vide complaint dated 26.02.2016 as being violative of its right under Article 30(1) of the Constitution of India. The complaint was allowed vide order dated 14.03.2017 and the Chandigarh Administration was restrained from imposing any reservation upon the school. The present writ petition has been filed by the Chandigarh Administration on 19.02.2018 challenging the said order as well as the earlier order dated 10.09.2014 granting minority status to the school.

*(8)* In the aforementioned background, the contention of learned counsel for the petitioner is that the NCMEI had no jurisdiction to grant minority status to the school vide order dated 10.09.2014 because such an authority only lay with the competent authority appointed vide order dated 12.09.2006 i.e. Director Public Instruction (Schools). On the jurisdictional issue, it has further been argued that Section 19 of the 1952 Act barschallenge to any action taken under the said Act through a suit or other proceeding and thus, the NCMEI had no jurisdiction to entertain a complaint against the show cause notice dated 26.08.2015. Consequently, order dated 14.03.2017 is also without jurisdiction. On merits, it has been argued that from the Memorandum of Association of

the society, it is apparent that the society was established as a secular entity. Consequently, the school established by it was a secular institution. There is no evidence on record to show that the founding members of the society belonged to the Sikh minority community and even if the amended Memorandum of Association is taken into consideration, it does not establish that the school was set up for the benefit of the Sikh minority community. Amendment dated 31.01.2013 was made during the pendency of proceedings before the NCMEI and no benefit thereof can be given to the school. The school has failed to show that it was established by members of the Sikh minority community for the benefit of members of the said community and thus, order dated 10.09.2014 passed by the NCMEI is perverse. With respect to the 1996 Scheme, it has been argued that Clause 29 of the allotment letter dated 13.10.1988 binds an allottee to comply with directions given by the Chandigarh Administration regarding admission of students. After introduction of the 1996 Scheme, the school was directed to reserve 15% seats for students belonging to the economically weaker sections of the society and the school was bound to make such reservation in view of Clause 29 of the allotment letter. Thus, order dated 14.03.2017 is also unsustainable. Strong reliance has been placed upon judgment dated 17.08.2018 passed by a Single Bench of this Court in CWP No.17654 of 2017 titled as ***Director School Education Vs. National Commission for Minority Educational Institutions***.

(9) A strong preliminary objection has been raised on behalf of the society and the school regarding delay in challenging order dated 10.09.2014 passed by the NCMEI. It has been contended that the said order has been challenged after almost three and a half years and thus, the challenge thereto has to fail on grounds of delay and laches. The Chandigarh Administration was well aware of the said order as it was passed in the presence of its counsel. Moreover, after passing of order dated 10.09.2014, the school has reserved 20% seats for students belonging to the Sikh minority community in the academic session 2016-17 onwards. Students seeking admission under the said category were required to obtain a certificate that the student concerned belonged to the Sikh minority community from the Chandigarh Administration. The Chandigarh Administration had been granting such certificates all along but took no steps to challenge the order dated 10.09.2014 within a reasonable time. Thus, it is apparent that there is acquiescence on its part and on this ground also the writ

petition is not maintainable. On merits, it has been contended that the record indicates that the founder members of the society belonged tothe Sikh religion. Persons professing this religion belong to a religious minority in UT Chandigarh. They have a fundamental right to establish an administer educational institutions of their choice and a fundamental right can never be waived. Thus, even if it is accepted that to start with theschool was a secular institution, the management thereof, all of whom are members of the Sikh minority community, could resolve to include the object of conservation of its religion and culture in the objects of the society. This was in fact done vide amendment dated 24.12.1994. The requirements of Article 30(1) of the Constitution of India stood fulfilled and accordingly there was no error in the order dated 10.09.2014. A minority educational institution cannot be forced to implement directions of the State to reserve seats for economically weaker sections of the society as the same would be a violation of its fundamental right under Article 30(1) of the Constitution of India. The amendment dated 31.01.2013 was only clarificatory in nature and it would relate back to the date of the original Memorandum of Association. In any case, the 1996 Scheme cannot applyto the school as it was allotted land in the year 1988 and became functionalin the year 1991. The terms of the 1996 Scheme are applicable only to allottees under the said Scheme and not to existing schools. Thus, direction of the Chandigarh Administration to reserve 15% seats for students belonging to economically weaker sections of the society was without jurisdiction so far as the school was concerned. Reliance has been placed upon ***Chandana Dass (Malakar)*** versus ***The State of West Bengal and others***[1]***, Sisters of St. Joseph of Cluny*** versus ***State of West Bengal and others***[2]***, Manager, Corporate Educational Agency*** versus ***James Mathew and others***[3]***, T.M.A. Pai Foundation and others*** versus ***State of Karnataka and others*** [4] ***, P.A. Inamdar and others*** versus ***State of Maharashtra and others***[5]***, Union of India and others*** versus ***N.R. Parmar and others***[6].

(10) On the jurisdictional issue, reliance has been placed upon various provisions of the 2004 Act to argue that the NCMEI was well

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[1] 2019 (4) SCT 489
[2] 2018(2) SCT 640
[3] 2017 (4) SCT 57
[4] 2002(8) SCC 481
[5] 2005(6) SCC 537
[6] 2013(2) SCT 287

withinits jurisdiction to pass the impugned orders.

**Delay and Laches**:-

(11) Lengthy arguments have been addressed on the issue of delay and laches. Learned Senior counsel for respondents No.2 to 4 has vehemently contended that the Chandigarh Administration was well awareof order dated 10.09.2014 as it was passed in the presence of its counsel andthere is no satisfactory explanation for the delay in challenging the same. An inspection of the record of the Chandigarh Administration pertaining to order dated 10.09.2014 shows that a communication dated 20.02.2015 ofthe counsel for the Chandigarh Administration is on record enclosing a photocopy of order dated 10.09.2014. The photocopy has been stamped by the Secretary, NCMEI on 30.12.2014 certifying that said copy is a true copyof the original. Thus, the certified copy of order dated 10.09.2014 was ready on 30.12.2014 yet, the Chandigarh Administration did not care tochallenge the same. Moreover, annual reports of the NCMEI available on its website show that all orders passed by it are uploaded on the website. The Chandigarh Administration could have well obtained a copy of the said order from the website also, if it was actually interested in challenging the same. Leave alone challenging the order, the Chandigarh Administration acquiesced to the same as is evident from its conduct. It issued Sikh minority community certificates to students applying for admission in the school against quota of 20% reserved for them. Thus, the writ petition deserves to be dismissed on this short ground. Reliance has been placed upon ***State of M.P.*** versus ***Bhailal Bhai***[7]***, Office of the Chief Post Master General and others*** versus ***Living Media India Ltd. and another***[8]***, M/s Ghai Construction Engineers and Contractors*** versus ***Godavari Marathwada Irrigation Development Corporation Thr Its Executive Engineer,*** **Civil Appeals No.421 and 422 of 2018 decided on 16.01.2018** and some other cases.

(12) On the other hand, learned counsel for the petitioner has submitted that the record of the case indicates that an office noting dated 26.09.2014 was made that order dated 10.09.2014 be challenged before the Delhi High Court after obtaining a certified copy. Thereafter, reminder dated 04.12.2014 was sent to the counsel for

[7] 1964 AIR (SC) 1006
[8] 2012(2) SCT 269

obtaining a certified copy. Subsequent noting dated 20.02.2015 indicates that on receipt of photocopyof the order it was advised that the same be challenged before the Delhi High Court. However, certified copy of order dated 10.09.2014 was not made available and thus, the official obtained a certified copy personally on 07.05.2015 and instructions were given to engage a counsel. Subsequent notings dated 17.06.2015 and 23.06.2015 show that instructions had been issued to engage a counsel. On 12.10.2015, directions were issued to the counsel to file a writ petition in the Delhi High Court. This was followed by reminder dated 11.02.2016. Thereafter, noting dated 16.03.2016 shows that active steps were being taken to challenge the impugned order. Meanwhile, the school filed complaint challenging show cause notice dated 26.08.2015 and thus, filing of the writ petition before the Delhi High Court was deferred. On passing of order dated 14.03.2017, opinion of a Law Officer was obtained who opined that the order be challenged before the Punjab and Haryana High Court. Thus, the delay has been sufficiently explained and the objection of learned Senior counsel for respondents No.2 to 4 cannot be sustained. Reliance has been placed upon ***Ramchandra Shankar Deodhar and others*** versus ***The State of Maharashtra and others***[9]***, State of Nagaland*** versus ***Lipok AO and others***[10]***, State (NCT of Delhi)*** versus ***Ahmed Jaan***[11]**, and** ***State of J & K and others*** versus ***Mohmad Maqbool Sofi and others***[12].

(13) Reliance has also been placed upon ***Mafatlal Industries Ltd. Etc.*** versus ***Union of India Etc.***[13] to argue that the judgment inthe case of **Bhailal Bhai (supra)** has been overruled.

(14) From the aforementioned facts it transpires that the explanation given by the Chandigarh Administration is not sufficient. The Chandigarh Administration is equipped with trained Law Officers who are well aware ofthe nitty gritties of law. Thus, the explanation that delay was caused on account of an initial decision taken to challenge the order dated 10.09.2014 before the Delhi High Court and non-filing of a writ petition before theDelhi High Court by the concerned counsel within time, is nothing but a lame excuse.

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[9] 1974(1) SCC 317
[10] 2005(3)SCC 752
[11] 2008(14) SCC 582
[12] 2009(15) SCC 177
[13] 1997(5) SCC 536

*(15)* A perusal of the judgments relied upon by learned Senior counsel representing respondents No.2 to 4 show that so far as Article 226 of the Constitution of India is concerned, no period of limitation is prescribed. However, the power under the said Article is a discretionary power and the discretion would not normally be exercised in favour of a party who is not vigilant about its right. Whether the High Court should or should not refuse to exercise its discretion in a case would depend upon the facts and circumstances of that particular case and no hard and fast rule can be laid down. Normally, the limitation prescribed for filing a civil suit i.e. three years from the date of arising of the cause of action would provide an adequate guide for refusing to exercise jurisdiction under Article 226 of the Constitution of India. In the case of ***Chief Post Master General (supra)***, the Supreme Court refused to condone a delay of 427 days in filing the Special Leave Petition. It may be noted that the said judgment was passed after taking into consideration the defence raised that government machinery being impersonal in nature must be given some concession. This defence has been relied upon in the judgments referred to by learned counsel for the petitioner and thus, I would lean in favour of view taken in the case of ***Chief Post Master General (supra)***.

(16) Although, the matter of delay and laches should be held in favour of respondents No.2 to 4, keeping in view the nature of the controversy and public interest involved, I deem it appropriate to decide the writ petition on merits as well.

**Jurisdiction of NCMEI**:-

(17) Relevant provisions of the 2004 Act relied upon by learned counsel for either side need to be reproduced to examine their respective contentions.

> **10. Right to establish a Minority Educational Institution**.
>
> (1) Subject to the provisions contained in any other law for the time being in force, 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.
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> (2) The Competent authority shall,—

(a) on perusal of documents, affidavits or otherevidence, 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 anylaw for the time being in force.

Explanation. —For the purpose of this section,—

(a) "applicant" means any person who makes an application under sub-section (1) for establishment of a Minority Educational Institution;

(b) "no objection certificate" means a certificate stating therein, that the Competent authority has no objection for the establishment of a Minority Educational Institution.

**11. Functions of Commission**: —Notwithstanding anything contained in any other law for the time being in force, the

Commission shall—

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

(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 anydeprivation 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.

**12A. Appeal against orders of the Competent authority:**

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

order to the Commission.

(2) An appeal under sub-section (1) shall be filed within thirty days from the date of the order referred to in sub-section (1) communicated to the applicant: Provided that the Commission may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period.

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

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

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

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

(1) Without prejudice to the provisions contained in the National Commission for Minorities Act, 1992 (19 of 1992), where an authority established by the Central Government or any State Government, as the case may be, for grant of minority status to any educational institution rejects the application for the grant of such status, the aggrieved person may appeal against such order of the authority to the Commission.

(2) An appeal under sub-section (1) shall be preferred within thirty days from the date of the order communicated to the applicant: Provided that the Commission may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing itwithin that period.

(3) An appeal to the Commission shall be made in such form as may be prescribed and shall be accompanied by a

copy of the order against which the appeal has been filed.

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

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

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

(18) A plain reading of Section 10 aforementioned shows that a person who desires to establish a minority educational institution may seeka no objection certificate from the competent authority. However, the competent authority has the jurisdiction to issue a no objection certificate only to a person who desires to set up a minority educational institution after coming into force of the 2004 Act. This power is further subject to provisions contained in any other law for the time being in force. Section 11 aforementioned starts with a non obstante clause. The functions of NCMEI prescribed thereunder shall be performed notwithstanding anything contained in any other law. Sub-Section (f), vests in the NCMEI, thejurisdiction to decide all questions regarding status of a minority educational institution. The words of the said sub-section give very wide powers to the NCMEI in this regard. The wording further makes it clear that this power is exercisable in respect of existing institutions. Under sub- section (b), the NCMEI has the power to enquire into any issue of deprivation or violation of rights of a minority institution under Article 30 (1) of the Constitution of India. Section 12(A) provides the remedy of an appeal against an order of refusal to grant no objection certificate by the competent authority under Section 10. The said provision is not

relevant to this case. Section 12(B) vests in the NCMEI the power to hear an appeal against an order passed by an authority established by the Central Government or any State Government for grant of minority status to an educational institution rejecting the application for grant of such status. This power is without prejudice to the provisions of National Commission for Minority Act, 1992. Thus, the NCMEI exercises original jurisdiction as provided in Section 11(f) and appellate jurisdiction as provided in Sections 12(A & B). Section 22 gives overriding effect to the provisions of the 2004 Act. Its provisions will prevail over any other law in force.

(19) The aforementioned provisions of the 2004 Act have been interpreted by the Supreme Court in the case of **Cluny (supra).** It has been held as follows;-

> 15. At first blush, it does appear that there is a clash between the provisions of Section 10(1) and Section 11 (f) of the 2004 Act. Harmoniously construed, however, it would be clear that the NCMEI's powers under Section 11(f) are to be exercised, notwithstanding anything contained in any other law for the time being in force. On the other hand, the competent authority who grants a no objection certificate under Section 10 can only do so subject to the provisions contained in any other law for the time being in force.
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> 16. Secondly, Section 11(f) is a very wide provision which empowers the NCMEI to decide all questions relating to the status of an institution as a minority educational institution and to declare its status as such. The expression "all questions" as well as the expression "relating to", which are words of wide import, clothe the NCMEI with the power to decide any question that may arise, which may relate directly or indirectly, with respect to the status of an institution as a minority education institution. Looked at by itself, Section 11 (f) would include the declaration of the status of an institution as a minority educational institution at allstages. Article 30 of the Constitution of India grants a fundamental right to all minorities, whether based on religion or language, to establish and administer educational institutions of their choice. The power under Section 11(f), read by itself, would clothe the NCMEI with the power to decide any question that may arise with regard to the right

> to establish and/or administer educational institutions by a minority. The power does not stop there. It also includes the power to declare such institution as a minority educational institution, which is established and administered as such, so that it can avail of the fundamental right guaranteed under Article 30 of the Constitution.
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> 17. However, Section 10(1), which was introduced at the same time as Section 11(f) by the Amendment Act of 2006, carves out one facet of the aforesaid power contained in Section 11(f), namely the grant of a no objection certificate to a minority educational institution at its inception. Thus, any person who desires to establish a minority educational institution after the Amendment Act of 2006 came into force, must apply only to the competent authority for the grant of a no objection certificate for the said purpose. It is a little difficult to subscribe to Shri Hegde's argument that the said powers are concurrent. Harmoniously read, all applications for the establishment of a minority educational institution after the Amendment Act of 2006 must go only to the competent authority set up under the statute. On the other hand, for the declaration of itsstatus as a minority educational institution at any stage post establishment, the NCMEI would have the power to decide the question and declare such institution'sminority status."

(20) Thus, the contention of learned counsel for the petitioner that order dated 10.09.2014 passed by the NCMEI was without jurisdiction, cannot be accepted.

(21) Judgment dated 17.08.2018 passed by R.K. Jain, J. in CWP No.17654 of 2017 The Director School Education vs. NCMEI does not help the petitioner because there are two distinguishing features in the facts ofthat case. The first is that there was nothing on record to indicate that the settlors of the trust belonged to the Sikh religion. In this case the record indicates otherwise as shall be discussed later. Secondly, it was held therein that object of the Trust could not have been amended because the trust deed did not vest such powers in the Trustees. This is not the situation here. Memorandum of Association of a registered society can be amended in law and in exercise of this power the same has been amended.

(22) Section 11(b) clothes the NCMEI with the power to

entertain complaints regarding violation of rights of a minority to establish and administer educational institution of their choice. Show cause notice dated 26.08.2015 was a threat of resumption of the land and building of the school for violation of a direction of the Chandigarh Administration to reserve 15% seats for students belonging to economically weaker sections of the society. Such a direction would violate the right of administration of a minority institution granted under Article 30(1) of the Constitution of India as is evident from the judgment in **P.A. Inamdar (supra)**. Relevant paras of the said judgment are reproduced below:-

> "124. So far as appropriation of quota by the Stateand enforcement of its reservation policy is concerned, we do not see much of 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 admissionon lesser percentage of marks, i.e. on any criterion except merit.
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> 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 nationalization 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 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 andbased 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 free-ships 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 weaker and poorer sections ofthe society.

127. Nowhere in Pai Foundation, either in themajority 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."

(23) Thus, the school was entitled to challenge the show cause notice dated 26.08.2015 before the NCMEI and it had the jurisdiction to decide the complaint. Accordingly, order dated 14.03.2017 was also within jurisdiction and the argument to the contrary raised by learned counsel forthe petitioner is rejected.

(24) Reliance by learned counsel for the petitioner on Section 19 of the 1952 Act is misplaced. The said Section bars any Court to entertain asuit or other proceeding challenging an order of resumption or order of recovery of arrears or penalty under Section 8 thereof. It does not bar challenge to proceedings initiated under Section 8(a) of the 1952 Act on the ground of them being violative of fundamental rights. Moreover, both the 1952 Act and the 2004 Act are special Acts and a later special Act shall prevail over an earlier special Act. Section 22 of the 2004 Act further clarifies that the said Act has overriding effect over all other insistent laws. Hence, it cannot be argued that on account of Section 19 of the 1952 Act, NCMEI was barred from entertaining the complaint.

(25) The issue regarding applicability of the 1996 Scheme as amended in the year 2005 to the school on account of a term of the conditions of allotment of land, shall be examined presently.

**Application of 1996 Scheme**:-

(26) Clause 29 of the allotment letter dated 13.10.1988 is in the following terms:

> "The admission to the institution shall subject to directions/instructions which the Director Public Instructions (Schools/Colleges), Chandigarh may issue from time to time."

(27) In view of the aforementioned term, the Director Public Instruction (Schools) can issue directions to the school in respect of admissions. However, the directions have to be lawful.

(28) The 1996 Scheme was formulated for regulating allotment of lands to private schools. One of the conditions of allotment prescribed thereunder is that the school would reserve 15% seats for students belonging to economically weaker sections of the society. Thus, it is clear that a school allotted land under the said Scheme must reserve 15% seats as prescribed. In this case, the school was allotted land in the year 1988 and the 1996 Scheme nowhere states that the

terms thereof would be applicable to existing schools also. Thus, a direction to the existing schools to comply with terms of the 1996 Scheme was unlawful.

**Minority status of the school:-**

(29) The entire controversy revolves around the status of the school. If it is minority educational institution, it possesses the fundamental right under Article 30(1) of the Constitution of India viz. to establish and administer educational institution of its choice. The right of administration includes the right of admission of students of its choice and thus, no reservation can be imposed on it. On the other hand, if the school is held to be an unaided private secular institution, it is bound to abide by the reservation policy of the State.

(30) Article 30 falls under the Cultural and Educational Rights guaranteed by Part III of the Constitution of India. These rights comprisethe right of minority, religious and linguistic, to conserve their language script and culture and also the right to establish and administer educational institutions of their choice. However, a citizen cannot be denied admission in an educational institution maintained by the State or receiving aid from it on the grounds of religion, race, caste, language or any of them. Clearly, the mandate is that a minority whether religious or linguistic has the right to establish and administer educational institutions of its choice and irrespective of whether it receives aid from the State or not, it is entitled to frame its own policy regulating admission of students.

(31) There is no dearth of law on the scope and width of Article 30 (1) of the Constitution of India. However, learned counsel for the petitioner has urged that a decision on this issue be deferred as reference to a Seven Judges Bench has been made in **Civil Appeal No.2286 of 2006 titled as Aligarh Muslim University** versus **Naresh Agarwal and others**, on the issue whether a minority educational institution, being administered by a minority is entitled to the fundamental rights granted under Article 30(1) of the Constitution of India even though it was not established by persons belonging to the said minority. In my considered opinion, this issue does not arise in this case and thus, I am proceeding to decide the issue of statusof the school.

(32) The earliest judgment on the point is ***In Re The Kerala***

***Education Bill,* 1957**[14]**.** A Constitution Bench of 7-Judges examined the validity of the Kerala Education Bill 1957 passed by the State of Kerala on 02.09.1957. One of the questions framed by the Bench was whether certain provisions of the said Bill offended Article 30(1) of the Constitution of India. In this context, it was held that a minority is to be determined with reference to the population of a particular State. The main issue has been decided as follows:-

> "22. We now pass on to the main point canvassed before us, namely, what are the scope and ambit of the right conferred by Art. 30(1). Before coming to grips with the main argument on this part of the case, we may dealwith a minor point raised by learned counsel for the State of Kerala. He contends that there are three conditions which must be fulfilled before the protection and privileges of Art. 30(1) may be claimed, namely, (1) there must be a minority community, (2) one or more of the members of that community should, after the commencement of the Constitution, seek to exercise the right to establish an educational institution of his or their choice, and (3) the educational institution must be established for the members of his or their owncommunity. We have already determined, according to the test referred to above, that the Anglo-Indians, Christians and Muslims are minority communities in the State of Kerala. We do not think that the protection and privilege of Art. 30(1) extend only to the educational institutions established after the date our Constitution came into operation or which may hereafter be established. On this hypothesis the educational institutions established by one or more members of anyof these communities prior to the commencement of the Constitution would not be entitled to the benefits of Art. 30(1). The fallacy of this argument becomes discernible as soon as we direct our attention to Art. 19(1) (f) which, clearly enough, applies alike to a business, occupation or profession already started and carried on as to those that may be started and carried on after the commencement of the Constitution. There is no reason why the benefit of Art. 30(1) should be limited only to educational institutions established after the commencement of the Constitution. The language employed

[14] AIR 1958 SC 956

in Art. 30(1) is wide enough to cover both pre-Constitution and post-Constitution institutions. It must not be overlooked that Art. 30(1) gives the minorities two rights, namely, (a) to establish, and (b) to administer, educational institutions of their choice. The second right clearly covers pre-Constitution schools just as Art. 26 covers the right to maintain pre-Constitution religious institutions. As to the third condition mentioned above, the argument carried to its logical conclusion comes to this that if a single member of any other community is admitted into a school established for the members of a particular minority community, then the educational institution ceases to be an educational institution established by the particular minority community. The argument is sought to be reinforced by a reference to Article 29(2). It is said that an educational institution established by a minority community which does not seek any aid from the funds of the State need not admit a single scholar belonging to a community other than that for whose benefit it was established but that as soon as such an educational institution seeks and gets aid from the State coffers Article 29(2) will preclude it from denying admission to members of the other communities on grounds only of religion, race, caste, language or any of them and consequently it will cease to be an educational institution of the choice of the minority community which established it. This argument does not appear to us to be warranted by the language of the Article itself. There is no such limitation in Art. 30(1) and to accept this limitation will necessarily involve the addition of the words "for their own community" in the Article which is ordinarily not permissible according to well established rules of interpretation. Nor is it reasonable to assume that the purpose of Art. 29(2) was to deprive minority educational institutions of the aid they receive from the State. To say that an institution which receives aid on account of its being a minority educational institution must not refuse to admit any member of any other community only on the grounds therein mentioned and then to say that as soon as such institution admits such an outsider it will cease to be a minority institution is tantamount to saying that minority institutions will not, as minority institutions, be entitled to

any aid. The real import of Art. 29(2) and Art. 30(1) seems to us to be that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it. By admitting a non-member into it the minority institution does not shed its character and cease to be a minority institution. Indeed the object of conservation of the distinct language, script and culture of a minority may be better served by propagating the same amongst non- members of the particular minority community. In our opinion, it is not possible to read this condition into Art. 30(1) of the Constitution.

23. Having disposed of the minor point referred to above, we now take up the main argument advanced before us as to the content of Art. 30(1). The first point to note is that the Article gives certain rights not only to religious minorities but also to linguistic minorities. In the next place, the right conferred on such minorities is to establish educational institutions of their choice. It does not say that minorities based on religion should establish educational institutions for teaching religion only, or that linguistic minorities should have the rightto establish educational institutions for teaching their language only. What the article says and means is that the religious and the linguistic minorities should havethe right to establish educational institutions of theirchoice. There is no limitation placed on the subjects to be taught in such educational institutions. As such minorities will ordinarily desire that their children should be brought up properly and efficiently and be eligible for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering the public services, educational institutions of their choice will necessarily include institutions imparting general secular education also. In other words, the Article leaves it to their choice to establish such educational institutions as will serve both purposes, namely, the purpose of conserving their religion, language or culture, and also the purpose of giving a thorough, good general education to their children. The next thing to note is that the Article, in terms, gives all minorities, whether based on religion or language, two rights, namely, the right to establish and the right to

> administer educational institutions of their choice. The key to the understanding of the true meaning and implication of the Article under consideration are the words "of their own 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 makeit. The ambit of the rights conferred by Art. 30(1) has, therefore, to be determined on a consideration of the matter from the points of view of the educational institutions themselves. The educational institutions established or administered by the minorities or to be so established or administered by them in exercise of the rights conferred by that Article may be classified into three categories, namely, (1) those which do not seek either aid or recognition from the State, (2) those which want aid, and (3) those which want only recognition but not aid."

(33) It has been held that a minority has the right to establish and administer educational institution of its own choice which would include the choice to establish an institution imparting secular education. The students of such an institution need not belong to the minority alone and the minority is free to admit students belonging to other communities as well.

(34) In ***S. Azeez Basha and another*** versus ***Union of India***[15] the Supreme Court was examining whether the Aligarh Muslim University (Amendment) Act, 62 of 1951 was constitutional or not. By virtue of this challenge, the nature and status of Aligarh Muslim University was examined and it was held that the said university having been established by an Act of the Government of India, had not been established by a minority and could not claim the rights under Article 30(1) of the Constitution. Relevant part of the judgment is as follows:

> "19. Under Article 30(1), "all minorities whether based on religion or language shall have the right to establish and administer educational institutions of their choice". We shall proceed on the assumption in the present petitions that Muslims are a minority based on religion. What then is the scope of Art. 30(1) and what exactly is the right conferred therein on the religious minorities. It is to our mind quite

[15] AIR 1968 SC 662

clear that Art. 30(1) postulates that the religious community will have the right to establish and administer educational institutions of their choice meaning thereby that where a religious minority establishes an educational institution, it will have the right to administer that. An argument has been raised to the effect that even though the religions minority may not have established the educational institution, it will have the right to administer it, if by some process it been administering the same before the Constitution came into force. We are not prepared to accept this argument. The, Article in our opinion clearly shows that the minority will have the right to administer educational institutions of their choice provided they have established them, but not otherwise. The Article cannot be read, to mean that even if the educational institution has been established by somebody else, any religious minority would have the right to administer it because, for some reason or other, it might have been administering it before the Constitution came into force. The words "establish and administer" in the Article must be read conjunctively and so read it gives the Tight to the minority to administer an educational institution provided it has been established by it. In this connection our attention was drawn to In re, The Kerala Education Bill, 1957(1) where, it is argued, this Court had held that the minority can administer an educational institution even though it might not have established it. In that case an argument was raised that under Art. 30(1) protection was given only to educational institutions established after the Constitution came into force. That argument was turned down by this Court for the obvious reason that if that interpretation was given to Art. 30(1) it would be robbed of much of its content. But that case in our opinion did not lay down that the words "establish, and administer" in Art 30(1) should be read disjunctively, so that, though a minority might not have established an educational institution it had the right to administer it. It is true that at p. 1062 the Court spoke of Art. 30 (1) giving two rights to a minority i.e. (i) to establishand (ii) to administer. But that was said only in the context of meeting he argument that educational institutions established by minorities before the Constitution came into

> force did not have the protection of Art. 30(1). We are of opinion that nothing in that case justifies the contention raised on behalf of the petitioners that the minorities would have the right to administer an educational institution even though the institution may not have been established, by them. The two words in Art 30(1) must be read together and so read the Article gives this right to the minority to administer institutions established by it. If the educational institution has not been established by a minority it cannot claim the right to administer it under Art. 30(1). We have therefore to consider whether the Aligarh University was established by the Muslim minority; and if it was so established the minority would certainly have the right to administer it."

(35) According to this judgment, only an institution established by a minority can claim the right to administer the same and will enjoy the rights under Article 30(1) of the Constitution of India. If an educational institution has not been established by a minority then it cannot claim the right guaranteed by Article 30(1) of the Constitution of India. An observation to the contrary in Re The Kerala Education Bill 1957 was explained as referring to pre-independence educational institutions.

(36) In ***State of Kerala etc.*** versus ***Very Rev. Mother Provincial etc.***[16] a 6-Judges Bench has held as follows:

> "8. Article 30(1) has been construed before by this Court. Without referring to those cases it is sufficient to say that the clause contemplates two rights which are separated in point of time. The first right is the initial right to establish institutions of the minority's choice. Establishment here means the bringing into being of an institution and it must be, by a minority community. It matters not if a single philanthropic individual with his own means, founds the institution or the community at large contributes-the funds. The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community bya member of that community. It is equally irrelevant that in addition to the minority

[16] (1970) 2 SCC 417

> community others from other minority communities- or even from the majority community can take advantage of these institutions. Such other communities bring in income and they do not have to be turned away to enjoy the protection.
>
> 9. The next part of the right relates to the administration of such institutions. Administration means 'management of the affairs' of the institution. This management mustbe 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."

(37) From the observations aforementioned it appears that the Benchhas held that for enjoyment of the right under Article 30(1) of the Constitution of India, the minority should not only establish an educational institution but the same should also be for the benefit of the minority community. However, in the very next line it has been mentioned that members of other communities can also be admitted in such institutions. Thus, obviously the expression for the benefit of a 'minority community' refers to financial benefit. This view is reinforced by the observations in the next following line that students from other communities bring in income and merely because such students are admitted in the institution, it cannot be said that the institution does not possess a minority character.

(38) The next judgment referred to by the parties is ***A.P. Christians Medical Educational Society*** versus ***Government of Andhra Pradesh and another***[17]. In this case, the Supreme Court was examining whether the appellant before it could claim minority status. In this context it was held as follows:

> "8. It was seriously contended before us that any minority, even a single individual belonging to aminority, could found a minority institution and had the right so to do under the Constitution and neither the Government nor the University could deny the society's right to establish a minority institution, at the very threshold as it were, howsoever they may impose regulatory measures in the interests of

[17] (1986) 2 SCC 667

uniformity, efficiency and excellence of education. The fallacy of the argument in so far as the instant case is concerned lies in thinking that neither the Government nor the University has the right to go behind the claim that the institution is a minority institution and to investigate and satisfy itself whether the claim is well- founded or ill-founded. The Government, the University and ultimately the court have the undoubted right to pierce the 'minority veil' - with due apologies to the Corporate Lawyers - and discover whether there is lurking behind it no minority at all and in any case, no minority institution. The object of Art. 30(1) is not to allow bogies to be raised by pretenders but to give the minorities 'a sense of security and a feeling of confidence' not merely by guaranteeing the right to profess, practise and propagate religion to religious minorities and the right to conserve their language, script and culture to linguistic minorities, but also to enable all minorities, religious or linguistic, to establish and administer educational institutions of their choice. These institutions must be educational institutions of the minorities in truth and reality and not mere masked phantoms. They may be institutions intended to give the children of the minorities the best general and professional education, to make them complete men and women of the country and to enable them to go out into the world fully prepared and equipped. They may be institutions where special provision is made to the advantage and for the advancement of the minority children. They may be institutions where the parents of the children of the minority community may expect that education in accordance with the basic tenets of their religion would be imparted by or under the guidance of teachers, learned and steeped in the faith. They may be institutions where the parents expect their children to grow in a pervasive atmosphere which is in harmony with their religion or conducive to the pursuit of it. What is important and what is imperative is that there must exist some real positive index to enable the institution to be identified as an educational institution of the minorities. We have already said that in the present case apart from the half a dozen words 'as a Christian minorities institution' occurring in one of the objects recited in the memorandum of association,

> there is nothing whatever, in the memorandum or the articles of association or in the actions of the society to indicate that the institution was intended to be a minority educational institution. As already found by us thesehalf a dozen words were introduced merely to found a claim on Art. 30(1). They were a smoke-screen."

(39) The observations that authorities concerned can make an inquiry into whether in fact an institution claiming minority status has been established by a minority has been made in view of the facts and circumstances of the said case. The appellant therein had been set up without permission, recognition and affiliation and it was claiming minority status to overcome these hurdles.

(40) In ***St. Stephen's College*** versus ***University of Delhi***[18] it has been held that the words 'establish and administer' used in Article 30(1) of the Constitution of India have to be read conjunctively. There must be proof of establishment of the institution by a minority and the same is a condition precedent for claiming the right to administer the institution.

(41) Then comes the celebrated judgment in ***T.M.A. Pai Foundation and others*** versus ***State of Karnataka and others***[19]. The relevant observations are as follows:-

> "102. It had been, inter alia, contended on behalf of the state that if a single member of any other community is admitted in a school establish for a particular minority community, then the educational institution would cease to be an educational institution established by that particular minority community. It was contended that because of Article 29(2), when an educational institution established by a minority community gets aid, it would be precluded from denying admission to members of other communities because of Article 29(2), and that as a consequence thereof, it would cease to be an educational institution of the choice of the minority community that established it. Repelling this argument,it was observed at pages 1051-52, as follows:
>
> ".....This argument does not appear to us to be warranted by the language of the Article itself. There is no such limitation

[18] (1992) 1 SCC 558
[19] (2002) 8 SCC 481

in Article 30(1) and to accept this limitation will necessarily involve the addition of thewords "for their own community" in the Article which is ordinarily not permissible according to well established rules of interpretation. Nor is it reasonable to assume that the purpose of Article 29(2) was to deprive minority educational institutions of the aid they receive from the State. To say that an institution which receives aid on account of its being minority educational institution must not refuse to admit any member of any other community only on the grounds therein mentioned and then to say that as soon as such institution admits such an outsider it will cease to be a minority institution is tantamount to saying that minority institutions will not, as minority institutions, be entitled to any aid. The real import of Article 29(2) and Article 30(1) seems to us to be that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it. By admitting a non-member into it the minority institution does not shed its character and cease to be a minority institution. Indeed the object of conservation of the distinct language, script and culture of a minority may be better served by propagating the same amongst non-members of the particular minority community. In our opinion, it is not possible to read this conditioninto Article 30(1) of the Constitution."

103. It will be seen that the use of the expression "sprinkling of outsiders" in that case clearly implied the applicability of Article 29(2) to Article 30(1); the Court held that when a minority educational institution received aid, outsiders would have to be admitted. This part of the state's contention was accepted, but what was rejected was the contention that by taking outsiders, a minority institution would cease to be an educational institution of the choice of the minority community that established it. The Court concluded at page 1062, as follows:-

"...We have already observed that Article 30 (1) gives two rights to the minorities, (1) to establish and (2) to administer, educational institutions of their choice. The right to administer cannot obviously include the right to maladminister. The minority cannot surely ask for aid or recognition for an educational institution run by them in

> unhealthy surroundings, without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided"
>
> 104. While noting that Article 30 referred not only to religious minorities but also to linguistic minorities, it was held that the Article gave those minorities the right to establish educational institutions of their choice, and that no limitation could be placed on the subjects to be taught at such educational institutions and that general secular education is also comprehended within the scope of Article 30(1). It is to be noted that the argument addressed and answered in that case was whether a minority aided institution loses its character as such by admitting non-minority students in terms of Article 29(2). It was observed that the admission of 'sprinkling of outsiders' will not deprive the institution of its minority status. The opinion expressed therein does not really go counter to the ultimate view taken by us in regard to the inter-play of Articles 30(1) and 29 (2).”

(42) It is thus evident that a minority educational institution does not shed its minority character simply because it is imparting secular education or is admitting students belonging to other communities.

(43) The judgment in ***T.M.A. Pai Foundation (supra*)** has been interpreted by a 7 Judges Bench in ***P.A. Inamdar (supra)***, wherein it has been held that private unaided educational institution cannot be forced to share its seats on account of a quota imposed by the State. Thus, a minority educational institution can surely not be subjected to a quota. The relevant observations have already been reproduced above.

(44) In ***Cluny (supra)***, a society was registered on 26.03.1973 inter alia to establish and run schools, colleges, institutions and etc. Vide communication dated 16.12.1997 it clarified that it did not seek minority status or special concessions and wished to establish a college on secular lines and permission was granted. Subsequently, the society

applied for minority status before the NCMEI vide letter dated 27.06.2007. The NCMEI granted minority status. An application for cancellation of the certificate filed by the affiliating university was also rejected. Thereafter, the society filed a writ petition seeking to rid itself of the governing body in place under the statute of the affiliating university. A cross writ was filed by the governing body. A learned Single Judge found that the NCMEI had no jurisdiction to grant minority status and this decision was upheld by the Division Bench. Consequently, the society approached the Supreme Court wherein apart from finding that the NCMEI had original jurisdiction to grant minority status, it was held that a fundamental right can never be waived. Thus, an institution started as a secular institution may convert itself into a minority institution.

(45) The law crystallized in the above noted judgments is that to be classified as a minority, the unit to be taken into consideration is the State concerned. Once it is established that within a particular State a community is a religious/linguistic minority, it has the right to establish and administer an educational institution of its choice. Imparting of secular education and admission of students belonging to other communities, does not denude it of its minority character. Further, an institution established by a minority can possess a secular character to start with and it can opt for a minority status subsequently.

(46) The Memorandum of Association dated 15.09.1976 gives no inkling of the religion or language of the founding members. The objects of the society also do not speak of conservation of any minority language or culture. There is also no reference to any particular religion and thus, the inescapable conclusion is that the society was established as a secular society for establishing secular schools. The Memorandum of Association was amended on 24.12.1994 wherein an introduction was included under the head 'objects of the society'. This introduction recited that the society was of minority under Articles 29 and 30 of the Constitution of India and in the school set up by it, Punjabi Language, Punjabi Culture, History ofProphets and Gurus was being taught on top priority. However, admission was opened to students belonging to all communities keeping in view the teachings of the great mystic St. Kabir. The rules and regulations of the society were accordingly amended along with which the names and addresses of the founding members were annexed disclosing that all of them professed Sikh religion. From this amendment it is established that all the founding members of the society professed the Sikh religion and that stress was

laid on the conservation of the Punjabi Language and Culture apart from teaching history of the Sikh Gurus. An application for declaration of minority status was filed on 07.05.2012 and the NCMEI was called upon to opine on the character and status of the school. According to the judgments referred to hereinabove, an institution would be a minority institution within the meaning of Article 30(1) of the Constitution of India provided it was established by a religious or linguistic minority. The kind of education to be imparted is the choice of the minority. A perusal of the Memorandum of Association as amended on 24.12.1994, establishes that the founders of the society professed the Sikh religion. The Sikhs are a religious minority in U.T. Chandigarh as is evident from the census of the year 2001 annexedwith the application dated 07.05.2012. Even the census of the year 2011 placed on record by the petitioner itself corroborates this fact.

(47) As held in ***Cluny (supra)*** there can be no waiver of the right guaranteed under Article 30(1) of the Constitution of India and thus, the school could very well seek declaration of minority status at a later date.The intention to avail the benefits of a minority was expressed in the year 1994 when the first amendment to the Memorandum of Association was made. The school possessed all the parameters required for declaration of minority status and the NCMEI was justified in granting the same even though the reasons given by it may not fully justified. Reference to the amendment dated 31.01.2013 is not necessary because it is not essential that a minority educational institution must be for the benefit of the said minority only.

**Conclusion:**

The writ petition has no merit and is accordingly dismissed.

*P.S. Bajwa*