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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 26th November, 2019

+ W.P.(C) 602/2018

SURJAN SINGH RISAL SINGH

MEMORIAL EDUCATION SOCIETY Petitioner

Through: Mr. Raghav Awasthi & Mr. Mukesh
Sharma, Advocates.

Versus

HUMAN RESOURCE DEVELOPMENT

MINISTRY & ANR Respondents

Through: Mr. V.P.S. Charak & Ms. Shubhra
Parashar, Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

: **D. N. PATEL, Chief Justice (Oral)**

1. This Public Interest Litigation has been preferred for the following prayers :-

“(a) This Hon’ble Court may be pleased to issue a Writ of Certiorari for quashing of Notification No.F.7-5/2005-MC(P), dated January 18, 2005.

(b) Pass any other order/order (s) as this Hon’ble Court may deem fit.”

2. The Government of India pursuant to the powers conferred under Section 2 (f) of National Commission for Minority Educational Institutions Act, 2004 (hereinafter referred to as ‘the Act, 2004’) issued Notification No.F.7-5/2005-MC(P) dated 18th January, 2005

(Annexure P-1 to the memo of this writ petition) whereby the following five entities have been notified as the minority communities for the purpose of the Act –

- (1) Muslims,
- (2) Christians,
- (3) Sikhs,
- (4) Buddhists and
- (5) Zoroastrians (Parsis).

3. Learned counsel appearing for the petitioner submits that looking to the statement of objects and reasons and also looking to the provisions of the Act, 2004, the aforesaid notification is violative of Article 14, 29 and 30 of the Constitution of India and is also violative of the Act, 2004 mainly for the reason that linguistic minority within the National Capital Territory of Delhi should also have been declared as minority communities for the purpose of the Act, 2004.

4. Counsel for the petitioner has made no submission as to the legality of the aforesaid five minority communities or as to whether they are rightly or wrongly added in the aforesaid notification. The main contention put forth by the counsel for the petitioner is that the non-inclusion of linguistic minority in the list of minority communities within the State of Delhi is against the purpose of the aforesaid Act and thus, is violative of Article 14 of the Constitution.

5. The Petitioner in the writ avers that Section 4 lays down the qualification and requirements for appointment to the post of the Chairperson or Members. Section 4 read with Section 2(f) makes a person belonging to any other religious community ineligible to

become a part of the Commission.

6. Learned counsel for the petitioner, in support of his arguments, has placed reliance on *Bal Patil & Anr. vs. Union of India & Ors.* **(2005) 6 SCC 690.**

7. We, however, fail to see how this judgment supports his case. The petitioner in *Bal Patil (Supra)* challenged the notification issued by virtue of the power conferred under Section 2(c) of the National Commission for Minority Act, 1992 whereby the Central Government notified certain communities as 'minorities' vis-à-vis exclusion of a certain community, thus being violative of Articles 14, 25 to 30 of the Constitution of India.

8. Paragraph 11 and 12 of *Bala Patil (supra)* bear significance and hence are reproduced hereinbelow:-

“11. The expression “minority” has been used in Articles 29 and 30 of the Constitution but it has nowhere been defined. The Preamble of the Constitution proclaims to guarantee every citizen “liberty of thought, expression, belief, faith & worship”. Group of Articles 25 to 30 guarantee protection of religious, cultural and educational rights to both majority and minority communities. It appears that keeping in view the constitutional guarantees for protection of cultural, educational and religious rights of all citizens, it was not felt necessary to define 'minority'. Minority as understood from constitutional scheme signifies an identifiable group of people or community who were seen as deserving protection from likely deprivation of their religious, cultural and educational rights by other communities who happen to be in majority and likely to gain political power in a democratic form of Government based on election.

12. In the background of constitutional scheme, the provisions of the Act therefore instead of giving definition of “minority” only provide for notifying certain communities as “minorities” who might require special treatment and protection of their religious, cultural and educational rights. The definition of 'minority' given under the Act in section 2(c) is in fact not a definition as such but only a provision enabling the Central Government to identify a community as a “minority” which in the considered opinion of the Central Government deserves to be notified for the purpose of protecting and monitoring its progress and development through the Commission.”

(emphasis supplied)

9. Section 2(c) of the National Commission for Minority Act, 1992 reads as under:-

“2. Definitions – In this Act, unless the context otherwise requires, -

- (a) xxx
- (b) xxx
- (c) “minority”, for the purposes of this Act, means a community notified as such by the Central Government;

10. Section 2(f) of the National Commission for Minority Educational Institutions Act, 2004 reads as under:-

“2. Definitions – In this Act, unless the context otherwise requires, -

- (a) to (e) xxx
- (f) “minority”, for the purposes of this Act, means a community notified as such by the Central Government;”

11. The aforesaid two provisions are *mutatis mutandis* and thus para 12 of *Bala Patil (Supra)* as reproduced hereinabove stands squarely
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applicable to the present case. It is pertinent to note that the definition of “minority” is an enabling provision for the Central Government to notify a community as a “minority” in terms of the objects and purposes of the Act.

12. The contention of the petitioner that non-inclusion of a community as minority (whether linguistic or otherwise) would violate Article 14 of the Constitution and does not hold ground because it is in the spirit of the legislation of the Act to notify a community as “minority” by the Central Government as it is the Central Government who is best suited to determine the scope of Section 2(f) for the purpose of the Act, 2004, and thus, the appointment to the post of the Chairperson or a Member to the Commission.

13. Moreover, it is not for this Court to issue any direction or mandate, on the claim of the petitioner that some communities must be awarded the status of minority, as it is within the mandate of the State to do so.

14. The learned counsel for the Petitioner further contends that certain communities residing in the territory of the National Capital of Delhi must be included in as per the definition of ‘minorities’.

15. This contention of the Petitioner is completely misconceived, since the applicability of the Act, 2004 extends to the entire country except the State of Jammu and Kashmir, and the inclusion of a certain community as a ‘minority’ of a particular state for the purposes of the Act, 2004 cannot be extended for the entire country (except the State of Jammu and Kashmir). Moreover, such a claim from a certain community would lead to a cascading effect on each community

seeking a claim for such an inclusion, especially when it is the prudence of the Central Government as per the mandate of the Act, 2004 to determine the same.

16. Reliance must be placed on the words of D.M. Dharmadhikari, J from *Bal Patil (supra)*

“33. The constitutional goal is to develop citizenship in which everyone enjoys full fundamental freedoms of religion, faith and worship and no one is apprehensive of encroachment of his rights by others in minority or majority.

34. The constitutional ideal, which can be gathered from the group of articles in the Constitution under Chapters of Fundamental Rights and Fundamental Duties, is to create social conditions where there remains no necessity to shield or protect rights of minority or majority.

35. The above mentioned constitutional goal has to be kept in view by the Minorities Commissions set up at the Central or State levels. Commissions set up for minorities have to direct their activities to maintain integrity and unity of India by gradually eliminating the minority and majority classes. If, only on the basis of a different religious thought or less numerical strength or lack of health, wealth, education, power or social rights, a claim of a section of Indian society to the status of 'minority' is considered and conceded, there would be no end to such claims in a society as multi-religious and multi- linguistic as India is. A claim by one group of citizens would lead to a similar claim by another group of citizens and conflict and strife would ensue.

... If each minority group feels afraid of the other group, an atmosphere of mutual fear and distrust would be created posing serious threat to the integrity of our Nation. That would sow seeds of multi-nationalism in

India. It is, therefore, necessary that Minority Commission should act in a manner so as to prevent generating feelings of multi-nationalism in various sections of people of Bharat.

36. The Commission instead of encouraging claims from different communities for being added to a list of notified minorities under the Act, should suggest ways and means to help create social conditions where the list of notified minorities is gradually reduced and done away with altogether.” *(emphasis supplied)*

17. In view of the aforesaid facts, reasons and judicial pronouncements, there is no substance in this writ petition and the same is, therefore dismissed.

CHIEF JUSTICE

C.HARI SHANKAR, J.

**NOVEMBER 26, 2019
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