

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.17654 of 2017
Date of Decision:17.08.2018

The Director School Education, Department of Education, Chandigarh
Administration, Chandigarh

. Petitioner

Vs.

National Commission for Minority Educational Institution and others

. Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Amit Jhanji, Advocate, and
Ms.Sukhmani Tiwana, Advocate, for the petitioner.

Ms.Alka Sarin, Advocate, with
Mr.Shikhar Sarin, Advocate, for respondents No.2 to 9.

RAKESH KUMAR JAIN, J.

The petitioner has challenged the order dated 4.2.2016 passed by the National Commission for Minority Educational Institutions [for short 'the Commission'] constituted under the National Commission for Minority Educational Institutions Act, 2004 [for short 'the Act'] declaring respondent No.3 as a minority educational institution and ordered for the issuance of a minority status certificate.

In brief, on 30.11.1974 "Bhagwant Singh Charitable Trust" was created by Bhagwant Singh s/o S.S. Makan Singh as the Settler and R.S. Mamik s/o Bhagwant Singh, H.S. Mamik s/o Bhagwant Singh and Harbans Kaur wife of Bhagwant Singh as the trustees, for the purposes mentioned in Clause 2(a) to (j) of the said Trust Deed. Clauses 2(a) to (j) of the Trust Deed are reproduced as under: -

- a) *To promote the study and advancement of knowledge of humanities, economics, political science, sociology or other social science, or the natural sciences and the encouragement of literature and fine arts.*
- b) *To publish or aid the publication or sale of news papers, magazines, journals, books brochures, pamphlets and research papers.*
- c) *To establish, help or conduct institutions carrying on, for facilitation, teaching, study or research, including research and intelligence units, libraries, laboratories, colleges, schools, book clubs, book shops or institutions conducting market or other surveys.*
- d) *To invite scholars, research workers or experts, Indian or Foreign, to arrange for lectures, seminars and conferences, in India or to give research assignments to individuals or institutions in India.*
- e) *To establish and maintain research fellowships, profession ships, readerships or lectureships or to award scholarships, studentships, stipends, prizes, travelling grants in India available in India, either as loan or scholarship.*

- f) To organize and hold exhibitions of works of art and science and competitions on subjects of general and occupational interest including essay competitions and to award prizes for the same.*
- g) To help institutions which have similar objective as aforesaid by way of loans or grants or donations.*
- h) To give financial assistance from the income of trust and permit the use of the trust properties or any part thereof either free of charge or for a nominal fee to the charitable institutions for the educational economic social or cultural benefit and advancement.*
- i) To provide for welfare of the employees of the Trust and/or their families or of any institution conducted or helped by the Trust.*
- j) For the (not legible) of the poor or for education, or for medical relief of for the advancement or any other object of general public utility PROVIDED ALWAYS that if at any time hereafter it is held that any of the objects or purpose after said towards which the corpus or income of the Trust Fund or any part thereof hereby directed to be applied or expended is not strictly charitable according to*

law then and in that case the trustee shall apply and expand the same towards the execution and carrying out such of the objects purposes aforesaid as may be held to be strictly charitable according to law.

PROVIDED that the Trustees shall be at liberty to utilize the Trust Fund (which shall include the corpus and/or the income of the Trust Fund and/or accretion thereto) or any part of the Trust Fund for any or more of the objects aforesaid and in such proportion as they may, in their absolute discretion think fit and proper and the trustee shall be at liberty to use the Trust Fund or any part thereof for the purpose aforesaid either (not legible) or through any institutions carrying out the aforesaid objects.”

Clauses 22, 23, 25, 27 & 33 of the said Trust Deed are also relevant, which read as under:-

22) The Chairman is or any two trustees shall be entitled to convene a meeting of the trustees.

23) Two trustees present shall form a quorum for any meeting of the trustees.

25) All questions arising at meeting of the Trustees shall be decided by a

majority of votes and in case of equality of votes the Chairman shall have a second or casting vote provided always that no question relating to the disposal of the corpus of the Trust Fund or any part thereof shall be decided and disposed of unless sanctioned at a meeting of the Trustees by three-fourth of the member of trustees from the time being of those presents at such meeting.

27) A resolution in writing circulated amongst all the trustees and passed by a majority of the trustees for the time being of these present in Delhi shall be as valid and effectually as if it has been passed at a meeting of the trustees duly called and convened.

33) The Trustees may from time to time make such rules and regulations for managing the affairs of the Trust not inconsistent with the main objects of the trust, as they may think fit and may from time to time add, alter and vary the some. The Trustees shall also have the power to vary or clauses 3, 4, 5, 6,

*7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17,
18, 19, 20, 21, 22, 23, 24, 25, 26, 27,
28, 29, 30, 31, 32 hereof frame in
substitution other clauses of clause.”*

Since the sole object of the Trust was to impart education, therefore, it started the Vivek High School (respondent No.3) in the year 1984 but in the year 1989, the Trust applied for allotment of land to the Union Territory, Chandigarh for establishment of the School. The Trust was allotted a plot measuring 28683.59 sq. yards in Sector 38-B, Chandigarh and possession of the plot was handed over to the Trustees on 23.10.1989. On 29.7.2005, the Chandigarh Administration issued a notification in terms of the powers conferred by Section 3 and 22 of the Capital of Punjab (Development and Regulation) Act, 1952 notifying the “Allotment of land of Educational Institutions (Schools), etc. on Lease Hold Basis in Chandigarh (Amendment) Scheme, 2005” [for short ‘the Scheme’]. Clause 8 of the said notification is relevant which is reproduced as under: -

“8. In the said scheme for para 18 the following shall be substituted namely:-

“The Educational Societies/ Institutions (Schools)/Trusts shall be required to:-

- i. Reserve 15% seats as may be determined by the Chandigarh Administration from time to time, in the schools for students belonging to economically weaker sections of the Society and the fee charged from those*

students be nominal preferably the same as is charged from students of Government Institutions. Provided that if for certain reasons schools are unable to fill up these 15% seats reserved for economically weaker sections in any academic year, the same shall be brought to the notice of the Chandigarh Administration and the concurrence of the Competent Authority shall be obtained with reasons to be recorded in writing for reducing/condoning this reservation for that particular academic year.

ii. Follow instructions/ guidelines/ directions issued by the Chandigarh Administration from time to time regarding fee structure and admission procedure etc.

iii. Appoint qualified teacher/other Ministerial staff and pay them the salaries as is required to be paid in an aided school in the Union Territory, Chandigarh.”

According to the aforesaid notification, all educational institutions and societies in Chandigarh were now required to reserve 15% of the total seats for the Economically Weaker Sections of the society. In the meantime, the Government of India, Ministry of Law and Justice issued a notification by which powers were given to the respective States and Union Territories to declare institutions as ‘minority institutions’ under the provisions of the National Commission for Minority Educational Institutions (Amendment) Ordinance 2006 [for short ‘the Ordinance’] and in pursuance thereof, the Chandigarh Administration vide its order dated 12.6.2006 appointed officers to grant no objection certificate for the establishment of Minority Educational Institution. The chart of the designated officers, as provided in the said order, read as under: -

<i>“1. Director Public Instruction (Colleges), U.T. Chd.</i>	<i>In respect of Institutions which impart education above 10+2 level</i>
<i>2. Director Public Instruction (Schools) UT, Chd.</i>	<i>In respect of Institutions which impart education upto 10+2 level.”</i>

Thereafter, “The Right of Children to Free and Compulsory Education Act, 2009 [for short ‘the Act of 2009’] came with an object to provide free and compulsory education to all children of the age of 6 to 14 years, imposing various statutory obligations upon the Central/State Governments to ensure that the norms and standards set down in the said Act are followed meticulously. The validity of the Act of 2009 was challenged in a case reported as ***“Society for Un-aided Private Schools of Rajasthan***

Versus UOI and another” 2012(6) SCC 1 in which, vide order dated 12.4.2012, the Hon’ble Apex Court made the following observations: -

“20. Accordingly, we hold that the Right of Children to Free and Compulsory Education Act, 2009 is constitutionally valid and shall apply to the following:

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school including aided minority school(s) receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided non-minority school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.

However, the said 2009 Act and in particular Sections 12(1)(c) and 18(3) infringes the fundamental freedom guaranteed to unaided minority schools under Article 30(1) and,

consequently, applying the R.M.D. Chamarbaugwalla v. Union of India [1957 SCR 930] principle of severability, the said 2009 Act shall not apply to such schools.”

As per the aforesaid decision, though the Act of 2009 was upheld but it was not made applicable to the un-aided minority schools.

Thereafter on 7.5.2012, respondent No.2 made an application to respondent No.1, seeking minority status, mentioning therein that they are applying directly to it because according to their information there is no designated authority in the Union Territory, Chandigarh. In column No.2, 3 and 9(d) of the application, respondent No.2 mentioned as under: -

“2	<i>Whether the applicant institution’s claim is based on religious or linguistic minority?</i>	<i>Religious</i>
3.	<i>whether the applicant institution has been established or administered by : (a) Religious minority or (b) Linguistic minority</i>	<i>Religious Print from national minorities commission website is attached showing minority status of Sikhs in Chandigarh. (Annexure 1)</i>
9(d)	<i>Names and Addresses of present Trustees/ Mutwallis /Members of the Governing Body and their religion.</i>	<i>1. Harmeet Singh Mamik, # 34, Sector 4, Chandigarh,</i>

		<i>Religion-Sikh</i>
		2. <i>Ashok Chopra,</i> <i>Garden Estate,</i> <i>Gurgaon,</i> <i>Religion-Sikh.</i>
		3. <i>Vikramjeet Singh</i> <i>Mamik, # 34,</i> <i>Sector 4,</i> <i>Chandigarh,</i> <i>Religion-Sikh</i>
		4. <i>Capt. Jasbir Singh</i> <i>Mundi, # 511,</i> <i>Sector 8-B,</i> <i>Chandigarh,</i> <i>Religion –Sikh.”</i>

Affidavit of Harmeet Singh Mamik was also filed with the application in which he has averred that “*Vivek High School, Sector 38-B, Chandigarh was established by and is being managed by Bhagwant Singh Charitable Trust. The Trust comprises of members of the Sikh community and is managed by them. Vivek High School is run by the trust for the benefit of members of Sikh minority community*”.

In the reply, it was brought to the notice of the Commission that the contention of the school that there is no designated authority for considering the application for grant of minority status is not correct and reference was made to the letter dated 12.6.2006 by which the competent authorities were designated. During the proceedings, an order was passed by the Commission on 10.9.2014, which read as under: -

“Learned counsel for the petitioner has fairly conceded that the deed of Bhagwant Singh Charitable Trust does not reflect that the beneficiaries of the petitioner institution are members of the Sikh community. He seeks an adjournment to get the said deed of trust amended to prove the said fact. List on 3.2.2015”

Thereafter, the Supplementary Trust deed was executed on 19.12.2014 by Ashok Chopra, authorized by H.S. Mamik by its authority letter dated 18.12.2014 being the Chairman of the Trust to insert the following point, to the functioning of the Trust and to form a part of the original Trust Deed dated 30.11.1974. The said amendment in the Supplementary Trust deed read as under: -

“Since the settler and the original trustees of the trust were all Sikhs, the trust shall also engage in Charitable and education activities including establishing and administering educational institutions primarily for the benefit of the Sikh community however, without prejudice to the members of any other community according to the basic tenets of this trust”

It was mentioned in the supplementary trust deed that it is an

the application of respondent No.3 vide its impugned order dated 4.2.2016.

The Commission noticed the argument/objections raised by the petitioner which read as under:-

A. The only motive to seek the minority status by the school is to avoid implementation of Right to Education Act” (RTE).

B. The petitioner has bypassed the competent State Authority and has directly applied to the NCMEI for the grant of minority status certificate.

C. Founding and existing Trustees of the said trust do not belong to the minority Sikh community. Hence it can't claim that the petitioner institution has been established and administered by the Sikh community which enjoys the fundamental right to establish & administer minority educational institution under Article 30 (1) of the Constitution of India.

D. Original Trust Deed does not have any clause claiming that the Trust will establish educational institutions primarily for the benefit of Sikh community.

E. Respondent also contests the trustees' right to amend the Trust Deed quoting clause 33 of the original Trust Deed.

The first objection was overruled by the Commission with the observation that *"the NCMIE has neither any authority nor any mechanism to gauge the intention of the petitioner. It is the fundamental right of a minority community to establish an educational institution under Article 30 A of the Constitution of India. This right also exempts them from RTE Act. It is, therefore, nothing wrong on the part of the petitioner institution to seek exemption from the RTE if the school is run primarily for the benefit of the Sikh community. Hence the respondent objection is overruled"*.

The second objection was overruled with the following observations:-

"Respondent pleads that the petitioner school has avoided and "bypassed the competent State Authority". This argument is also based on erroneous ground. The petitioner institution is run under the CBSE Board, which is a Central body. The NCMEI Act clearly says that all educational institutions recognized by the CBSE and the ICSE etc. need not go to State authorities to seek minority status certificate. They are free to apply directly to the NCMEI for grant of minority status certificate. Hence, respondent's second plea also does not stand

on any legal grounds and seems malafide. It is therefore, rejected.”

The third objection was overruled with the following observations:-

“Respondent pleads that the founding and existing trustees of the petitioner trust are not from Sikh community which again is contested by the learned counsel for the petitioner.

The petitioner institution while submitting a certified copy of the original Trust Deed of the Bhagwant Singh Charitable Trust has filed the details of all the founding trustees. According to the certified copy of the said trust deed, founding trustees of the said trust are:

(i) S.S. Makhan Singh, who is a settler Other trustees are:

(ii) R.S. Mamik S/o Shri Bhagwant Singh

(iii) Bhagwant Singh S/o Shri S.S. Makhan Singh

(iv) H.S. Mammik S/o Bhagwant Singh

(v) *Smt. Harbans Kaur W/o S.*

Bhagwant Singh

All the trustees by their surname itself sound Sikhs. Besides, the petitioner has filed an affidavit swearing that all the above-mentioned trustees are Sikh by birth.

The existing trustees namely Sardar H.S. Mamik, S/o Late Sardar Bhagwant Singh, Shri Ashok Chopra, S/o Shri Balraj Chopra, Sardar Vikramjeet Singh Mamik, S/o Sardar H.S. Mamik and Sardar Jasbir Singh Mundy, S/o Late Col. Sardar Jaswant Singh Mundy are also from the Sikh community.

Only one person, Shri Ashok Chopra can be contested as non/Sikh though Chopras too belong to Sikh community. Yet the existing majority of the trustees of the said trust are Sikhs. Hence the said trust is clearly established by the Sikh members and it is being controlled and administered by the majority members of the Sikh community which is one of the stipulated guidelines of the NCMEI for granting minority status certificate. Hence, respondent's plea in point C. is also rejected."

The fourth objection was overruled with the following observations:-

“Respondent’s pleads that the original trust deed of the said trust does not have any clause specifically stating that the trust shall establish educational institutions primarily for the benefit of Sikh community which is a mandatory clause for seeking minority status certificate for an educational institution. Respondent objection is correct. However, the petitioner sought the court permission to amend its trust deed with a clause stating that the petitioner institution will be run primarily for the benefit of Sikh community.”

The fifth objection was overruled with the following observations:-

“Respondent contested the trustee’s right to amend the said trust deed taking cover of the clause 33 of the original trust deed which, according to the respondent, debars the trustees to amend the original trust deed. However, Clause 33 of the said trust reads:

“The trustees from time to time may make such rules and regulations for managing the affairs of the trust not inconsistent with the main objects of the trust as they may think fit

and from time to time add, alter and vary the same. Trustees shall also have the power to vary or alter clauses 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 to 32 and 33 hereof frame in substitution other clauses or clause”

From clause 2 to clause 32 of the said trust cover every aspect of the petitioner trust. Hence, the trustees are free to make any amendment deemed necessary to continue the basic objects of the trust.

The respondent’s plea on this ground too is not valid and is, therefore, overruled.”

Learned counsel for the petitioner has submitted that as per Article 30(1) of the Constitution of India, all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. It is submitted that in this case respondent No.2 has obtained the status of minority from the Commission on the basis of Sikh religion. It is submitted that in ***Civil Appeal No. 3945 of 2018*** tilted as ***“Sisters of St. Joseph of Cluny Vs. The State of West Bengal and others”*** decided by the Hon’ble Apex Court on 18.4.2018, it was held that *“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 its status as a minority educational institution at any stage post establishment, the NCMEI would have the power to decide the question and declare such institution’s minority status”*.

It is argued that the Commission had no jurisdiction to even entertain the application dated 7.5.2012 filed by respondent No.2 for seeking approval of minority status for respondent No.3, setting up the claim of the institution on religion, alleging that the institution was established and administered by the religious minority, referring to the religion of the trustees for the first time as Sikh. It is further submitted that the approval of minority status to respondent No.3, by respondent No.2, after coming into force of the Act of 2009, is not only an afterthought but an act of fraud on the Statute. It is also submitted that the original Trust deed came into being on 30.11.1974 in which neither the settler nor the trustees mentioned themselves following Sikh religion or even Sikhs and in para 2 therein, in which the objects to be achieved by the Trust were mentioned, it was categorically mentioned that the trust would be secular and would neither have a religious colour nor in any of the objects mentioned in para No.2(a) to (j) (already reproduced in the earlier part of this order) it is mentioned that the Trust is dedicated to a religious cause much less for the Sikh. It is also submitted that as per Clause 33 of the said Trust Deed, the Trustees were allowed to make such rules and regulations for the management of the Trust which should not be in-consistent with the main objects of the Trust and can vary Clauses from 3 to 32 of the Trust Deed but not Clause 2 in which the objects of the Trust were mentioned. It is further submitted that respondent No.2 knew that the original Trust was secular and not established in order to administer a religious minority institution, therefore, it was conceded before the Commission on 10.9.2014 that the original Trust Deed does not reflect that the beneficiaries of the institution are the members of the Sikh community and sought time to amend the trust deed. It is argued that it was

dated 9.12.2014 by way of supplementary Trust Deed that the original trustees are Sikh and the Trust is engaged in charitable and educational activities including the establishment and administering educational institutions primarily for the benefit of the Sikh community. It is further submitted that not only Clause 2 of the original Trust Deed has been varied because it was provided therein that the Trust fund would be used by the trustees for achieving one or more of the objects mentioned from Clause 2(a) to 2(j) but also the Commission had no jurisdiction to entertain and decide the application filed by respondent No.2 to declare respondent No.3 as a religious minority institution in view of the law laid down by the Supreme Court in the case of *Sisters of St. Joseph of Cluny (Supra)* in which it has been held that the minority institution at any stage post establishment can approach the Commission to get a declaration about its minority status. Meaning thereby the minority status should have already been vested in the said institution otherwise the said status, for the first time, can be granted only by the authorities set up under the Statute. In this regard, he has again referred to the order dated 12.6.2006 passed by the Department of Education, Chandigarh Administration, in pursuance of the notification dated 20.02.2006 issued by the Government of India, Ministry of Law and Justice and received by D.O. No.3-40/2005-NCMEI-3033 dated 15.2.2016 from the Secretary National Commission or Minority Education Institutions, Patel Chowk, New Delhi, whereby it has designated competent authority for the grant of No Objection Certificate in respect of the institutions which impart education for the establishment of Minority Educational Institutions in UT, Chandigarh under the provisions of the Ordinance. It is also submitted that although the said order was passed on 12.6.2006 yet

authority, straightway applied to the Commission on 7.5.2012 for grant of minority status for the reasons best known to them by passing the designated authority for the sole purpose of avoiding the provisions of the Act of 2009.

Learned counsel for the petitioner has also submitted that the Commission has made factual errors in the impugned order when it observed that *“However, the petitioner sought the court permission to amend its trust deed with a clause stating that the petitioner institution will be run primarily for the benefit of Sikh community”*. It is submitted that there is no such order of granting permission rather there is an order dated 10.9.2014 when adjournment was sought by respondent No.2 to get the original Trust Deed amended to prove that the trustees are members of the Sikh community. It is further submitted that although the Commission has referred to Clause 33 while dealing with the objection “E” but it has wrongly observed that *“from clause 2 to clause 32 of the said trust cover every aspect of the petitioner trust. Hence, the trustees are free to make any amendment deemed necessary to continue with the basic objections of the trust”*. It is submitted that Clause 33 specifically creates for changing Clause 2 at all and the clauses which could be varied are specifically mentioned as Clause 3 to 32.

Learned counsel for the petitioner has also challenged the manner in which amendment has been brought in the original Trust Deed by way of supplementary Trust Deed and has referred to Clauses 22, 23, 25 and 27 of the original Trust Deed to contend that the amendment has been brought in the original Trust Deed in violation of Sections 47 and 48 of the Indian Trust Act, 1882. It is submitted that the Trust Deed having been changed by Ashok Chopra one of the trustees, on the authority letter of Chairman of the Trust, is contrary to law as well as the provisions of the

Learned counsel for the petitioner has referred to the decision of the Supreme Court rendered in the case of *State of Kerala etc. Vs. Very Rev. Mother Provincial etc. (1970) 2 Supreme Court Cases 417*, and has referred to para No.8 & 9 of the said decision, which read as under: -

“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 by a member of that community. It is equally irrelevant that in addition to the minority community others from other minority communities or even from the majority community can take

advantage of these institutions. Such other communities bring in income and they do not have to be turned away to enjoy the protection.

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

He has further referred to the decision of the Supreme Court in the case of ***"A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and another"*** (1986) 2 Supreme Court Cases 667, para Nos. 1, 2 & 8 of which read as under: -

"1. A brazen and bizarre exploitation of the naive and foolish, eager and ready-to-be-duped, aspirants for admission to professional collegiate courses,

behind the smoke screen of the right of the minorities to establish and administer educational institutions of their choice - is what this case is about. A society styling itself as the 'Andhra Pradesh Christian Medical Educational Society' was registered on August 31, 1984. The first of the objectives mentioned in the memorandum of association of the society was,

"to establish, manage and maintain educational and other institutions and impart education and training at all stages, primary, secondary, collegiate, Post-graduate and doctoral, as a Christian Minorities' Educational Institutions."

Another object was

"to promote, establish, manage and maintain Medical colleges, Engineering colleges, Pharmacy colleges, Commerce, Literature, Arts and Sciences and Management colleges and colleges in other subjects and to promote allied activities for diffusion of useful knowledge and training".

Other objects were also mentioned in the Memorandum of Association. All that is necessary to mention here is that none of the objects, apart from the first extracted object,

had anything to do with any minority. Even the first mentioned object did not specify or elucidate what was meant by the statement that education and training at all stages was proposed to be imparted in the institutions of that society "As Christian Minorities' Educational Institutions'. Apparently the words "as a Christian minorities' educational institutions" were added in order to enable the society to claim the rights guaranteed by Art. 30(1) of the Constitution and for no other purpose. This will become clearer and clearer as we narrate further facts.

2. It is also worthy of note that neither the memorandum of association nor the articles of association make any reference to any amount of corpus with which the society and the institutions proposed to be founded by it were to be financed initially. It was admitted before us in answer to a question by us to the learned counsel for the appellant-society that the society had no funds of its own apart from what was collected from the students.

8. It was seriously contended before us that any minority, even a single individual belonging to a minority, 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 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 pharmonyx with their religion or conducive to the pursuit to 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 these half a dozen words were introduced merely to found a claim on Art. 30(1). They were a smoke-screen.

He has also relied upon a decision of the Supreme Court in the case of ***"T. Varghese George Vs. Kora K. George and others"*** (2012) 1 Supreme Court Cases 369, para No.37 to 39 of which read as under:-

37. With respect to an outsider coming in the management, it is to be seen that the founder had not designated any of the persons on the board by their religion. Thus, he nominated all the persons in their ex-officio capacity as follows:- (a) Principal of the school (ex-officio),(b) Headmaster /

Headmistress, (c) Warden of the Hostel (ex- officio), (d) Member elected by the parent association, (e) Member elected from the staff council, and (f) Three persons having high standard in the education field nominated by the first five. When one sees the formation of this board, one just cannot say that persons other than Christians cannot be in the management of the institution. Incidentally, we may note that the nominated Chairman Justice J. Kanakraj, son of Late P. Jacob is a Christian. The objection of the appellant appears to be only on the basis of the religion of S.Palamalai, the Executive Trustee and Correspondent of the trust.

- 38. Paragraph 8 of Very Rev. Mother Provincial quoted above lays down two tests. The negative test is that a contribution from other communities to a minority institution and conferring of benefits of the institution to the majority community are not the factors which matter in deciding the minority*

character of the institution. The positive test is that the intention in founding the institution must be to found an institution for the benefit of a minority community. As far as, these negative testes are concerned, they can be said to be satisfied in the present case. But the positive test which is more significant namely that the intention must be to found an institution for the benefit of a minority community, is not satisfied. We do not find anywhere in the initial declaration made by the founder that the institution was to be a minority institution. All the trustees nominated were on ex-officio basis or on the basis of their qualifications and not on the basis of religion. The funds and income was to be utilized for encouraging poor and deserving students irrespective of caste, creed or religion. It is nowhere stated in that declaration that the trust was being created for the benefit of the Christian community. Thus the proposition in

Very Rev. Mother Provincial in fact goes against the appellant.

39. *In the facts of the present case, we may not be required to go to the extreme as canvassed by Shri Ganesh based on the quotation from judgment in the case of Shirur Mutt (supra). But, we cannot ignore the proposition laid down in S. Azeez Basha (supra) namely that if an institution is established by somebody else, meaning thereby a person belonging to another religion or a secular person, still a religious minority can claim the right to administer it on the basis of Article 30(1) merely because he belongs to a minority or for some reason or the other people of a minority might have been administering it. In the instant case the approach of the founder is clearly seen to be a secular approach and he did not create the trust with any restricted benefits for a religious community. Merely because he belongs to a particular faith, the persons belonging to that faith cannot claim exclusive*

right to administer the trust. The establishment and administration must be both by and for a minority which is not so in the present case. Similarly, it is material to note as observed in sub para (ii) and (iii) of para 19 in Malankara Syrian Catholic College (supra), the right conferred on minorities under Article 30 is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position vis-a-vis the majority. The right to establish and administer educational institution does not include the right to maladminister. This being the position in the present case, there is no occasion for us to apply the propositions in para 63 (6) of All Saints' High School judgment (supra) or the one in the case of MD. Ismael (supra).”

He has also referred to the decision in **Case No.1320 of 2009** titled as **“Buckley Primary School Vs. The Principal Secretary to Government School & Mass Education Department, Government of Orissa”** decided by the Commission on 6.7.2010 and also relied upon it in the impugned order. It is contended that the said decision has wrongly been applied by the Commission as the facts of that case are altogether different

from the facts of the present case. In this regard, it is submitted that the Buckley Primary School was a registered Trust, constituted by the members of the Christian community. The said school was established in the year 1837 and was managed by the Diocese, Cuttak. It was founded by the Christian Community with an object to give Catholic youth of the Christian community a full course of moral and liberal education by imparting through religious instructions and by maintaining a Catholic atmosphere in the institution. It is not the case of respondent No.2 because neither it was established for the benefit of Sikh community nor the school/respondent No.3 is being administered with a view to impart education to Sikh youth with a full course of moral and liberal education by imparting through religious instructions and by maintaining a Sikh religious atmosphere in the institution.

On the other hand, learned counsel appearing on behalf of respondents No.2 to 4 has submitted that the settler and the trustees of the original trust deed are all Sikhs and the object of establishment of the Trust and the school is for the benefit of Sikh community and in this regard, supplementary Trust Deed has been made and the relevant clause has been inserted on 19.12.2014. It is also submitted that the petitioner cannot take advantage of the word “religion” used in Clause 2 of the original Trust Deed because the word “religion” mentioned therein was pertaining to Trust fund and not to establish and administer the education institution. It is further submitted that respondent No.2 had directly applied to the Commission for approval of minority status because the jurisdiction to declare the minority status vests with the Commission only and in this regard, she has also referred to the law laid down by the Apex Court in the case of *Sisters of St.*

minority Trust can be given by the Commission. She has also referred to Article 30(1) of the Constitution of India to contend that it is a fundamental right of all minorities to establish and administer educational institutions of their choice based on religion or language. It cannot be interfered with by the State. It is submitted that respondent No.2 to 4 has sought the declaration of the Status of their institution being a religious minority as not only the trustees are all Sikhs but also the number of Sikh students are more in the school. It is also submitted that the supplementary Trust Deed has been created in accordance with the provisions of the original Trust Deed because a meeting was held in which resolution was passed on 13.12.2014 on the basis of which the Chairman of the Trust was authorized and he further delegated his authority to one of the Trustees, namely, Ashok Chopra for the purpose of making an amendment in the original Trust Deed by way of supplementary Trust Deed. It is argued that there is no attempt on the part of the respondents to escape from the provisions of the Act of 2009 by seeking the status of minority institution rather the said status had to be obtained by them because the Chandigarh Administration has been persistently pestering them to adhere to grant admission by reserving 15% seats in EWS quota though the provisions of the Act were not applicable to the respondents being the minority institution. It is further argued that there is no error in the impugned order passed by the Commission which has dealt with all the objections/arguments raised by the petitioner by recording a specific finding. She has also referred to a decision of the Supreme Court in the case of ***“T.M.A. Pai Foundation and others Vs. State of Karnataka and others”*** 2003 AIR (SC) 355 while pressing upon her right enshrined under Article 30(1) of the Constitution of India to establish and administer an educational institution being a minority. She has also relied upon another

decision of the Supreme Court rendered in the of *“P.A. Inamdar and others Vs. State of Maharashtra and others”* (2005) 6 Supreme Court Cases 537 and in the end the decision of the Supreme Court in the case of *Sisters of St. Joseph of Cluny (Supra)*.

I have heard leaned counsel for the parties and perused the record with their able assistance.

There is no dispute that Article 30(1) of the Constitution provides that all the minorities, whether religious or linguistic, shall have a right to establish and administer educational institution of their choice but the question involved in this case is about the validity of the order passed by the Commission.

I have already given the facts in detail as to why respondent No.2 came into being and respondent No.3 is established but for the sake of clarity it is pertinent to mention that it all started with the execution of the Trust Deed on 30.11.1974 when the Trustees had decided to apply the trust fund for any one or more of the objects mentioned in Clause 2(a) of the Trust Deed irrespective of considerations of sex, caste, creed or religion to establish and administer the educational institution. It was thus a secular Trust in which neither the settler nor the Trustees made a reference to their religion nor it was referred anywhere in the Trust Deed that it has been created to establish and administer educational institution for the benefit of Sikh community. The purport for creation of the Trust was to impart education. The Trust started respondent No.3-School in 1984 and obtained land measuring 28683.59 sq. yards on lease hold basis from Chandigarh Administration on 23.10.1989 for the purpose of establishment and administration of respondent No.3-school which is presently operating from

the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 amended the existing scheme called Allotment of land of Educational Institutions (Schools), etc. on lease hold Basis in Chandigarh Scheme, 1995 by the Scheme called “Allotment of land of Educational Institutions (Schools), etc. on lease hold Basis in Chandigarh (Amendment) Scheme, 2005” by which para No.18 of the earlier Scheme was substituted to direct the educational societies/institutions (schools/Trusts) to reserve 15% seats, as may be determined by the Chandigarh Administration from time to time, in the schools for students belonging to the Economically Weaker Sections of the society and the fee charged from those students would be nominal preferably the same as is charged from the students of the Government Institutions. In the meantime, the National Commission for Minority Education Institutions Act, 2004 came into force in January 2005 and in pursuance of the notification dated 20.2.2006, issued by the Ministry of Law and Justice, Government of India and D.O. No.3-40/2005-NCMEI-3633 dated 15.2.2006 issued by the Secretary National Commission or Minority Education Institutions, Patel Chowk, New Delhi, the Chandigarh Administration appointed the designated competent authorities for the grant of No Objection Certificate to the institutions to impart education by establishing Minority Educational Institutions in UT, Chandigarh, under the provisions of the Ordinance. Then the Act of 2009 came into being which was held to be not applicable to the unaided minority institution. Respondent No.2 directly applied to the Commission for the minority status, showing ignorance about the availability of any designated authority in UT, Chandigarh on the basis that it is a religious minority because all the Trustees are Sikhs and there are Sikh students studying in the school.

Commission by filing its reply as well and at one point of time it transpired that in the original Trust Deed the trustees have not mentioned that they are the members of the Sikh community therefore, an adjournment was sought on 10.9.2014 to get the original Trust Deed amended and then came the amended Trust Deed/supplementary Trust Deed on 19.12.2014 in which for the first time it was mentioned that the settlers and the Trustees are Sikhs and also educational institution is primarily established for the benefit of Sikh community. Though the said supplementary Trust Deed was strongly opposed by the petitioner that it should not be taken on record but the Commission allowed it to be taken on record and considered the same while passing the impugned order. There is a complete fallacy in the argument of the counsel for respondents No.2 to 4 that the Commission had the jurisdiction to pass the impugned order in view of the decision of the Supreme Court in the case of *Sisters of St. Joseph of Cluny (Supra)* because in the said case, the Supreme Court has laid down that the applications for the establishment of minority educational institutions, after the amendment of Act, 2006, must go only to the competent authority set up under the Statute and the application for declaration of status as a minority educational institution at any stage post establishment, shall be decided by the Commission and declared such institutions minority status. It is well settled that the declaration is always of a pre-existing right. In this case, respondents No.2 to 4 had no pre-existing right of being a religious minority to establish and administer the school on religion basis which is quite apparent from the original trust deed which is totally silent in this regard. Respondents No.2 to 4 in order to overcome this difficulty, decided to bring into existence a supplementary Trust Deed in which, for the first time, it was

for the benefit of Sikhs. This has happened post Act of 2006, in the year 2014, therefore, the Commission had no jurisdiction, much less competence, to declare the status of respondents No.2 to 4 as a religious minority. In this regard observations made by the Supreme Court in the case of ***A.P. Christians Medical Educational Society (Supra)***, contained in para 8 of the said judgment (already referred to in the earlier part of this order), would be relevant because in that case it was held that the Government, the university and ultimately the Court have the undoubted right to pierce the 'minority veil' to reject the bogies raised by the pretenders. It was further observed that though dozen times the word has been used as "Christian minorities" in the memorandum of association but there is nothing found in the memorandum or articles of association or in the actions of the society to indicate that the institution was intended to be a minority educational institution. It was also observed that the use of half a dozen times the word "Christian minorities" was only to create a smoke-screen. Further, the Commission has patently erred in referring to Clause 33 of the original Trust Deed while making an observation that the trustees are free to make any amendment, deemed necessary, to continue the basic objects of the trust despite that it has been categorically mentioned in para 33 of the original Trust deed that except for Clauses 3 to 32 no other clauses of the Trust deed can be varied by way of addition, alteration etc.. It means that the Commission has not applied its mind at all to the provisions of the Trust Deed otherwise this finding could not have been recorded by it that the Trustees are free to make any kind of amendment which may be deemed necessary to continue the basic objects of the trust because the objects of the Trust cannot be altered by way of addition or subtraction by the Trustees as

features which have been illegally altered by the Trustees by way of supplementary Trust Deed. Therefore, the supplementary Trust Deed cannot be looked into for any purpose much less for the purpose of inserting for the first time that the Trustees are Sikhs and the object of the Trust is to impart education to the Sikh community which is conspicuous by its absence in the entire original Trust Deed in which at the time of its execution the Trustees deliberately did not mention that they are professing Sikh religion or that the object of the Trust is to impart education to the Sikh community. It all started when respondent No.2 was cornered by the Chandigarh Administration for following the provisions of the Scheme in which it is provided that they would reserve 15% seats in the school for the students belonging to Economically Weaker Section. Respondents No.2 to 4 have, as a matter of fact, tried to avoid the provisions of law by trying to change its colour and obtained a declaration which was not allowed to be given by the Commission even as per the decision of the Supreme Court in the case of *Sisters of St. Joseph of Cluny (Supra)*. Moreover, the Commissioner has further erred in relying upon a previous order in the case of *Buckley Primary School (Supra)* which is entirely on different facts which would again strengthen the belief of the Court that the impugned order has been passed without application of mind. The judgments relied upon by the learned counsel for the petitioner in the case of *State of Kerala (Supra)* and *A.P. Christians Medical Educational Society (Supra)* are relevant whereas the judgments relied upon by the learned counsel for the respondents in the case of *T.M.A. Pai Foundation and others (Supra)* and *P.A. Inamdar and others (Supra)* have no relevance to the controversy involved in this case.

No other point has been raised.

Thus, in view of the aforesaid facts and circumstances, I am of the considered opinion that the impugned order is totally illegal. Hence, the present petition is allowed and the impugned order is hereby set aside. No costs.

17.08.2018
Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking /reasoned : *Yes/No*
Whether Reportable : *Yes/No*