महाराष्ट्र शासन

क्रमांक : एसयुसी २६९२/[४४०७]
मशि-५
उच्च व तंत्र शिक्षण आणि
सेवायोजन विभाग
मंत्रालय, विस्तार भवन
मुंबई ४०० ०३२
दिनांक : २३ जून, १९९४.

प्रति,

कुलसचिव,
शिवाजी विद्यापीठ,
कोल्हापूर.

विषय – अल्पसंख्यांक शिक्षण संस्थेचा दर्जा देण्याबाबत.
श्री. ऐ.प.दि.जैन एजुकेशन, सोलापूर.

महोदय,

श्री ऐलक पन्नालाल दिगंबर पाठशाळा, सोलापूर या शिक्षण संस्थेसाठी शासनाने क्रमांक – पीएसएन ३८८२/ ३४४ / मशि-२ , दिनांक १२ सप्टेंबर, १९८३ च्या पत्रान्वये अल्पसंख्यांक संस्थेचा दर्जा देण्यात आलेला आहे. तसेच क्रमांक – संकीर्ण -१०९९/ अ.तं.शं./७५१५ / मशि-३ , दिनांक ६ जून, १९९४ च्या पत्रान्वये शासनाने उपरोक्त शिक्षण संस्थेसाठी बी.एड.महाविद्यालयांतील जागा भरणे – संबंधीच्या बाबींसाठी अल्पसंख्यांक शिक्षण संस्थेचा दर्जा देण्यात आलेला आहे. वरील दोन आदेशाच्या आधारे आता उपरोक्त संस्थेच्या खालील महाविद्यालयांना अल्पसंख्यांक शिक्षण संस्थेचा दर्जा मान्य करण्यात येत आहे. :—

[१] वालचंद कला व विज्ञान महाविद्यालय, सोलापूर
[२] हीराचंद नेमचंद वाणिज्य महाविद्यालय

आपला विश्वासू,

[र. अ. प्रधान]
कक्ष अधिकारी, महाराष्ट्र शासन.

प्रत – शिक्षण संचालक, [उच्च शिक्षण], महाराष्ट्र राज्य, पुणे यांना माहितीसाठी व आवश्यक त्या कार्यवाहीसाठी अग्रेषित.

प्रशासन अधिकारी, उच्च शिक्षण , पुणे विभाग, पुणे.

कू.मा.प.२/–

मानद सचिव, श्री. ए.पा.डी.जे. पाठशाळा, बाळीवेस, सोलापूर ४१३००२

यांना माहितीसाठी प्रेषित.

महाराष्ट्र शासन

क्रमांक:पीएस १४८५/५३४/माशि-२[अ]
शिक्षण व सेवायोजन विभाग,
मंत्रालय विस्तार भवन, मुंबई-४०० ०३२,
दिनांक:- फेब्रुवारी, १९८७.

प्रति,
सेक्रेटरी,
श्री. ऐलाक पन्नालाल दिगंबर जैन
पाठशाळा, बाळीवेस, सोलापूर-२

विषय:- अल्प संख्याकांची संस्था म्हणून गणना करण्याबाबत..

महोदय,

आपल्या दिनांक २८.८.१९८५ च्या पत्रानुसार शिक्षण विभागाच्या सचिवांना लिहिलेल्या पत्राच्या संदर्भात आपणास कळविण्यात येते की, महाराष्ट्र खाजगी शाळा कर्मचारी [सेवेच्या शर्ती] विनियमन अधिनियम १९७७ च्या कलम २[१३] खाली आपल्या संस्थेची अल्प संख्याक संस्था म्हणून गणना करण्यात येत असून कलम ३[२] चा फायदा आपल्या संस्थेसाठी चालविल्या जाणाऱ्या खाजगी माध्यमिक शाळांना देण्यास शासन परवानगी देत आहे.

आपला विश्वासू,

[बी. व्ही. पिसे]
उप सचिव, महाराष्ट्र शासन

यांची प्रत
शिक्षण संचालक, महाराष्ट्र राज्य, पुणे
शिक्षण उपसंचालक, पुणे विभाग, पुणे यांना त्यांच्या क्रमांक:माध्य-३/पुवि ८६-८७/एसआर, दि. २३.१२.१९८६ च्या पत्राचे संदर्भात अग्रेषित.
शिक्षण अधिकारी[माध्यमिक], जिल्हा परिषद, सोलापूर यांना त्यांच्या क्रमांक:जिपसो/शिक्षण/माध्य-६/११६८, दि. २.१.८७ च्या संदर्भात रवाना.

बेबारी/

महाराष्ट्र शासन
सक्षम प्राधिकारी तथा प्रधान सचिव
अल्पसंख्याक विकास विभाग,
मंत्रालय, मुंबई - ४०० ०३२.

क्रमांक:अशैसं-२००८/४३०/प्र.क्र.२२३/२००८/का.१, दिनांक :- ३ नोव्हेंबर, २००८.

अल्पसंख्याक दर्जाच्या मान्यतेचे प्रमाणपत्र

श्री ऐल्लक पन्नालाल दिगंबर जैन पाठशाळा, सोलापूर या शैक्षणिक संस्थेने त्यांच्या संस्थेस धार्मिक अल्पसंख्याक शैक्षणिक संस्था म्हणून दर्जाच्या मान्यतेचे प्रमाणपत्र मिळण्यासाठी दि.८.९.२००८ रोजी अर्ज सादर केला होता. दि.१७.१०.२००८ रोजी माझ्या समक्ष संबंधित संस्थेसोबत झालेल्या सुनावणी दरम्यान संस्थेच्या पदाधिकाऱ्यांनी केलेल्या सादरीकरणाच्या आधारे सदर संस्था ही अल्पसंख्याक विकास विभाग, शासन निर्णय, क्र.अशैसं-२००८/प्र.क्र.१३३/२००८/का.१, दि.४ जुलै, २००८ अन्वये विहित करण्यात आलेल्या निकषांतर्गत राज्य शासनाने घोषित केलेल्या धार्मिक (जैन) अल्पसंख्याकामधील व्यक्तींकडून अथवा व्यक्तींच्या समुदायाकडून स्थापित व संचालित करण्यात येत असल्याबाबत माझे समाधान झाले आहे. परिणामत: सदर संस्था ही धार्मिक (जैन) अल्पसंख्याक शैक्षणिक संस्था असल्याचे याद्वारे घोषित करण्यात येत आहे.

हे प्रमाणपत्र केवळ महाराष्ट्र राज्यापुरते लागू असेल. सदर संस्थेस प्रदान करण्यात आलेला धार्मिक अल्पसंख्याक दर्जा हा संस्था संचालित करत असलेल्या सर्व शैक्षणिक शाखांना लागू राहील.

उपरोल्लेखित शैक्षणिक संस्थेस याद्वारे प्रदान करण्यात आलेला धार्मिक अल्पसंख्याक दर्जा हा शैक्षणिक वर्ष २००८-०९ पासून विधिग्राह्य असेल. संबंधित संस्थेने अल्पसंख्याक विकास विभाग, शासन निर्णय, क्र.अशैसं-२००८/प्र.क्र.१३३/२००८/का.१, दि.४ जुलै, २००८ अन्वये विहित करण्यात आलेल्या निकष व अटींची सातत्याने व विनिर्देशपूर्वक पूर्तता करणे बंधनकारक राहील.

टी. एफ. थेकेकरा

(टी. एफ. थेकेकरा)
सक्षम प्राधिकारी तथा प्रधान सचिव
अल्पसंख्याक विकास विभाग, महाराष्ट्र शासन
मंत्रालय, मुंबई - ४०० ०३२.

ITEM NO.23 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). 23287/2018
(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. Meetu 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. Rashimi 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

vai

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.Jai Chhabria and Mr.R.P. Carvalho i/b M/s.Federal & Rashmikant 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 notice of motion for interim reliefs 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 the 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 15.02.2011 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 prior to the impugned G.Rs. and the circular were Statute Nos.413 and 417 dated 14.08.1984 issued by respondent No.4 – 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 in 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 Section 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 that 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 / Teacher Recruitment Boards must invite three 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 Assistant 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, 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 good 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.

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 that category.

(b) The quorum for the meeting should be five of which hat least 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 members 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 penal 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 C/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."

5. 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 this 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 mentioned 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 3 of the 2000 Regulations subject to the selected candidates having the prescribed qualifications, experience etc.

6(A) By paragraph 3 of the impugned G.R. dated 15.12.2011, 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 be included as 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 20120131044045145001.

(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.Chinoy, 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 567,* 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. 194, 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 in their own committee or body consisting of persons elected by them. Second is the right to choose its teachers. It is said that minority institutions want teachers to have compatibility 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 for an educational institution was regarded as one of the essential ingredients under Article 30(1). The Court's attention was drawn to the fact that in *Kerala Education Bill, 1957* case *1959 SCR 995*, this Court had opined that clauses 11 and 12 made it obligatory for all aided schools to select teachers from a panel selected from each district by the Public Service Commission and that no teacher of an aided school could be dismissed, removed or reduced in rank without the previous sanction of the authorized officer. At SCC p. 792, Khanna, J., observed that in cases subsequent to the opinion in *Kerala Education Bill, 1957 case* this Court had held similar provisions as clause 11 and clause 12 to be violative of Article 30(1) (*sic* in the case) of the minority institutions. He then observed as follows: (SCC p. 792, para 109)

"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. This means that the right under Article 30(1) implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution. The conditions that can normally be permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and 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, 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 non-teaching, and administrative control over them, the management should have the freedom and

> there should not be any external controlling 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 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 no 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, 386*, 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 members 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. (2011) 2 MLJ 641*. 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.Xavier's College Society vs. State of Gujarat & Anr, AIR 1974 SC 1398,* the Division Bench held as under :-

> "60. 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 without outside interference, as the right of appointment of teachers out of qualified teachers is to be left to the minority institutions alone cannot be accepted, as the process of selection of teachers cannot be (sic) regulated, as it would amount to interference in

administration of minority institutions.

61. 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 basis structure of the Constitution and therefore, any regulation 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 administer 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 regulations 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. Sharma and Co. (1988) 4 SCC 353,* the Hon'ble Supreme Court was pleased to consider question with regard to the applicability of law when the matter stood 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 1985, 3145 of 1985 - *Jaipur Development Authority v. Firm Chhokhamal Contractor*. It was, hence, urged that this should await adjudication on this 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 procrastinated. 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 wants 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 8.12.1985 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 as 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 69, 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.5652/2006 & CM 4648/2006 (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 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, BDP, 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 members 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 minorities 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 showing 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 at this stage, 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 this writ petition would be applicable in certain States although they have been held to be ultra-rives the Constitution of India. Mr.Chinoy relied upon the judgment of the Supreme Court in *Kusum Ingots & 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 appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution. 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 insistence 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 the 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.826) 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 233 (SCC, p.835) that this provision was not held to be inapplicable to minority institutions. The other dissenting Judge, Dwivedi J., noted that (para 287, SCC p.850) 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. "

16. 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 concurrent judgment of their 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 Ahmadabad St.Xavier's* 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 teacher 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 reliefs.

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 third 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 prayers (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 members 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.)**