



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8852 OF 2016

Dnyanprasarak Shikshan Sanstha,
Kille-Dharur, Taluka Dharur,
District Beed, through its
Secretary Uttamlal Harilal Toshniwal,
Age: 67 years, Occu. Agriculture,
R/o. Kille-Dharur, Tq. Dharur,
District Beed.

...PETITIONER

VERSUS

1. The State of Maharashtra
through its Principal Secretary,
Minority Development Department,
Mantralaya, Mumbai.
2. The Deputy Director of Education,
Aurangabad Division,
Aurangabad.
3. The Education Officer
(Secondary),
Zilla Parishad, Beed
4. Mahadeo s/o Kisanrao Satpute,
Age: 65 years, Occu. Agriculture,
R/o. Kille-Dharur, Tq. Dharur,
District Beed.

...RESPONDENTS

Mr. S.R. Barlinge, Advocate for the petitioner
Mr. S.R. Kedar, Advocate for respondent No. 4
Mrs. P.V. Diggikar, AGP for State

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CORAM : MANJUSHA DESHPANDE, J.

RESERVED ON : 30th JANUARY, 2025
PRONOUNCED ON: 11th MARCH, 2025

ORDER :

1. Petitioner is challenging the judgment and order dated 04.06.2016 passed by respondent No. 1.

2. It is the contention of the petitioner that the Petitioner is an educational institution registered under the Societies Registration Act, 1860 and under the Bombay Public Trust Act, 1950. Petitioner society which was registered in the year 1971 runs primary, secondary and higher secondary school at Dharur, Dist. Beed. The members of the managing committee of the society belong to linguistic minority, therefore, a certificate to that effect has been issued by competent authority in favour of petitioner on 09.06.1992. The certificate has conferred status of linguistic minority on the petitioner as provided under Article 30 of the Constitution of India.

3. The status of minority institution of the petitioner was challenged by an employee Shri. U.N. Sakhare before this Court by filing Writ Petition No. 3818 of 2001. However, the writ petition was dismissed by this Court vide order dated 23.07.2002, on the ground of belated challenge. In the year 2005-2006 another employee of institution challenged the status of petitioner by filing Writ Petition No. 8082 of 2006 with a

prayer to complete inquiry which was initiated against the petitioner society, challenging the minority status of the petitioner. After recording the statement of the learned AGP that pending inquiry would be completed as per directions issued in Writ Petition No. 7201 of 2006, the writ petition was disposed of on 11.01.2007. An inquiry was conducted by Respondent No. 1 at the instance of Respondent No. 3. During the inquiry, in response to the show cause notices, reply was filed by the petitioner.

4. In the hearing, it was contended before respondent No. 1 that, once the certificate is granted by the competent authority recognizing the petitioner as linguistic minority institution, it is not open for the authority to re-inquire into the issue. It was also pointed out that though Government Resolution dated 04.07.2008 was issued thereby introducing certain norms of recognition of minority institution by competent authority, the Government Resolution was not applicable to the petitioner, since the effect of Government Resolution dated 04.07.2008 would be prospective and certificate issued in favour of petitioner is issued on 09.06.1992. Though all these facts were brought to the notice of respondent No. 1, the status of

petitioner as linguistic minority institution was cancelled by respondent No. 1 by order dated 31.03.2011.

5. Petitioner challenged the order dated 31.03.2011 in Writ Petition No. 5698/2011. The impugned order was stayed by this Court. During pendency of writ petition, a statement was made by learned advocate for respondent No. 3 that there is remedy available before National Commission for Minority Educational Institutions, New Delhi. Therefore, petitioner has prayed for liberty to approach the Commission. Accordingly when he approached the National Commission for Minority Educational Institutions, by order dated 10.01.2012, the Commission has refused to interfere on the ground that issue regarding linguistic minority was outside the purview of National Commission for Minority Educational Institutions. Petitioner once again approached this Court by filing Writ Petition No. 7602 of 2012. While disposing of the writ petition, petitioner was protected by interim order for further period of six weeks from the date on which the Appellate Authority decides the Appeal filed by petitioner and communicates its decision to the petitioner.

6. The decision of respondent No. 1 in exercise of his powers as provided under Government Resolution dated 27th

May, 2013 is challenged in the present writ petition. Respondent No. 1 has passed an order dismissing the Appeal on 04.06.2016 and the order was communicated to the petitioner on 20.06.2016. Therefore, petitioner immediately approached this Court on 20.08.2016 and secured interim orders from this Court and protection was granted by issuing directions to respondents not to implement the impugned order dated 04.06.2016.

7. It is the contention of Shri. S.R. Barlinge learned advocate for petitioner that, status of linguistic minority as provided under Article 30 of Constitution of India has been conferred by competent authority on 09.06.1992. The Deputy Director of Education, Aurangabad Region, Aurangabad was the competent authority to confer such status of linguistic minority. Therefore, a communication has been issued on 09.06.1992 to the Education Officer, Secondary, Zilla Parishad, Beed, informing him that petitioner has been established by persons belonging to linguistic minority. Therefore, the schools that are run by the society should be considered as minority schools. Though, there was challenge to the minority status conferred on the petitioner twice in this Court, however, the challenge could not sustain. Though, inquiry was initiated at the instance of respondent No.

3, the petitioner had submitted reply to the show cause notice issued by respondent No. 1. It was canvassed before respondent No. 1 that certificate dated 09.06.1992 cannot be made subject matter of belated challenge invoking provisions of subsequent Government Resolution dated 04.07.2008 which would have prospective effect. Though, Government Resolution dated 04.07.2008 lays down certain norms in respect of recognition of minority institutions, at the same time, it also contains a stipulation that those institutions which have been granted recognition as minority educational institutions by the department of the State Government by specific order or letter prior to 11.06.2007, or under the GR of General Administration Department, Government Resolution No. ASS-2006/634/CR 63, dated 11 June, 2007, or by the National Commission for Minority Educational Institutions, New Delhi, or by the order of any Court, need not apply again for recognition under the provisions.

8. Therefore, in view of condition contained in Clause-II under the caption 'Eligibility Criteria for Recognition' the case of the petitioner was exempted from the application of Government Resolution. It was also brought to the notice of respondent No. 1 that once the competent authority has issued status of minority

in favour of an institution, it is not open for the authority to reopen and re-inquire on the issue. It is the contention of the petitioner that, despite the above-mentioned facts that were agitated before respondent No. 1, the respondent No. 1 has cancelled the status of petitioner as minority institution by order dated 31.03.2011.

9. Shri. Barlinge submits that, in fact order passed by respondent No. 1 has been erroneously passed relying on the judgment and order passed in Writ Petition No. 292/2007 in the case of *Mina Ashok Wani Vs. State of Maharashtra & Others*. According to him, issue involved in the writ petition was totally different, however, some stray observations made by this Court while deciding the writ petition have been relied upon by the respondent No. 1 while canceling the petitioner's status of minority institution, vide order dated 31.03.2011.

10. According to him, issue in the case of Meena Wani (supra) was regarding benefits taken by minority institutions under the provisions of Section 2 of Maharashtra Employees of Private School (Condition of Service) Regulation Act, 1977, which do not lay down any condition for recognition of minority institution. Therefore, reliance placed by respondent No. 1 while

passing the impugned order is misplaced.

11. Though, the petitioner had filed Writ Petition No. 5698/2011, challenging the order passed by respondent No. 1 dated 31.03.2011, in view of remedy of Appeal available before National Commission for Minority Educational Institutions, petitioner was granted liberty to approach the Commission and accordingly liberty was granted by this Court to file Appeal before National Commission for Minority Educational Institutions. Ultimately, after refusal to entertain the Appeal by National Commission for Minority Educational Institutions, once again the petitioner was required to approach this Court. Even during pendency of subsequent writ petition, which was directed against order dated 10.01.2012 passed by National Commission for Minority Educational Institutions, Writ Petition No. 7602/2012 came to be disposed of by granting liberty to file Appeal as provided by Government Resolution dated 27.05.2013.

12. It is the contention of the petitioner that even before the Appellate Authority the case of the petitioner was consistent that certificate which is granted on 09.06.1992 by the competent authority cannot be cancelled resorting to subsequent executive instructions issued from time to time by Government for

issuance and recognition of status of linguistic minority. Whenever Executive instructions are issued they are always prospective in nature unless otherwise provided. Therefore, policy decisions which were taken by the State by issuing Government Resolution do not relate back to the status of minority which was conferred long back on the petitioner. Unfortunately, the challenge by petitioner before respondent No. 1 once again failed on account of order passed by respondent No. 1 dismissing the Appeal filed by petitioner on 04.06.2016.

13. Learned advocate for the petitioner has raised various grounds in the present writ petition challenging the order passed by respondent No. 1. Learned advocate for petitioner places reliance on the certificate issued in favour of members of managing committee of petitioner wherein it is certified that they belong to Marwadi community and their mother-tongue is Marwadi, and they are linguistic minority. The certificate is issued by the President of Municipal Council, Dharur. According to the learned advocate for the petitioner certificate clearly supports the fact that the managing committee consists of persons who do not belong to Marathi speaking community. The communication dated 09.06.1992 issued by Deputy Director of

Education, Aurangabad also contains the statement about institution being established by more than 50% persons belonging to linguistic minority community and it refers to article 30(1) of the Constitution of India.

14. Though, the petitioner was required to face challenge to the status of minority, which is conferred on them, consistently in various writ petitions as well as in proceedings before respondent No. 1. It needs to be appreciated that their stand before all the authorities is consistent, that status of linguistic minority has been conferred on the petitioner in view of Article 30(1) of Constitution of India, since the trust is being managed by more than 50% persons who belong to linguistic minority, and their status is rightly supported by documents. Therefore, there cannot be any dispute that petitioner-institution is managed by a committee of persons who belong to linguistic minority.

15. He further submits that on 27.05.2013 one more government resolution has been issued by the Minority Department. Earlier government resolution dated 04.07.2008 has been superseded by subsequent government resolution dated 27.05.2013. The earlier government resolutions have been

amalgamated and after their amalgamation new policy has been framed by the government resolution. He has drawn my attention to the preface of government resolution, wherein it is observed that provisions of government resolution will have a prospective effect. He further relies on clause 9 of the government resolution dated 27.05.2013, which provides that the institution which has already been conferred with the status of minority institution by the competent authority and other government department or by the National Commission for Minority Educational Institutions Act, 2004, need not apply again under the provisions of government resolution 27.05.2013. He specifically relies on this clause to contend that, since the petitioner was already conferred status of linguistic minority issued by competent authority, it was not necessary to again undergo the process of obtaining certificate or obtaining recognition under the new policy of the government.

16. Learned advocate for the petitioner places reliance on clause 8 of Part B of government resolution wherein the competent authority has been created for grievance redressal. A forum was created for either refusal of status of minority or cancellation of status of minority and a Appellate Authority and

Additional Chief Secretary/Principal Secretary/Secretary of Minority Welfare Department, Mantralaya, Mumbai was constituted for redressal of grievance of minority educational institutions.

It is the contention of learned advocate for the petitioner that the practice of creating a forum for redressal of grievance by issuing executive instructions has been deprecated by the Hon'ble Supreme Court in the case of ***Secretary, Sh.A.P.D. Jain Patshala & Ors. vs. Shivaji Bhagwat More & Ors.***, 2011 DGLS (SC) 492. In the reported judgment a challenge was raised to the creation of grievance committee to challenge the termination or cancellation of appointment of Shikshan Sevak in the Shikshan Sevak Scheme of 2000, providing for grievance redressal mechanism which was created upon direction of the High Court to create quasi judicial forum.

17. The issue which was framed was answered by the Hon'ble Supreme Court by observing that, "*Neither the Constitution nor any statute empowers a High Court to create or constitute quasi judicial Tribunals for adjudicating disputes. It has no legislative powers. Nor can it direct the executive branch of the State Government to create or constitute quasi judicial*

Tribunals, otherwise than by legislative Statutes. Therefore, it is not permissible for the High Court to direct the State Government to constitute judicial authorities or Tribunals by executive orders, nor permissible for the State by executive order or resolution create them for adjudication of rights of parties." It was observed that "Article 162 of the Constitution, no doubt, provides that subject to the provisions of the constitution, the executive power of a State shall extend to the matters upon which the Legislature of the State has competence to legislate and are not confined to matters over which legislation has been already passed. It is also well settled that so long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive power under Article 162 cannot be circumscribed; and if there is no enactment covering a particular aspect, the Government could carry on the administration by issuing administrative directions or instructions, until the legislature makes a law in that behalf." Therefore, ultimately, it was held that "constitution of a Grievance Committee as a public adjudicatory forum, whose decisions are binding on the parties to the disputes, by an executive order of the Government is impermissible."

Drawing support from the above judicial

pronouncement it is the contention of learned advocate for the petitioner that the Appellate Authority created under the Government Resolution dated 27.05.2013 is against the verdict of Hon'ble Supreme Court, which has been laid down in the above mentioned case. The above judicial pronouncement is squarely applicable to the facts of the present case since grievance committee is constituted for adjudicating grievances of the minority educational institutions in the State of Maharashtra against cancellation of minority status or refusal to grant minority status. Such creation of Appellate Authority by way of issuing executive instructions is not permissible. He also relies on the judgment of this Court in the case of ***Sonai Apang Vikas and Shikshan Sanstha, Nandurbar and Another vs. Jyoti Dulesingh Ranawat and Others***, 2018(4) Mh.L.J. 474. He specifically relies on para 11 of said judgment, which reads thus;

"11. It appears that said decision has been rendered in the background that respondent no.1 therein was employee of Ashram School to which the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 were not applicable, as such, appeal filed under section 9 of said Act before the School Tribunal was not considered to be maintainable and it has been observed that employee of Ashram School may have

to approach competent authority in terms of the various Government Resolutions issued in relation to Ashram Schools, while appellate remedy is provided thereunder.”

18. It is also contended that the Government Resolution dated 04.07.2008, has been superseded and amalgamated in Government Resolution dated 27.05.2013. In Government Resolution dated 27.05.2013, there is a special clause which contains that, so far as linguistic minority educational institution is concerned clause 7(iii)(a) of the government resolution contains a condition that the trust/society/company/firm who is claiming status of religious/linguistic minority should have more than 50% of its members of managing committee belonging to religious or linguistic minority community of which the status is claimed.

19. In order to draw support to his claim that more than 50% of the managing committee members belong to linguistic minority community the learned advocate has tendered the Schedule I of the trust. As per the last change report, which is submitted to the Assistant Charity Commissioner, 8 amongst 15 members belong to linguistic minority community. Therefore, there should not be any doubt that members of the managing

committee do not belong to minority community.

20. It is also contended that order passed by respondent No. 1 dated 04.06.2016 cannot be sustained in view of judicial pronouncement by Hon'ble Supreme Court in the case of A.P.D. Jain Patshala (supra) whereby practice of constituting grievance redressal forum by issuing Government Resolution was deprecated and was held to be impermissible. He submits that, in view of above, the order passed by respondent No. 1 cannot be sustained and deserves to be quashed and set aside.

21. Per contra, learned advocate Shri. Kedar, appearing for respondent No. 4 has opposed the challenge to the impugned order, contending that claim of the petitioner that members of the petitioner-society are belonging to linguistic minority, is not based on any record submitted before the Education Officer or Deputy Director of Education or Government during inquiry. He has also raised objection to the certificate which is placed on record at Exhibit-B, issued by President, Municipal Council, Kille-Dharur, which have been issued declaring that members of managing committee are belonging to linguistic minority. According to him, President of Municipal Council is not competent authority to issue such certificate. It is his contention

that representation/complaint was made in the year 2002 itself by at least 9 members working in the school to the Government requesting Deputy Director of Education and Education Officer to hold appropriate inquiry into the minority status of the petitioner. The Secretary of the management was directed to produce record by issuing notice. However, the management did not submit any record. In spite of a request being made by Education Officer, to the Deputy Director of Education to make him available the record declaring status of linguistic minority to the petitioner, no such record was made available. Respondent No. 4 places reliance on the copy of letter dated 19.11.2003. It is his contention that proceedings initiated against the petitioner were adjourned from time to time in order to enable the petitioner to produce record. However, petitioner has failed to produce any record. Therefore, Deputy Director of Education vide communication dated 10.12.2009 submitted report to the Government recommending cancellation of certificate granting minority status to the petitioner. After taking into consideration the report of the Deputy Director of Education, respondent has passed order on 31.03.2011, observing that at least 2/3rd members of the educational institution do not belong to particular religious or linguistic minority community. Amongst 15

members, 7 are Marwadi, 3 are Kamthi, 2 are Hindi and one is belonging to Lingayat community. Therefore, upon going through Namuna-3 he has observed that 2/3rd members do not belong to any religious or linguistic minority, which is necessary. On the basis of observations made by him and upon going through the record, it is held by respondent No. 1 that since 2/3rd members of the managing committee do not belong to any one particular linguistic minority. They do not comply with the guidelines issued under Government Resolution dated 04.07.2008, therefore, the communication issued by the Deputy Director of Education addressed to Education Officer (Secondary) Zilla Parishad, Beed, dated 09.06.1992 granting status of minority to the petitioner has been cancelled.

22. There is no record to support the declaration of minority status of the petitioner. Neither proposal nor any document which is required to be submitted for issuance of such status is produced by the office of Deputy Director or by petitioner during hearing before respondent No. 1. In spite of several opportunities being granted to the petitioner, no record therefore, respondent No. 1 has rightly passed the order.

23. Respondent No. 4 specifically relies on communication which was issued by the Deputy Director of Education, Aurangabad addressed to the Desk Officer dated 10.12.2009, which is marked as Exhibit-D in the reply of respondent No. 4. Said communication contains a statement that with reference to Government letter dated 26.12.2002 information was called from the office of Education Officer, about the basis for proposal of petitioner submitted for grant of status of linguistic minority. In response to that communication, no information was received. Thereafter, Education Officer (Secondary), Zilla Parishad, Beed submitted inquiry report informing that, Secretary of the institution namely Sudhakar Chidrawar had submitted proposal of the petitioner, and he is no more, the proposal was also not available with the Education Officer. Since no documents were made available in support of communication dated 09.06.1992, the Joint Secretary of School Education Department has recommended cancellation of status of linguistic minority of petitioner by communication dated 25.04.2005. Even thereafter, certain documents were called by the Government on 16.06.2005 from the managing committee regarding constitution of the society, names of original trustee. After receiving report from the Education Officer, hearing was

given on 24.04.2006. Since Managing Committee members have failed to produce the copy of proposal which was submitted for grant of minority status, in spite of giving ample opportunity, the Director of Education had recommended cancellation of minority status of petitioner and accordingly, after taking into consideration the conduct of the Managing Committee, status of the petitioner has been cancelled by following the procedure. Hence, respondent No. 4 submits that the impugned order does not deserve any interference.

24. Learned AGP has also opposed the writ petition. According to the averments of affidavit filed by respondent No. 1, this Court in Writ Petition No. 292/2007 has made observations about the minority status in context of provisions of Section 3(2) of Maharashtra State Employees of Private Schools (Condition of Service) Regulation Act, 1977. The gist of para no. 2 to 5 of judgment can be summarized as under:

"Government of Maharashtra at no stage has declared any institution as a minority institution, the Education Department accepted the declaration under sub-section (2) from various managements and have treated them as minority institution. Now on that basis, those managements are declared as minority

institutions without such declaration of their status independent of section 3(2) by the Government of Maharashtra." After such declaration is specifically issued by Government of Maharashtra, the management or institution gets recognition as minority institution. Hence, according to Deputy Director the declaration is to be made by the State of Maharashtra who is competent authority to make such declaration. Therefore, status of minority declared by Deputy Director of Education cannot be considered as status of minority institution issued by the competent authority. The letter dated 09.06.1992 is merely a letter issued by the Deputy Director of Education, only with respect to the provision of section 3(2) of the Maharashtra State Employees of Private Schools (Condition of Service) Regulation Act, 1997. Therefore, it cannot be treated as declaration of status of minority institution of the petitioner. Hence, respondent No. 1 has prayed that order passed by respondent No. 1 does not deserve any interference.

25. After hearing the respective parties, the questions that arise for consideration of this Court are;

- (i) Whether communication dated 09.06.1992 can be said to be a certificate declaring status of minority issued by competent authority?

- (ii) Whether the certificate issued in the year 1992 can be cancelled on the basis of subsequent policy decisions issued vide Government Resolution dated 04.07.2008 and 27.05.2013?
- (iii) Whether decision which is rendered in exercise of powers conferred under Government Resolution dated 27.05.2013 by competent authority which is created by way of executive instructions is binding in view of judicial decision of Hon'ble Supreme Court in A.P.D. Jain Patshala (supra)?

26. The communication which is claimed to be a certificate of status of minority is placed by petitioner on record at Exhibit-C, which reads as under:

जाक्र मावि-3/1992-93/17117/18
विभागीय शिक्षण उपसंचालक,
औरंगाबाद विभाग, औरंगाबाद
दिनांक : 9.6.92

प्रति,

शिक्षणाधिकारी (मा.),
जिल्हा परिषद,
बीड

विषय : अल्पसंख्याकांचे विद्यालय म्हणून मान्यता देणेबाबत

संदर्भ : आपले प.क्र.मावि 7/90-91/471/151, दि. 11.6.90

वरील विषयाच्या संदर्भात कळविण्यात येते की, अल्पसंख्याकांच्या शाळाबाबतचे भारताचे संविधान कलम 30 (1) नुसार धर्म किंवा भाषा या तत्वावर आधारीत अल्पसंख्याकामार्फत चालविण्यात येणा-या शैक्षणिक संस्था ह्या अल्पसंख्याकांच्या संस्था समजण्यात येतात.

श्री.ज्ञान प्रसारक शिक्षण संस्था, किल्ले धारूर, ता.केज ही संस्था 50 टक्के पेक्षा जास्त अल्पभाषीक लोकांनी स्थापन केली आहे. म्हणून सदरील संस्थेमार्फत चालविण्यात येणा-या प्राथमिक / माध्यमिक शाळा ह्या अल्पसंख्याक शाळा समजण्यात याव्यात.

स्वाक्षरीत / -

शिक्षण उपसंचालक, औरंगाबाद विभाग,
औरंगाबाद करीता

स्थळ प्रत शिक्षण उपसंचालक यांनी मान्य केली आहे.

याची प्रत : सचिव श्री.ज्ञान प्रसारक शिक्षण संस्था, किल्लेधारूर, ता. केज, जि. बीड यांना माहितीस्तव.

27. The above communication refers to a communication issued to the Education Officer (Secondary), Zilla Parishad, Beed dated 11.06.1990. It refers to a communication issued by Education Officer (Secondary), Zilla Parishad Beed to the Deputy Director of Education. The communication contains an averment that the the schools that are managed either by religious or linguistic minority are considered to be minority Institutions as provided under Article 30(1) of the Constitution of India. It further contains that, Dnyan Prasarak Shikshan Sanstha, Kille Dharur, Taluka- Kaij is established by more than 50% persons belonging to linguistic minority community. Therefore, primary and secondary schools which are being run by institution should be considered as minority schools.

28. Upon going through the contents of communication/certificate of minority status, it is evident that there is no declaration as such given that educational institution belongs to a particular linguistic minority. Therefore, it should be treated as linguistic minority institution. The tenor of document itself makes it clear that it is an internal communication between

Deputy Director of Education and Education Officer (Secondary), Zilla Parishad, Beed, wherein it was informed by Deputy Director of Education, Aurangabad to the Education Officer (Secondary), Zilla Parishad, Beed that primary and secondary schools which are run by petitioner should be considered as minority schools. Similarly, it does not mention to which linguistic minority the Management of the school belongs. When there is declaration of status of either religious or linguistic minority, there is a reference as to which religious community or linguistic minority, the society is run by. The communication does not contain a declaration that the petitioner is conferred status of any one particular linguistic minority. The language of communication also does not in any way declare that the petitioner institution should be considered as particular linguistic minority institution.

29. Though, learned advocate for the petitioner has tried to convince that observations in Writ Petition No. 292/2007 are totally in different context and not at all applicable to the present case, however, after carefully going through the judgment of this Court, I find that relying on affidavit by Principal Secretary, General Administration Department, this Court has observed that;

"2. -----Surprisingly, it appears that the Education Department was not issuing Certificate declaring an educational institute as a minority institution, but they were relying upon the provisions of section 3(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as the "said Act"). This was misconception of the Education Department. Sub-section (1) of section 3 of the said Act states that the provisions of the said Act shall apply to all private schools in the State of Maharashtra, whether receiving any grant-in-aid from the State Government or not. Sub-section (2) of section 3 of the said Act provides that notwithstanding anything contained in sub-section (1), the provisions of the said Act shall not apply to the recruitment of the Head of a minority school and any other persons (not exceeding three) who are employed in such school and whose names are notified by the Management to the Director or, as the case may be, the Deputy Director for this purpose.

3. A plain reading of section 3 of the said Act makes it clear that all private schools are covered under sub-section (1) and their employees are regulated under the provisions of the Act. Sub-section (2) aforesaid makes out an exception to sub-section (1) aforesaid and the exception is that if the private school is run by a minority institution, then in respect of the said minority institution, for the recruitment of the Headmaster and other employees (not exceeding three), the provisions of the said Act will not apply and for the said purpose, viz., to fill in the post of Headmaster and three persons as contemplated under sub-section (2), the minority institution shall notify the names of those persons to the Director or Deputy Director.

4. However, sub-section (2) aforesaid itself does not confer on a management the status of a minority

institution. So also because the management of an Institution files a declaration in respect of the Headmaster and three other persons under aforesaid sub-section (2) with the Director, such institution does not acquire the status of a minority institution. What is required under the law is that before the school management can claim the benefit of sub-section (2) as a minority institution, the said management must be independently recognised by the Government of Maharashtra as a minority institution. After such declaration is separately issued by the Government of Maharashtra, a management or institution gets recognition as a minority institution. It is only thereafter that such management is entitled to exercise the right under the aforesaid sub-section (2) and not otherwise."

It is further observed by this Court that though the Government of Maharashtra at no stage has declared any institution as a minority institution, the Education Department accepted the declaration under sub-section (2) from various managements and have treated them as minority institution. Now on that basis, those managements are claiming status of minority institutions without such declaration of their status independent of section 3(2) by the Government of Maharashtra. The whole procedure adopted by the Education Department and the Government is absolutely contrary to the scheme of the Act. It has been observed by this Court that at no stage any of the institution has been declared as minority institution and the Education Department accepted the declaration under sub-

section (2) and treated them as minority institution.

30. The communication dated 09.06.1992 issued by Deputy Director of Education, Aurangabad to the Education Officer (Secondary), Zilla Parishad, Beed, does not confer status of Minority Institution on the petitioner since it does not contain the name of particular linguistic minority, or declaration that petitioner-society belongs to particular linguistic minority. In absence of the particulars, which are required in a certificate for declaration of minority status the communication dated 09.06.1992 cannot be treated as a certificate of declaration of status of linguistic minority of the petitioner society.

31. So far as next contention of the petitioner that whether the certificate issued in the year 1992 can be cancelled on the basis of subsequent Government Resolutions dated 04.07.2008 and 27.05.2013 is concerned, the complaint made by employees against the management was entertained by this Court and pursuant to the statement made in Writ Petition No. 7201/2006 only after entertaining the objections raised by the employees, the inquiry has been initiated. During the inquiry petitioner was granted sufficient opportunity before respondent No. 1 to produce the proposal in support of status of minority

and any document which would support the issuance of communication which is claimed to be certificate of minority. The petitioner has failed to produce any document which would support the issuance of such communication or certificate. Therefore, if the document issued which is wrongly interpreted to be declaration of status of minority, a complaint is certainly capable of being entertained. While passing order dated 31.03.2011 it is categorically observed by the Competent Authority and Additional Chief Secretary that, upon going through the record, the members of managing committee do not appear to be belonging to any one particular linguistic minority. Therefore, it is contrary to the Government Resolution dated 04.07.2008. Though, subsequently Government Resolution dated 04.07.2008 has been superseded by Government Resolution dated 27.05.2013, however, before issuance of Government Resolution dated 27.05.2013, decision dated 31.03.2011 has been taken by Respondent No. 1, when the Government Resolution dated 04.07.2008 was very much holding the field, which contained guidelines for eligibility and for recognition of minority institutions.

32. So far as objection of the petitioner regarding re-

inquiry of certificate issued in the year 1992 is concerned, clause II of the Government Resolution dated 04.07.2008 specifically lays down that those institutions which have been granted recognition as minority educational institutions by the department of the State Government by a specific order or letter prior to 11.6.2007, or under the GR of General Administration Department, Government Resolution No. ASS-2006/634/CR 63, dated 11 June, 2007, or by the National Commission for Minority Educational Institutions, New Delhi, or by the order of any Court, need not apply again for recognition under the provisions. So far as exemption to the institutions who have earlier obtained recognition is concerned, petitioner does not fall in any of the exception that are provided under eligibility clause of the Government Resolution. As observed by this Court in Writ Petition No. 292/2007, there was no certificate issued by Government prior to the decision of this Court in Writ Petition No. 292/2007. Therefore, there is no question of treating the communication dated 09.06.1992 as a recognition issued to the minority educational institution.

33. The grounds for revoking the recognition are also provided in the Government Resolution, which are as follows;

- a) The Institution has obtained the recognition by submitting false information to the Competent Authority.
- b) Violations of any of the clauses in paras IV and V above.
- c) If a complaint is received by the Government as regards the veracity of the Minority status or the fraudulent, admission process adopted by the institution to the detriment of the concerned Minority Community students and the complaint is found to be true on enquiry.

34. Therefore, considering the enabling powers contained in the Government Resolution dated 04.07.2008 itself it was within powers to entertain a complaint, I do not find substance in the contention of petitioner that, certificate which was issued on 09.06.1992, could not have been challenged by employees of the institution. The provisions of Government Resolution dated 04.07.2008 are unambiguous which enable the Government to entertain the complaints against the genuineness of status of minority institutions.

35. Reliance placed by learned advocate for the petitioner on the reported judgment in the case of A.P.D. Jain Patshala (supra) is concerned, the subject matter of the judgment is constitution of grievance committee, to challenge the termination or cancellation of appointment of Shikshan

Sevak in the Shikshan Sevak Scheme introduced in the year 2000. The Shikshan Sevak who were appointed pursuant to the scheme were not treated as teachers in the private schools. They were appointed as Shikshan Sevak, and they were precluded from approaching School Tribunal for redressal of their grievance against their termination. Since, there was no provision in the scheme providing any mechanism for redressal of grievance of Shikshan Sevak, on this background, the High Court had given direction to constitute grievance committee, for the redressal of their grievance. The grievance committee which was constituted by issuing executive order under the directions of High Court was challenged. While deciding this issue, the Hon'ble Supreme Court has observed that;

"Constitution of a Grievance Committee as a public adjudicatory forum, whose decisions are binding on the parties to the disputes, by an executive order of the Government is impermissible. The Grievance Committee cannot be public quasi-judicial forum nor can its decisions be made final and binding on parties, in disputes relating to Shikshan Sevaks." Therefore, it was held that, any order or opinion of grievance committee on a complaint or grievance submitted by Shikshan Sevak were only recommendations to the State Government for taking further action and nothing more.

36. The observations made in the aforesaid judgment are clearly regarding creation of judicial and quasi judicial tribunals for adjudication of disputes by way of executive instructions. It is held that, quasi-judicial and judicial tribunals cannot be constituted by State Government by executive orders or resolution, for adjudication of rights of parties.

37. Learned advocate for the petitioner has also relied on the judgment in Sonai Apang Vikas and Shikshan Sanstha (supra) wherein decision in A.P.D. Jain Patshala (supra) is referred.

38. So far as contention of petitioner that executive instructions cannot be issued for creating adjudicatory forum are concerned, there cannot be any dispute about the decision which is holding the field. It is worthwhile to note that though the petitioner is raising objection to the creation of forum for adjudicating the dispute of minority status the challenge is raised after participating in the enquiry before Respondent No. 1 and after the order dated 31.03.2011 is passed by the Competent Authority and Additional Chief Secretary, Minority Development Department, Mantralaya, Mumbai, which is confirmed by the Principal Secretary, Minority Development Department, Mumbai by issuing government order dated 04.06.2016.

39. The order dated 31.03.2011 has been issued by the Competent Authority in exercise of his powers under Government Resolution dated 04.07.2008. The petitioner has participated in the inquiry before Competent authority, which is provided under Government Resolution dated 04.07.2008 and after the participation of petitioner he is challenging the decision given by the Competent Authority on the ground of impermissibility of creation of forum by issuance of Executive Instructions. Once having participated in the proceedings, that is provided under the Government Resolution, petitioner cannot challenge the decision on the ground that creation of such forum itself is unconstitutional.

40. Though, sufficient opportunity of hearing was afforded to the parties, petitioner has not raised any objection to the creation of forum under the Government Resolution for redressal of grievance, against the order of Competent Authority. Having once participated in the proceeding, the petitioner is precluded from raising any such objection in the present writ petition.

41. The Authority created by Government Resolution dated 27.05.2013 cannot be equated with the quasi-judicial and

judicial tribunals which are created for adjudication of disputes. The provisions made in the Government Resolution by creating a 'Competent Authority' within the department of minority development, it also provides for Appeal against the decision of 'Competent Authority' which is neither Judicial nor quasi Judicial forum.

42. The decision in A.P.D. Jain Pathshala (supra) was primarily based on the background that though, statutory rules were in existence governing the service conditions of employees of private schools by Act of 1979, yet the Government Resolution dated 24.07.2000 has been issued. The four questions were raised before the Hon'ble Supreme Court, which read thus;

- (i) Whether the High Court can direct the State Government to create a quasi judicial forum; and whether creation of such a forum by an executive order, by the State Government, in pursuance of such a direction, is valid?
- (ii) Whether the High Court could, by a judicial order, exclude the jurisdiction of civil courts to entertain any suits on application in respect of disputes raised by Shikshan Sevaks?
- (iii) Whether the High Court was justified in holding that when the Grievance Committee holds that the order of termination is bad or illegal, it does not amount

to ordering reinstatement, but the Shikshan Sevak would as a result continue to be in the employment of the employer?

(iv) Whether the orders dated 2.5.2008 and 5.8.2008 of the High Court call for interference?

43. So far as issue raised by the petitioner is concerned it pertains to the first question, which is framed by the Hon'ble Supreme Court. It has been held by Hon'ble Supreme Court while answering the question, which is reproduced herein below:

"16. Article 162 of the Constitution, no doubt, provides that subject to the provisions of the constitution, the executive power of a State shall extend to the matters upon which the Legislature of the State has competence to legislate and are not confined to matters over which legislation has been already passed. It is also well settled that so long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive power under Article 162 cannot be circumscribed; and if there is no enactment covering a particular aspect, the Government could carry on the administration by issuing administrative directions or instructions, until the legislature makes a law in that behalf. (See Ram Jawaya Kapur v. State of Punjab-1955 (2) SCR 225 and Bishamber Dayal Chandra Mohan v. State of U.P.-1982 (1) SCC 39). But the powers of the State of exercise executive powers on par with the legislative powers of the legislature, is subject to the provisions of the Constitution."

44. So far as the government resolutions dated 04.07.2008 and 27.05.2013 are concerned, they do not create a judicial forum for deciding the dispute. There is no enactment/statute covering the issuance and Regulation of minority certificate and for deciding the complaints against issuance of certificate. It is not in dispute that State can issue such executive instructions till such time the legislature makes law in that behalf. It is nobody's case that subject matter of present writ petition is governed by any statute. Though, Article 30(1) provides for protection to linguistic and religious minorities, there was no Regulation governing the procedure for issuance of certificate of minority.

45. Incidentally, similar objection was raised before this Court in group of writ petitions bearing No. 7355/2024 and other connected writ petitions (Komal Balaji Awatirak & Anr. vs. The State of Maharashtra & Ors.), wherein there was a challenge raised to the Government Resolution dated 27.03.2024 issued by School Education and Sports Department, Government of Maharashtra. The government resolution was challenged on the ground that forums created under said government resolution have trappings of quasi judicial forum or a Tribunal, which is

impermissible. In view of decision of Hon'ble Supreme Court in A.P.D. Jain Patshala (supra) the challenge raised by petitioner therein was turned down by this Court on the ground that, the decision rendered by Hon'ble Apex Court was in background of fact that when already it was within the jurisdiction of Tribunal provided under Section 9 of the Act of 1979 to decide matters pertaining to termination, reinstatement and appointment, yet the grievance committee of a single member was constituted having all the powers of quasi judicial forums for discharging the functions which did not have enforceability. Hence, challenge to the Government Resolution has been turned down by this Court.

46. Even in the present case, the Appellate Authority as provided under the Government Resolution is not encroaching upon any other quasi judicial forums provided by any other statute for redressal of grievance on the issuance and cancellation of certificates. Hence, I do not find that judgment in the case of A.P.D. Jain Patshala (supra) would be applicable to the present case.

Therefore, the objection of the petitioner about creation of forum by way of executive instructions cannot be entertained.

47. Hence, in view of findings recorded by this Court to the grounds raised by the petitioner, the Writ Petition does not deserve any merit, as a result, the impugned order dated 04.06.2016 passed by Respondent No. 1 is upheld and the writ petition is dismissed.

48. After pronouncement of the order, learned Advocate for the Petitioner makes a request to stay implementation of this order for a period of eight weeks, as the Petitioner intends to challenge this order before the Supreme Court. Learned advocate for the respondent opposes the request for stay.

After going through the record it appears that initially interim relief was granted, which was continued for some time, however, thereafter it does not seem to be continued. But there are certain orders, which are subsequently passed wherein it is recorded that, "interim relief, if any, to continue". In view of the same, implementation of this order is stayed for a period of four weeks from the date of uploading of this order.

(MANJUSHA DESHPANDE, J.)