

(2011) 07 DEL CK 0129
In the Delhi High Court
Case No : LPA 593 of 2011

AL Karim Educational Trust		APPELLANT
	Vs	
Medical Council of India and Another		RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Establishment of Medical College Regulations, 1999 — Regulation 3
Indian Medical Council Act, 1956 — Section 10, 10A, 10A(2), 19A, 20
National Commission for Minority Educational Institutions Act, 2004 — Section 10, 10(1), 10(1), 10(3), 10(3)

Citation : (2011) 07 DEL CK 0129

Hon'ble Judges : Dipak Misra, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Sudhir Nandrajog and Mohit Kumar Shah, for the Appellant; Amit Kumar and Ashish Kumar for MCI, Gopal singh and Pranab Prakash for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, C.J.—Being dissatisfied with the order dated 26.4.2011 passed by the learned Single Judge in WP(C) No. 1986/2011, the present intra-court appeal has been preferred under Clause X of the Letters Patent.

2. The facts lie in a narrow compass. The Appellant, Al-Karim Educational Trust, set up a medical college in the name and style of Katihar Medical College, Katihar in the State of Bihar with an intake capacity of 60 students for the MBBS course. The Central Government, by communication dated 29.9.2006, along with a notification dated 2.3.2006 of the Government of State of Bihar, forwarded the application of the Appellant, the Medical Council of India (MCI), essentially certifying the Medical College of the trust for increase of seats in MBBS course from 60 to 100. The MCI inspected the teaching and training facilities available at the Medical College and eventually, on 13/14.06.2007, took a decision to return the application recommending disapproval to the Central Government for

increase of seats from 60 to 100. Thereafter, another application for increase of seats was filed in the year 2008 but the same also met with similar fate. As pleaded, the MCI was superseded vide Indian Medical Council (Amendment) Ordinance, 2010 by the Board of Governors and at that juncture, the Respondent filed an application on 29.9.2010 with the Board of Governors for increase of seats from 60 to 150, but the said application was not accompanied with the Essentiality Certificate as required under the establishment of Medical College Regulations, 1999 (for short "the 1999 Regulations"). The Board of Governors functioning for the MCI asked the trust to submit the Essentiality Certificate. The Trust instead of submitting the Essentiality Certificate moved the Commission of Minority Educational Institution ("the Commission") and the Commission in case No. 1383/2010 issued show cause to the State Government. As the State Government did not file show cause/reply, the Commission proceeded to pass an order declaring that there was a deemed grant of Essentiality Certificate by the Government of Bihar to the college for increasing the intake capacity of MBBS course from 60 to 150. For appreciation of the controversy from the opposite spectrum, the order passed by the Commission is produced below in entirety:

WHEREAS on 20.11.2008, the Petitioner college had applied to the competent authority of the Government of Bihar for grant of Essentiality Certificate for increasing intake capacity of MBBS course from 60 to 150.

AND WHEREAS within a period of ninety days from the receipt of application under Sub-section (1) of Section 10 of the National Commission for Minority Educational Act for grant of Essentiality Certificate, the Competent Authority has neither granted nor granted nor rejected the said application;

AND WHEREAS the Petitioner college has applied to the commission for a declaration that the Competent Authority has deemed to have granted the Essentiality Certificate in terms of Sub-section (3) of Section 10 of the NCMEI Act.

AND WHEREAS the Competent Authority failed to show cause against the declaration relating to grant of Essentiality Certificate in terms of Sub-section (3) of Section 10 of the NCMEI Act.

The Commission, therefore, declares that the Competent Authority of the Government of Bihar has deemed to have granted the Essentiality Certificate to the Petitioner college for increasing intake capacity of MBBS course from 60 to 150.

3. Being grieved by the aforesaid order, the MCI invoked the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India for issue of a writ of certiorari for quashment of the same. The learned Single Judge allowed the writ petition holding, inter alia, that the Commission has No. jurisdiction to deal with an issue of the present nature.

4. We have heard Mr. Sudhir Nandrajog, learned senior counsel along with Mr. Mohit Kumar Shah, learned Counsel for the Appellant, and Mr. Amit Kumar along

with Mr. Ashish Kumar, learned Counsel for the Medical Council of India.

5. The singular question that emanates for consideration is whether the Commission constituted under the National Commission for Minority Educational Institution Act, 2004 (for brevity "the 2004 Act") could have declared that the State of Bihar has granted the Essentiality Certificate as required under the 1999 Regulations framed by the MCI. Mr. Nandrajog, learned senior counsel for the Appellant, would submit that if Section 2(ca) of the 2004 Act, which defines the competent authority, is conjointly read with the provisions enshrined under Sections 10, 11, 12, 12A and 12B of the 2004 Act, there can be No. scintilla of doubt that the Commission has jurisdiction to pass the order it has passed.

6. Per contra, Mr. Amit Kumar, learned Counsel for the Medical Council of India, would contend that the order passed by the learned Single Judge cannot be found fault with as the Regulations have been framed under the Medical Council Act, 1956 and the said enactment has its own area of operation and the Commission cannot encroach upon the spheres governed under the said Act and the Regulations framed there under.

7. Be it noted that the MCI Act, 1956 (for brevity "the 1956 Act") was legislated for re-constitution of the Medical Council of India and the maintenance of a Medical Register for India and for matters connected thereto. To have a complete picture, Section 10 of the 1956 Act is reproduced herein below:

10. THE EXECUTIVE COMMITTEE-(1) The Executive Committee, hereinafter referred to as the Committee, shall consist of the President and Vice-President, who shall be members ex-officio, and not less than seven and not more than ten other members who shall be elected by the Council from amongst its members.

2. The President and Vice-President shall be the President and Vice-President respectively of the Committee.

3. In addition to the powers and duties conferred and imposed upon it by this Act, the Committee shall exercise and discharge such powers and duties as the Council may confer or impose upon it by any Regulations which may be made in this behalf.

8. Section 10A provides for permission for establishment of a new Medical College, new course of study and also increase of seats. The same is reproduced herein below:

10A. PERMISSION FOR ESTABLISHMENT of NEW MEDICAL COLLEGE, NEW COURSE of STUDY.-

(1) Notwithstanding anything contained in this Act or any other law for the time being in force,-

(a) No person shall establish a medical college; or

(b) No medical college shall-

(i) open a new or higher course of study or training (including a post-graduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or

(ii) increase its admission capacity in any course of study or training (including a post-graduate course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1.- For the purposes of this section, "person" includes any University or a trust but does not include the Central Government.

Explanation 2.- For the purposes of this section, "admission capacity", in relation to any course of study or training (including post-graduate course of study or training) in a medical college, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training.

(2) (a) Every person or medical college shall, for the purpose of obtaining permission under Sub-section (1), submit to the Central Government a scheme in accordance with the provisions of Clause (b) and the Central Government shall refer the scheme to the Council for its recommendations.

(b) The Scheme referred to in Clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

(3) On receipt of a scheme by the Council under Sub-section (2), the Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned, and thereafter, it may,-

(a) if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any, specified by the Council;

(b) consider the scheme, having regard to the factors referred to in Sub-section (7), and submit the scheme together with its recommendations thereon to the Central Government.

(4) The Central Government may, after considering the scheme and the recommendations of the Council under Sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in Sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme, and any such approval shall be a permission under Sub-section (1):

Provided that No. scheme shall be disapproved by the Central Government

except after giving the person or college concerned a reasonable opportunity of being heard:

Provided further that nothing in this Sub-section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme has been submitted for the first time under Sub-section (2).

(5) Where, within a period of one year from the date of submission of the scheme to the Central Government under Sub-section (2), No. order passed by the Central Government has been communicated to the person or college submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it had been submitted, and, accordingly, the permission of the Central Government required under Sub-section (1) shall also be deemed to have been granted.

(6) In computing the time-limit specified in Sub-section (5) the time taken by the person or college concerned submitting the scheme, in furnishing any particulars called for by the Council, or by the Central Government shall be excluded.

(7) The Council, while making its recommendations under Clause (b) of Sub-section (3) and the Central Government, while passing an order, either approving or disapproving the scheme under Sub-section (4), shall have due regard to the following factors, namely:-

(a) whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Council u/s 19A or, as the case may be, u/s 20 in the case of postgraduate medical education;

(b) whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;

(c) whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the medical college or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(d) whether adequate hospital facilities, having regard to the number of students likely to attend such medical college or course of study or training or as a result of the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme;

(e) whether any arrangement has been made or programme drawn to impart

proper training to students likely to attend such medical college or course of study or training by persons having the recognised medical qualifications;

(f) the requirement of manpower in the field of practice of medicine; and

(g) any other factors as may be prescribed.

(8) Where the Central Government passes an order either approving or disapproving a scheme under this section, a copy of the order shall be communicated to the person or college concerned.

9. Section 33 confers power on the MCI to frame Regulations. Sub-section (fa) of Section 33 reads as follows:

33. POWER TO MAKE REGULATIONS

The Council may, with the previous sanction of the Central Government, make Regulations generally to carry out the purposes of this Act, and, without prejudice to the generality of this power, such Regulations may provide for-

....

....

....

(fa) the form of the scheme, the particulars to be given in such scheme, the manner in which the scheme is to be preferred and the fee payable with the scheme under Clause (b) of Sub-section (2) of Section 10A;

10. Regulation 3 of the 1999 Regulations deals with the establishment or increase in seats in a recognized Medical College. It provides that No. person shall establish or increase seats in a Medical College except after obtaining prior permission from the Central Government by submitting the Scheme annexed to the Regulations. Under the scheme, the eligibility criteria and other criteria are provided. In qualifying criteria under Clause 3, it has been stipulated as follows:

3. That Essentiality Certificate in Form 2 regarding No. objection of the State Government/Union Territory Administration for the establishment of the proposed medical college at the proposed site and availability of adequate clinical material as per the council Regulations, have been obtained by the person from the concerned State Government/Union Territory Administration.

11. The purpose of the 1956 Act and the Regulations is to regulate medical education and ensure quality education. In this context, we may profitably refer to certain citations in the field. In Government of Andhra Pradesh and Another Vs. Medwin Educational Society and Others, , the question that was posed for adjudication was as follows:

(1) What is the proper, assigned and available role of the State Government in the matter of grant of essentiality certificate for establishment of medical or

dental college, especially in the context of the operative constitutional, legislative and statutory provisions?

Their Lordships scanned the statutory provisions and the procedures pertaining to medical education and the relevant provisions of the 1956 Act. While dealing with the 1999 Regulations, their Lordships stated that there is necessity for grant of essentiality certificate by the State. In paragraphs 23 and 24 of the said decision, it has been stated thus:

23. It is not in dispute that one of the qualifying criteria to render an association eligible for permission to set up a new medical and dental college is to the following effect:

Essentiality certificate regarding the desirability and feasibility of having the proposed medical college/dental college at the proposed location has to be obtained by the applicant from the respective State Governments or the Union Territory Administration and that the adequate clinical material is available as per Medical Council of India's requirements

24. The statutory requirements as laid down in the Act and the Regulations are, therefore, required to be complied with before application filed by the person or association for setting up a medical college is taken up for consideration.

With regard to the importance of the certificate, it has been observed that the said certificate in the prescribed form emanates from the scheme framed under the parliamentary legislation and the said form is a part of the Regulations which are required to be considered in the light of the Parliamentary Act. In paragraph 30, their Lordships proceeded to state as follows:

30. In view of the aforementioned statutory provisions, there cannot be any doubt or dispute that an essentiality certificate to set up a medical college at the proposed site and adequate clinical material by a person is required to be obtained in Form 2 appended to the said Regulations, which lays down the following conditions:

(1) - (7) * * *

(8) How the establishment of the college would resolve the problem of deficiencies of qualified medical personnel in the State and improve the availability of such medical manpower in the State.

(9) * * *

(10) Full justification for opening of the proposed college.

12. It is worth noting, in the said decision, a reference was made to the decision in Thirumuruga Kirupananda Variarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others, wherein it has been laid down as follows:

For the purpose of granting the essentiality certificate as required under the qualifying criteria prescribed under the scheme, the State Government is only

required to consider the desirability and feasibility of having the proposed medical college at the proposed location. The essentiality certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of a new medical college now rests with the Central Government alone.

In paragraph 40, it has been held thus:

40. This aspect of the matter has been considered in *The State of Maharashtra Vs. Indian Medical Association and Others*, wherein a two-Judge Bench of this Court of which one of us Khare, C.J. (as he then was) was a member observed:

A perusal of para 3 of the Regulation shows that it is mandatory on the part of an institution or a management desirous of establishing a medical college to obtain Essentiality Certificate from the respective State Government or the Union Territory Administration, as the case may be. The requirement of Essentiality Certificate provided under para 3 of the Regulation concerns with among other requirements the desirability of having the proposed medical college at the proposed location. The desirability of having the medical college at the proposed location under para 3 of the Regulation is required to be decided by the State Government. Excepting the desirability of location of the proposed medical college and certificate that adequate clinical material is available as per the Medical Council of India at the proposed medical college, which are to be decided by the State Government all other aspects regarding establishment of a new medical college and imparting of the education therein are covered by the Central Act and Regulation framed there under. In other words, in the matter of establishment of a medical college and medical education, the field that is open where a State Government has any role to play is only in regard to decide the desirability of the location of the proposed medical college and grant of certificate that adequate clinical material is available as per the Medical Council at the proposed medical college.

13. In *The State of Maharashtra Vs. Indian Medical Association and Others*, their Lordships referred to the Regulation that deals with obtaining of the essentiality certificate, the qualifying criteria under the scheme and the Regulation that deals with the facet of obtaining of essentiality certificate by the applicant from the respective State Government or the Union Territory Administration regard being had to the desirability and feasibility of having the proposed medical college at the proposed location and availability of adequate clinical material as per the Medical Council of India requirements. The Apex Court, in that context, opined that the State Government is the only authority under the Regulations which is concerned to decide the location of a new proposed medical college within the State. Their Lordships further proceeded to lay down the object behind the necessity to obtain the essentiality certificate from the State Government and eventually expressed thus:

Another object behind the necessity to obtain the Essentiality Certificate from the

State Government under para 3 of the Regulations is that in the event a private management becomes incapable of setting up the proposed medical college or impart education therein, such a Certificate by the State Government casts an obligation on the State Government to take over the affairs of such a private medical college and discharge the obligations of the private management....

From the aforesaid enunciation of law, it is manifest that the State Government has the role in a particular realm with certain added responsibility and the rest, including the grant of permission for increase of intake capacity, remains with the Medical Council of India.

14. Presently, we shall proceed to scan the essential feature of the 2004 Act. The purpose of the 2004 Act is to constitute a National Commission for Minority Educational Institution and to regulate and provide for the matters connected therewith or incidental thereto. Section 2(ca) of the said 2004 Act reads as follows:

Section 2(ca) "Competent authority" means the authority appointed by the appropriate Government to grant No. objection certificate for the establishment of any educational institution of their choice by the minorities.

15. Section 10 of the 2004 Act deals with the rights of Minority Educational Institution. It reads as follows:

10. Right to establish a Minority Educational Institution.- *(1) Subject to the provisions contained in any other law for the time being in force, any person, who desires to establish a Minority Educational Institution may apply to the competent authority for the grant of No. objection certificate for the said purpose.

(2) The Competent authority shall,-

(a) on perusal of documents, affidavits or other evidence, if any; and

(b) after giving an opportunity of being heard to the applicant, decide every application filed under Sub-section (1) as expeditiously as possible and grant or reject the application, as the case may be:

Provided that where an application is rejected, the Competent authority shall communicate the same to the applicant.

(3) Where within a period of ninety days from the receipt of the application under Sub-section (1) for the grant of No. objection certificate,-

(a) the Competent authority does not grant such certificate; or

(b) where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate, it shall be deemed that the Competent authority has granted a No. objection certificate to the applicant.

(4) The applicant shall, on the grant of a No. objection certificate or where the

Competent authority has deemed to have granted the No. objection certificate, be entitled to commence and proceed with the establishment of a Minority Educational Institution in accordance with the rules and Regulations, as the case may be, laid down by or under any law for the time being in force.

Explanation.- For the purposes of this section,-

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

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

[Emphasis supplied]

16. Section 11 of the 2004 Act provides the functions of the Commission. It reads as follows:

FUNCTIONS and POWERS of COMMISSION

11. Functions of Commission.- Notwithstanding anything contained in any other law for the time being in force, the Commission shall-

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

[(b) enquire, suo motu, or on a petition presented to it by any Minority Educational Institution, or any person on its behalf into complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating to affiliation to a University and report its finding to the appropriate Government for its implementation;

(c) intervene in any proceeding involving any deprivation or violation of the educational rights of the minorities before a court with the leave of such court;

(d) review the safeguards provided by or under the Constitution, or any law for the time being in force, for the protection of educational rights of the minorities and recommend measures for their effective implementation;

(e) specify measures to promote and preserve the minority status and character of institutions of their choice established by minorities;

(f) decide all questions relating to the status of any institution as a Minority Educational Institution and declare its status as such;

(g) make recommendations to the appropriate Government for the effective, implementation of programmes and schemes relating to the Minority Educational Institutions; and

(h) do such other acts and things as may be necessary, incidental or conducive

to the attainment of all or any of the objects of the Commission.

17. Section 12 deals with the powers of the Commission. Sub-section (1) of the said section provides that if any dispute arises between a minority educational institution and a university relating to affiliation to such university, the decision of the Commission thereon shall be final. The other Sub-sections of the said provision basically provide for which power of the Civil Court can be exercised by the Commission and how the proceedings are deemed to be judicial proceedings under certain provisions of the Indian Penal Code. Section 12B of the 2004 Act, which deals with the power of the Commission to decide on the minority status of an educational institution, reads as follows:

12B. Power of Commission to decide on the minority status of an educational institution.-(1) Without prejudice to the provisions contained in the National Commission for Minorities Act, 1992 (19 of 1992), where an authority established by the Central Government or any State Government, as the case may be, for grant of minority status to any educational institution rejects the application for the grant of such status, the aggrieved person may appeal against such order of the authority to the Commission.

(2) An appeal under Sub-section (1) shall be preferred within thirty days from the date of the order communicated to the applicant:

Provided that the Commission may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period.

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

(4) On receipt of the appeal under Sub-section (3), the Commission may, after giving the parties to the appeal an opportunity of being heard, [**] decide on the minority status of the educational institution and shall proceed to give such direction as it may deem fit and, all such directions shall be binding on the parties.

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

18. We have reproduced the aforesaid statutory provisions to highlight the scheme of things under the Act and the fundamental purpose for which the Act was enacted and the role of the Commission. The Commission has a role to entertain any grievance relating to grant of "no objection certificate" for establishment of a Minority Educational Institution.

19. The submission of Mr. Sudhir Nandrajog, learned senior counsel, is that if the dictionary clause relating to the competent authority u/s 2(ca) of the 2004 Act is appositely scrutinized, it would clearly convey that the authority appointed by the appropriate Government is empowered to grant No. objection certificate for establishment of any educational institution of their choice by the minorities and when the minority has chosen to establish a medical college which is functional and intends to enhance the intake capacity, the competent authority has jurisdiction and when the same is not granted to a minority institution, the Commission has the authority to interfere.

20. In our considered opinion, the term "competent authority" has to be understood in the schematic context of the 2004 Act and regard being had to the purpose of the Act, it can only mean that the competent authority has No. objection for establishment of a minority educational institution of their choice. It has remotely nothing to do with the grant of Essentiality Certificate as engrafted under the 1999 Regulations with Section 10A of the 1956 Act. Thus, it is clear as crystal that the Commission has No. authority to dwell upon such an issue. The two enactments, namely, the 1956 Act and the 2004 Act operate in their own fields and we do not think that an issue of overlapping or concurrent jurisdiction arises in the present case. Issuing and grant of essentiality certificate by the State government for the 1956 Act and the 1999 Regulations have different connotations, issues and aspects which are not even remotely connected with the subject matter and scope of the 2004 Act.

21. In this context, the language employed in Section 10(1) "subject to" has its own signification. The expression "subject to" conveys the idea of provision yielding place to another provision or other provision subject to which it is made. This proposition of law has been clearly enunciated in *The The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another*,

22. In *Black's Law Dictionary*, 5th Edn., at p. 1278, the expression "subject to" has been defined as under:

Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided; answerable for. *Homan v. Employers Reinsurance Corp'n.*

23. In *K.R.C.S. Balakrishna Chetty and Sons and Co. Vs. The State of Madras*, , their Lordships have expressed thus:

...The use of the words "subject to" has reference to effectuating the intention of the law and the correct meaning, in our opinion, is "conditional upon."

24. In *Ashok Leyland Ltd. Vs. State of Tamil Nadu and Another*, , their Lordships have opined that the term "subject to" is an expression where limitation is expressed.

25. In *Iridium India Telecom Ltd. Vs. Motorola Inc.*, it has been held thus:

68. It is well settled that the expression "notwithstanding" is in contradistinction to the phrase "subject to", the latter conveying the idea of a provision yielding place to another provision or other provisions to which it is made subject.

26. The said principle has been reiterated in *S.N. Chandrashekar and Another Vs. State of Karnataka and Others*,

27. Section 10(1) of the 2004 Act stipulates that the provisions it encompasses are subject to the provisions contained in any other law for the time being in force. The requirement of obtaining essentiality certificate for establishing a proposed medical college is in No. manner concerned with the 2004 Act, which expressly stipulates that an NOC is to be applied for establishing a minority educational institution. The provisions of the 2004 Act are to yield to the postulates in the 1956 Act and the 1999 Regulations. The intake capacity in the medical college is within the exclusive domain of the MCI. The essentiality certificate has its own signification under the Regulations and the State has a role for establishment of a medical college. We have already indicated the purpose of essentiality certificate. The grant of essentiality certificate for having a medical college does not have remotely any access with any of the provisions contained in the 2004 Act. The said concept has been further concretized by use of the terms "subject to the provisions contained in any other law for the time being in force", which has been brought in by way of amendment in 2010. Thus, we are disposed to think that the Commission has exceeded in its jurisdiction.

28. As the order of the Commission would reflect, it has referred to Sub-section (3) of Section 10 of the 2004 Act to declare that the competent authority has deemed to have granted the essentiality certificate. As we have indicated hereinbefore, both the Acts operate in different areas and different fields and the No. objection certificate specifically relates to establishment of a minority educational institution in accordance with the Rules and Regulations as the case may be laid down by or under any other law for the time being in force. It is apt to notice that Section 3 of the 2004 Act which deals with the constitution of a Commission clearly provides that the Commission is constituted for Minority Educational Institutions to exercise the powers conferred on, and to perform the functions assigned to, it under the Act. Thus, in essentiality, the powers are restricted to conferment of the status of a minority institution to get a No. objection certificate for establishing a Minority Educational Institution in accordance with the Rules and Regulations laid down by or under any other law. The Commission has held that there is a deemed grant of No. objection certificate. It is a cardinal principle of the law of interpretation that while understanding a provision pertaining to legal fiction, it is the obligation of the Court to ascertain the purpose for which the fiction has been created. As the first step, the Court is duty bound to ascertain the said purpose and thereafter assume that those facts remained to be in existence to give effect to the fiction, but while construing the concept of a fiction, the Court has to keep in mind the purpose for which the Act has been enacted. It is an accepted facet of

interpretation that a legal fiction has to be constricted for giving effect to the purpose and intent of the said Act and cannot travel beyond the same or get extended to the provisions of another Act. That is the normal science of interpretation. Judged from this angle, the Commission could not have opined that there is a deemed grant of essentiality certificate which is required under the 1999 Regulations.

29. In view of our above analysis, we find that the order passed by the learned Single Judge is absolutely impeccable and does not warrant any interference. Accordingly, the appeal is dismissed without any order as to costs.