
(2015) 12 AHC CK 0066
In the Allahabad High Court
Case No : Misc. Bench No. 10116 of 2014

Hindu Front for Justice and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-12-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(1), 15(3), 15(4)
National Commission for Minorities Act, 1992 — Section 2(c)
National Commission for Women Act, 1990 — Section 2(c)

Citation : (2016) 1 ADJ 302 : (2016) 1 UPLBEC 64

Hon'ble Judges : Vimlesh Kumar Shukla and B.K. Srivastava-II, JJ.

Bench : Division Bench

Advocate : Hari Shankar Jain, for the Appellant

Final Decision : Dismissed

Judgement

Vimlesh Kumar Shukla, J.—Present public interest litigation has been moved before this Court by an association working in the name and style of Hindu Front for Justice and claiming that the said association has been formed on 3.5.2013 and for getting itself registered under the provisions of Societies Registration Act 1860 has moved application but till date no adverse communication has been sent. Petitioner No. 2 describes herself as Secretary of the association and petitioner Nos. 3 to 10 claim that they are the office bearers/members of the association and a declaration has been made that present writ petition in question is being filed in the individual capacity as well.

2. The grievance that has been sought to be raised by the petitioners in the present writ petition is by assailing the validity of the decision of the State Government wherein in the matter of granting pension the State Government in its wisdom has chosen to block 25% of the benefit of the pension scheme in favour of minority community. Petitioners are contending that such blocking of benefits in favour of one particular minority community is not at all subscribed by law and, accordingly, they have no personal interest in the matter and are not at

all beneficiary of the scheme in question, in view of this, as the issues that are being raised by them are in the nature of public interest, present public interest litigation be entertained by this Court.

3. In order to appreciate the issue, that is being sought to be raised before us, at the very outset, the scheme in question dated 7.2.2014 is being looked into and same is hereby quoted below;

4. A bare perusal of the scheme in question would go to show that it opens with the sentence that in order to provide adequate representation to each member of the society based on its population ratio in rural areas as well as urban areas the families who do not have adequate resources of income for their sustenance and for their social and economic development with the object of extending financial help Samajwadi Pension Yozna is being enforced.

5. Under the aforementioned scheme in question the head of the family would get monthly sustenance amount and various undertaking would have to be furnished in lieu of the said benefit to the family that each and every child of the age of 6 to 14 years will necessarily have to go to the institution and their attendance will have to be ensured upto the level of 70% and every child of more than 15 years of age, who is uneducated, he/she will have to join the education program in question, every child who is less than 5 years will have to get the benefit of immunization programme and every child in between the age of 6 to 14 years will have to participate in the health programme and every pregnant lady will have to ensure institutional delivery.

6. Paragraph 2 of the aforementioned scheme clearly mention that 40 lakh families have been targeted and keeping in view the respective population of the aforementioned category and the poverty in the aforementioned section the benefit would be distributed and therein for SC/ST category the target has been fixed as 30% to benefit 12 lakh families, for minority category candidates the percentage has been fixed 25% with the target of 10 lakh families and lastly for OBC and General category the target described as 45% to benefit 18 lakh families.

7. The claim in question has been attacked primarily on the ground that State Government has got no authority to provide for any affirmative action in favour of any community based on religion and, in view of this, the Government Order dated 7.2.2014 to the extent it proceeds to provide distribution of state resources upto the level of 25% to the members of minority community, is not at all subscribed by the constitutional provisions and in effect creates inequality amongst poor persons and a class amongst class is being created amongst poor.

8. Counter affidavit has been filed and therein stand has been taken that Government Order dated 7.2.2014 is a well considered policy decision taken by the State Government for the benefit of poor sections of the society irrespective of any consideration on the caste or communal lines and the Government Order dated 7.2.2014 has been launched for the economic and social development of

the identified poorest section of the society and all sections of society, who do not have proper means of livelihood on the basis of their population on proportionate basis have been given proper representation in urban and rural areas of the State for the grant of financial help under the scheme in question and for identifying the eligible persons for grant of benefit of the scheme the Government Order dated 7.2.2014 has laid down clear standard under 5.1.1 and 5.2.1, which also provides the exclusionary clause under 5.1.1 and 5.2.1 for rural area and urban area respectively. The preferential clause in rural and urban area has been provided under 5.1.2 and 5.2.2 respectively which has made the scheme transparent and simple for identifying the persons eligible for grant of benefit under the scheme. Care has been taken to prevent the abuse of the scheme by not providing any income limit as that could result in misuse of the same on the basis of false and fabricated income certificates. Every aspect of the Samajwadi Pension Yozna is to grant the benefit of financial help to those poorest of the poor section of the society, who do not have proper means of livelihood, irrespective of the caste and religion and every effort has been made to find out the actual needy person.

9. To the said counter affidavit, rejoinder affidavit has been filed and a supplementary counter affidavit and supplementary rejoinder affidavit has also been filed, and much emphasis has been sought to be laid on the fact that reservation for the members of minority community namely Muslims is not at all subscribed by the constitution and is de hors the constitution and same has the effect of dividing the country that has never been in the mind of the makers of the constitution.

10. After pleadings, mentioned above, have been exchanged, records in question have also been perused and, thereafter, present writ petition has been taken up for final hearing and disposal with the consent of parties.

11. Sri Hari Shanker Jain, learned counsel for the petitioner, has assailed the validity of the scheme in question only to the extent wherein 25% of the benefit of the scheme has been blocked and made available for the members of the minority community on the premises that minorities have been conferred special rights under the constitution under Article 29 and 30 of the Constitution of India and no other separate rights have been conferred upon them, then unless and until they are not declared socially and economically backward, such provision could not have been incorporated, as it has been done in the present case as report of the Sachar Committee is only in reference of Muslims and nothing beyond the same and once blocking of 25% of resources is nothing but an exercise of appeasement, then the said portion necessarily has to be struck down being violative of Article 14 and 15(1) and 15(4) of the Constitution of India.

12. The arguments advanced on behalf of petitioners have been resisted by the State through its Advocate General, Sri V.B. Singh, Senior Advocate, assisted by Sri H.P. Srivastava, Additional Chief Standing Counsel alongwith Sri Udai Pratap Singh, Standing Counsel, by contending that scheme in question is based on

permissible classification and constitute affirmative action under Article 14 and 15(1) of the Constitution of India and the action taken is constitutional one even without reference to Article 15(4) of the Constitution and minorities in itself constitute a separate class and once a conscious decision has been taken to extend the benefit to poor section of the society based on their population, then there is no infirmity whatsoever in the same and the challenge, so made, is unsustainable.

13. After respective arguments have been advanced, before proceeding to consider the same, at the very outset, we proceed to take note of the fact that in the case of Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., , the issue of equality of status and opportunity has been raised and Apex Court proceeded to take note of the fact that though forty-five years from the commencement of the Indian independence after the end of British paramountcy and forty-two years from the advent of our Constitution have marched on, the tormenting enigma that often nags the people of India is whether the principle of "equality of status and of opportunity" to be equally provided to all the citizens of our country from cradle to grave is satisfactorily consummated and whether the clarion of "equality of opportunity in matters of public employment" enshrined in Article 16(4) of the Constitution of India has been called into action and it has been mentioned that with a broken heart one has to answer these questions in the negative.

14. The judgment in the case of Indra Sawhney (supra) though in the context of public employment has been delivered on 4.12.1991 and the area that has been noted in the case of Indra Sawhney (supra) even as on date remains to be the area of concern with much more propensity. The Constitution of India is prefaced by a resolution "to secure all its citizens equality of status and of opportunity. Article 14 , 15 and 16 are part of string of constitutionally guaranteed rights that together form a comprehensive scheme to ensure equality in all spheres. Article 14 , 15 and 16 of the Constitution of India ensures equality before the law. For ready reference same is quoted below;

"Article 14 {Equality before law}

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15 {Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth}

1. The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

2. No citizen shall, on ground only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to -

a. access to shops, public restaurants, hotels and places of public entertainment;

or

b. the use of wells, tanks, bathing ghats, roads and places of public resort maintained whole or partly out of State funds or dedicated to the use of general public.

3. Nothing in this article shall prevent the State from making any special provision for women and children.

4. Nothing in this article or in clause (2) or article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

5. Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30 .

Article 16 {Equality of opportunity in matters of public employment}

1. There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

2. No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

3. Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

4. Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. (4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State. (4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of

vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.

5. Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination."

15. Accordingly, the Constitution of India confers on all citizens a fundamental right to be free of discrimination by the State on the grounds of race, religion and caste. In specific contexts government is further forbidden to discriminate on grounds of place of birth, resident, descene, class, language and sex. Additional provisions outlaw "untouchability" and proceeds to protect citizen from certain discriminatory practice by private persons and institutions. Equality is one of the basic features referred to in the Preamble of our Constitution. Our country is the most stratified society in the world. Although the word "Secular" was incorporated to the Preamble only in 1976 by 42nd Amendment, it has always been an implicit part of our Constitutional philosophy. A secular State is one in which the State does not officially promote any one religion as the State religion. Objective being that one religious community should not dominate another; the State should not enforce any particular religion nor take away the religious freedom of individuals. Secularism in real sense means "goodwill towards all religions" or "religious neutrality." Over and above caste differentiations there are huge income disparities, religious and community differences that are deeply engraved into every day social relations. To bridge the inequality, the key is affirmative action. The rationate behind affirmative action is to make unequal, equal by enlarging the social pool of talents and by expanding the pool of social assets in society for general good.

16. In Indra Sawhney (supra) case reservation under the constitution has been dealt with by clearly mentioning therein that any state action distinguishing classes of persons is liable to be condemned as invidious and unconstitutional unless justified as a benign classificational rationally addressed to the legitimate aim of qualitative and relative equality by means of affirmative action programmes of protective measures with a view to uplifting identified disadvantaged groups. All such measures must bear a reasonable proportion between their aim and the means adopted and must terminate on accomplishment of their object.

17. State interest in initiating affirmative action is to correct or remedy the evil effect of inequities stemming from prior discrimination but the focus in any such action must be on the victims and not on the wrongdoers. Discrimination in any form hurts as there is an element of deprivation of the legitimate expectations of classes of people upon whom the inevitable consequences of any such action must necessarily fall. Any unfair and undue deprivation of any class of people is

constitutionally impermissible. Any such action, though in some respects discriminatory, is permissible on the basis of a legitimate classification rationally related to the attainment of equality in all its aspects. Any attempt to view affirmative action as merely retributive or to unduly over-emphasise its compensatory aspect and widen the scope of reservation is to practice excessive and invidious reverse discrimination. Affirmative action is not merely compensatory justice, which it is, but it is also distributive justice seeking to ensure that community resources are more equitably and justly shared among all classes of citizens. Furthermore, from the point of view of social utility, affirmative action promotes maximum well being for the society as a whole and strengthens forces of national integration and general economic prosperity. Any benign affirmative action with a view to equality amongst classes of citizens is a constitutionally permitted programme but the weapon must be carefully and sparingly used in order that while the victims of past discrimination are appropriately compensated, the generality of persons striving to progress do not become victims of excessive, unfair and invidious reverse discrimination.

18. Before we go to the question of the validity of the scheme, we will have to look into the question as to what is the minority and in what way and manner minority should be dealt with.

19. The expression "minority" has been derived from the Latin word "minor" and the suffix "ity" which means small in number. According to Encyclopedia Britannica "minorities" means "group held together by ties of common descent, language or religious faith and feeling different in these respects from majority of inhabitants. In the yearbook on Human Rights, UN Publication, 1950 Edn, minority has been described as non-dominant groups having different religious or linguistic traditions than the majority population.

20. Who are the persons of inheritance of the rights under Article 30 of the Indian Constitution? This right secures to religious and linguistic minorities a right to establish and administer educational institutions of their choice.

21. The Constitution nowhere defines the terms "minority", nor does it lay down sufficient indicia to the test for determination of a group as minority. Constituent Assembly made no attempt to define the term while article 23 of the Draft Constitution, corresponding to present articles 29 and 30 , was being debated.

22. The whole debate in the Constituent Assembly on article 23 of the Draft Constitution which later assumed the shape of the present article 29 and 30 , revolve round this issue: what rights could or should be conceded to minorities? The reference to minorities was a reference to none other than Indian minorities existing in India. The original draft of the fundamental rights submitted to the Constituent assembly on April 16, 1947 by the Sub-Committee on Fundamental Rights did not contain any provision corresponding to article 30(1) and did not even refer to the word minority. The letter submitted by K.M. Munshi to the Minorities Sub-Committee on the same date when, along with some other rights,

the rights now forming part of article 30(1) was proposed, made a reference on the term "national minorities".

23. The Drafting committee, however, sought, to make a distinction between the rights of any section of the citizen to conserve its language, script or culture and the right of the minorities based on religion or language to establish and administer educational institutions of their choice and for this the committee omitted the word "minority" in the earlier part of the draft article 23 corresponding to article 29 , while it retained the word in the latter part of the draft article 23 which now forms part of the article 30(1) .

24. Dr. Ambedkar sought to explain the reason for substitution in the Draft Constitution of the word minority by the words "any section" by observing as follows:

"It will be noted that the term minority was used therein not in the technical sense of the word "minority" as we have been accustomed to use it for the purpose of certain political safeguards, such as representation in the Legislature, representation in the service and so on. The word is used not merely to indicate the minority in the technical sense of the word, it is also used to cover minorities which are not minorities in the technical sense, but which are nonetheless minorities in the culture and linguistic sense. That is the reason why we dropped the word "minority" because we felt that the word might be interpreted in the narrow sense of the term when the intention of this House....was to use the word "Minority" in a much wider sense so as to give cultural protection to those who were technically not minorities but minorities nonetheless."

25. Dr. Ambedkar's explanation that the right was available not only to minorities in the "technical sense" but also to minorities in the "wider sense" has an obvious reference only to that part of Draft article 23 which now forms part of article 29(1) and not to that which is now clause (1) of article 30 . His explanation, therefore, was taken to be an attempt to broaden the scope of clause (1) of article 29 only so as to include within the term "minority" other minority groups also, as contemplated and illustrated by him, and thus to confine article 30(1) to those minorities which he described as minorities in the technical sense, were politically recognized and the most prominent amongst them were represented in the Constituent Assembly also.

26. Article 29 of the Constitution of India defines the protection of interest of minorities:--

"1) Any section of the citizen residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have right to conserve the same.

2) No citizen shall be denied admission into any educational institution maintained by the State receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."

27. Clause (1) gives protection to every section of the citizens having distinct language, script or culture by guaranteeing their right to conserve the same. If such section desires to preserve their own language and culture, the state would not stand in their way. A minority community can effectively conserve its language, script or culture by and through educational institutions and therefore necessary concomitant to the right to conserve its distinctive language, script or culture and that is what is conferred on all minorities by article 30(1) . But article 29(1) , neither controls the scope of article 30(1) nor is controlled by that article. The scope of the two is different. Article 29(1) is not confined to minorities but extends to all sections of citizens. Similarly article 30(1) is not confined to those minorities, which have "distinct language, script or culture" but extends to all religious and linguistic minorities. Further, article 30(1) gives only the right to establish and administer educational institutions of minorities" choice while article 29(1) gives a very general right "to conserve" the language, script or culture. Thus, the right under article 30(1) need not be exercised for conserving language, script or culture.

28. Clause (2) relates to admission into educational institutions, which are maintained or aided by state funds. No citizen shall be denied admission in such institutions on grounds only of religion, race, caste, language or any of them. Article 15 prohibits discrimination against citizen on ground of religion, etc. but the scope of two articles is different. Firstly, article 15(1) protects all citizens against the state where as the protection of article 29(2) extends to the state or anybody who denies the right conferred by it.

29. Secondly, article 15 protects all citizens against discrimination generally but article 29(2) is a protection against a particular species of wrong, namely, denial of admission into educational institutions maintained or aided by the state. Finally, the specific grounds on which discrimination is prohibited are not the same in two articles. "Place of birth" and "sex" do not occur in article 29(2) , while "language" is not mentioned in article 15 .

30. The right to admission into an educational institution is a right, which is an individual citizen, has as a citizen and not as a member of a community or class of citizen. Hence a school run by a minority, if it is aided by state funds, cannot refuse admission to children belonging to other communities. But the minority community may reserve up to 50 percent of the seats for the members of its own community in an educational institution established and administered by it even if the institution is getting aid from the State. The state, however, cannot direct minority educational institutions to restrict admission to the members of their own communities. Article 29(2) , however, does not confer a legal right on the members belonging to other communities to freely profess, practice and propagate their religion within the precincts of a college run by a minority community. Article 29(2) cannot be invoked where refusal of admission to a student is on the ground of his not possessing requisite qualifications or where a student is expelled from an institution for acts of indiscipline.

31. To overcome the conflict with article 15 as well as article 29 the Constitution (First Amendment) Act, 1951, added clause (4) to article 15 to the effect that nothing in article 15 and article 29(2) shall prevent state from making any special provision for the advancement of any socially and educationally backward classes of citizen or for the schedule caste and the schedule tribes. Clause (5) has been added to Article 15 by means of Constitution (93rd Amendment) Act 2005 empowering State to make special provision for advancement of any socially and educationally backward classes of citizens or for SC/ST category candidates in relation to admission in institutions. The state is empowered to reserve seats in state colleges for socially and educationally backward classes of citizen or for SC and ST.

32. Article 30 of the Constitution of India defines Rights of Minority to Establish and Administer Educational Institutions:--

"1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

[1-A) In making any law providing for the compulsory acquisition of any property of an educational institution establish and administered by a minority, referred in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language."

33. Clause (1) gives rights to all minorities based on religion or language the right to establish and administer educational institution of their own choice. Article 29 and 30 are grouped together it will wrong to restrict the rights of minority to establish and administer educational institution concerned with language script and culture of the minorities. The reasons are: Firstly, article 29 confers the fundamental rights on any section of the citizen which will include the majority also where as article 30(1) confers all rights on all minorities. Secondly, article 29(1) is concerned with language, script or culture, whereas article 30(1) deals with minorities based on religion or language. Thirdly, article 29(1) is concern with the right to conserve language, script or culture, whereas article 30(1) deals with right to establish and administer educational institutions of the minorities of their choice. Fourthly, the conservation of language, script or culture under article 29(1) may be by means wholly unconnected with educational institutions, and similarly establishment and administer educational institutions by a minority under article 30(1) may be unconnected with any motive to conserve language, script or culture. A minority may administer an institution for religious education, which is wholly unconnected with any question of conserving language, script or culture. It may be that article 29(1) and article 30(1) overlap, but the former cannot limit the width of the latter. The scope of article 30 rests

on the fact that right to establish and administer educational institution of their own choice is guaranteed only to linguistic or religious minorities, and no other section of citizens has such a right. Further article 30(1) gives the right to linguistic minorities irrespective of their religion. It is, therefore, not at all possible to exclude secular education from article 30 .

34. The expression "minority" in article 30 remains undefined though the court has observed that it refers to any community which is numerically less than 50 percent of the population of a particular state as a whole when a law in consideration of which the question of minority right is to be determined as a State law. A community, which is minority in specific area of the State though a majority in the state as a whole, would not be treated as minority for the purpose of this article. A minority could not also be determined in relation to entire population of the country. If it was a state law, the minorities must be recognized in relation of that state. But the fact that the expression minority in article 30(1) is used to distinct from "Any section of citizen" in article 29(1) lends support to the view that article 30(1) deals with national minorities or minorities recognized in the context of entire nation. In that case, however, article 30(1) would become inapplicable to the national majority even if it is a minority in any particular state, e.g., Hindus in Punjab or Jammu and Kashmir.

35. Although article 30(1) does not speak of citizens, the minority competent to claim the protection of that article must be a minority of person residing in India. "The minority under article 30 must necessarily mean those who form a distinct and identifiable group of citizen in India". Article 30(1) does not confer upon foreigners not residents in India the right to set up educational institutions of their choice. The right conferred on minorities is to establish educational institutions of their choice. It does not say that minority based on religion should establish educational institutions for teaching of their own language alone. The article leave it to their choice to establish such educational institutions as will serve both the purpose, namely, the purpose of conserving their religion, language, or culture, and also the purpose of giving a thorough general education to their children. Minorities are, however, not entitled to have educational institutions exclusively for their benefit.

36. The right conferred on minorities is to establish educational institutions of their choice. It does not say that minority based on religion should establish educational institutions for teaching of their own language alone. The article leave it to their choice to establish such educational institutions as will serve both the purpose, namely, the purpose of conserving their religion, language, or culture, and also the purpose of giving a thorough general education to their children. Minorities are, however, not entitled to have educational institutions exclusively for their benefit.

37. Clause (2) is only a phase of non-discrimination clause of the constitution and does not derogate provisions made in clause (1). The clause is expressed in negative terms: the state is therefore enjoined not to discriminate in granting aid

to educational institutions on the ground that the management of the institutions is in the hands of minority, religious or linguistic. The clause does not mean that the state is competent otherwise to discriminate so as to impose restrictions upon the substance of rights to establish and administer educational institutions by minorities. The rights established by article 30(1) is intended to be a real right for the protection of the minorities in the matter of setting up of education institution of their choice.

38. Thus religious or linguistic minorities should be determined only in relation to the particular legislation which is sought to be impugned, namely that if it is the State Legislature these minorities is to be determined in relation to the population of the State. A minority for the purpose of Article 30 , it is well settled, has to be determined in relation to the State in which educational institution is situated/located, as per the judgment in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, . Same provides for as follows;

"Linguistic and religious minorities are covered by the expression "minority" under Article 30 of the Constitution. Since reorganisation of the State in India has been on linguistic lines, therefore, for the purpose of determining the minority the unit will be the State and not the whole of India. Thus, religious and linguistic minorities, who have been put on par in Article 30 , have to be considered State-wise."

39. Thus while it is true that it is only the minorities whose right to establish and administer educational institutions is mentioned in article 30(1) , it does not follow that the same stands denuded to the majority communities and this fact has also been clarified while answering question No. 10 and 11 in the case of T.M.A. Pai Foundation (supra) by categorically mentioning that all citizens have a right to establish and administer educational institutions under Article 19(1)(g) and 26 , and to minorities specifically under Article 30 . It was considered necessary like a special mention for the right of minorities by way of extra assurance but it would be not correct to say that minorities were considered backward and needed concessions though article 30(1) to bring them up. The object was to make that they will not be discriminated against, it was not intended to pamper as favored communities. It should follow therefore from articles 14 and 15 majority communities have right to similar treatment at the hands of the state in the matter of recognition affiliation government aid or non displacement management in respect of educational institutions established by majority as accorded to minority institutions of course condition can and to be imposed in regard to aid, affiliation and recognition in order to ensure standard of teaching but the same have to be uniformly onerous and not be so drastic as to involve surrender by the community or founder or management of its right to establish and administer the institution and all other matters.

40. The said rights of establishing and administering educational institution conferred to the minorities under Article 29 and 30 , flows from Article 14 , 15 ,

19(1)(2) , 21 and 26 (a) , and apart from the aforementioned rights as far as members of minority community are concerned, they are at par with the members of the majority community, by virtue of being the citizens of India with equal rights.

41. The issue, that is being raised in the present case, is that Sachar Committee was appointed by the Government of India (Prime Minister's Office) notification dated 9.3.2005 to prepare report on the social, economic and educational status of Muslims in India and once such report is particularly based in favour of one particular religious group i.e. members of Muslim community and the report of Sachar Committee has been made foundation and basis for providing such a quota, then it has a communal taint and such discrimination on religion lines, is not at all permissible as all citizens of India ought to have been treated alike except for socially and educationally backward class of citizens or for SC/ST category candidates and, in view of this, the aforementioned providing of quota to the extent of 25% is discriminatory in nature.

42. A High Level Committee headed by Justice Rajendra Sachar was appointed by the Government of India (Prime Minister's Office) notification dated 9.3.2005 to prepare a report on the social, economic and educational status of Muslim community in India. Said Committee submitted its report on 17.11.2006.

43. At this juncture we proceed to take note of the recommendations made by Justice Sachar Committee.

Recommendations of Sachar Committee:--

"1. While there is considerable variation in the conditions of Muslims across states, (and among the Muslims, those who identified themselves as OBCs and others), the Community exhibits deficits and deprivation in practically all dimensions of development.

2. Mechanisms to ensure equity and equality of opportunity to bring about inclusion should be such that diversity is achieved and at the same time the perception of discrimination is eliminated. This is only possible when the importance of Muslims as an intrinsic part of the diverse Indian social mosaic is squarely recognized.

3. Creation of a National Data Bank (NDB) where all relevant data for various SRCs are maintained is recommended. All the data should be eventually computerized and made available on the Internet.

4. An autonomous Assessment and Monitoring Authority (AMA) is needed/ recommended to evaluate the extent of development benefits which accrue to different SRCs through various programmes. Academics, professionals, civil society organizations along with state authorities as the official members can be part of this Authority and perform a watch-dog function which closely monitors the participation of various SRCs in both and Central level programme implementation.

5. While equity in the implementation of programmes and better participation of the Community in the development process would gradually eliminate the perception of discrimination, there is a need to strengthen the legal provisions to eliminate such cases.

6. It is imperative that if the minorities have certain perceptions of being aggrieved, all efforts should be made by the State to find a mechanism by which these complaints could be attended to expeditiously. This mechanism should operate in a manner which gives full satisfaction to the minorities that any denial of equal opportunities or bias or discrimination in dealing with them, either by public functionary or any private individual, will immediately be attended to and redress given.

7. The Committee recommends that an Equal Opportunity Commission (EOC) should be constituted by the government to look into the grievances of the deprived groups. An example of such a policy tool is the UK Race Relation Act, 1976. While providing a redressal mechanism for different types of discrimination, this will give a further re-assurance to the minorities that any unfair action against them will invite the vigilance of law.

8. A carefully conceived "nomination" procedure should be worked out to increase the participation of minorities at the grass roots. Mechanism should be put in place so that a larger number of minorities are indeed nominated so as to increase their participation in public bodies.

9. The Committee recommends the elimination of the anomalies with respect to reserved constituencies under the delimitation schemes. A more rational delimitation procedure that does not reserve constituencies with high minority population shares for SCs will improve the opportunity for the minorities, especially the Muslims, to contest and get elected to the Indian Parliament and the State Assemblies.

10. The idea of providing certain incentives to a "diversity index" should be explored. This is a complex proposition but if a transparent and acceptable method to measure diversity can be developed, a wide variety of incentives can be linked to this index so as to ensure equal opportunity to all SRCs in the areas of education, government and private employment and housing.

11. In order to respect and sustain diversity in the development and implementation of innovative programmes or in the provision of service, relevant functionaries should be sensitive to the need to have diversity and the problems associate with social exclusion.

12. The Committee recommends that a process of evaluating the content of the school text books needs to be initiated to purge them of explicit and implicit content that may impart inappropriate social values, especially religious intolerance.

13. The University Grants Commission (UGC) should be encouraged to evolve a

system where part of allocation to colleges and universities is linked to the diversity in the student population. Even private colleges, including those run by the minorities and which have affiliation with universities or are recognized by state bodies can be provided additional funds if they have a diverse student population and charge reasonable fees.

14. To facilitate admissions to the "most backward" amongst all the SRCs in the regular universities and autonomous colleges, alternate admission criteria need to be evolved.

15. Providing hostel facilities at reasonable cost for students from minorities must be taken up on priority basis. While this is required for all minority students, such facilities for girls in cities of all sizes are particularly desirable.

16. Teacher training should compulsorily include in its curriculum components which introduce the importance of diversity/plurality within the country and sensitize teachers towards the needs and aspiration of Muslims and other marginalized communities. The implementation of this should be monitored by the National Council of Teacher Education (NCTE).

17. Given the commitment to provide primary education in the child's mother tongue, the State is required to run Urdu medium schools. Given the constitutional responsibility of the State, it is imperative that Urdu language is supported to provide a regular stream of Urdu teachers.

18. Government should work out mechanisms whereby Madarasas can be linked with a higher secondary school board so that students wanting to shift to a regular/mainstream education can do so after having passed from a Madarsa.

19. Government should recognize degrees from Madarasas for eligibility in competitive examinations such as the Civil Services, Banks, Defense Services and other such examinations. The idea is to facilitate a process whereby Madarsa graduates too have a choice and an incentive to participate in these employment streams.

20. The Committee recommends promoting and enhancing access to Muslims in Priority Sector Advances. Any shortfall in achievement of targeted amount in minority specific programmes should be parked with NMDFC, NABARD and SIDBI and specific programmes should be funded with this amount.

21. The real need is of policy initiatives that improve the participation and share of the Minorities, particularly Muslims in the business of regular commercial banks. Since the size of the credit flows through regular banking channels is much higher than various community specific programmes, higher participation of minorities will result in larger gains to them.

22. The detailed analysis of Muslim participation in government employment and other programmes has shown vary limited participation in both. While no discrimination is being alleged, it may be desirable to have experts drawn from

the Community on relevant interview panels and Boards. This practice is already in vogue in the case of SCs/STs.

23. The country is going through a high growth phase. This is the time to help the underprivileged to utilize new opportunities through skill development and education.

24. Government should provide financial and other support to initiatives built around occupations where Muslims are concentrated and that have growth potential. These initiatives can take the form of interventions where existing skills of the workers are combined with knowledge of modern management practices, new technology, and emerging market needs.

25. The registration of trusts set up by the Community, such as Waqf institutions and mosque committees should be facilitated. These institutions, being closer to the community can indeed play an important role as intermediaries between policy programmes announced by the government and their beneficiaries within the Muslim community.

26. Lack of access to crucial infrastructural facilities is another matter of concern for the Muslims. Access to schools, health care, sanitation facilities, potable water and means of daily transportation are some of the basic facilities one can expect a state to provide for its citizens.

27. It is expected that the Report would invoke a positive response from the Civil Society, which will ensure that the policy measures introduced by the State in pursuance of these recommendations receive full support and active cooperation from all sections of the society, including the Muslim community. The issues relating to disparities across socio-religious communities are of utmost importance to our nation today. If this Report contributes in any way in constructively dealing with these issues and in facilitating a more informed discussion on them, the Committee's efforts would be well rewarded."

44. Report of Justice Sachar was submitted before both Houses of Parliament on 30th November, 2006. 15 Point Programme for the welfare of the minorities aimed at enhancing opportunities for education, equitable availability of Integrated Child Development Services (ICDS) Scheme and also improving access to School Education. Emphasis has also been made for giving central assistance to the recruitment and posting of Urdu language teachers in primary and upper primary schools and for modernization of Madarasa Programme/ education and scholarships for meritorious students from minority communities and improving educational infrastructure through the Maulana Azad Education Foundation. Emphasis has also been made for providing equitable share in economic activities and employment through the Swarnjayanti Gram Swarajgar Yojana, the Swarnjayanti Shahari Rojgar Yojana and the Sampurna Grameen Rozgar Yojana etc. and to strengthen the National Minorities Development & Finance Corporation by providing greater equity support to enable it to fully achieve its objectives. Further, in the recruitment of police personnel, it was

suggested that the State Governments would be advised to give special consideration for appointment to members of minority communities and also in Railways, Nationalised Banks and public sector enterprises etc. Emphasis has also been made to improve conditions of the slums inhabited by minority communities. It was noticed that scheme of Integrated Housing and Slum Development Programme and Jawaharlal Nehru National Urban Renewal Mission, the Central Government provides assistance to States/Union Territories for development of urban slums through provision of physical amenities and basic services. Programmes envisage that benefits of these programmes flow equitably to members of the minority communities and to the cities/slums, predominantly inhabited by minority communities. Programmes also envisage to prevent communal riots and also to constitute special Courts to try those offence. Further, programme also stipulates the target group of this programme would be eligible sections among the minorities notified under Section 2(c) of the National Commission for Minorities Act, 1992 viz. Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis). 15 Point Programme was envisaged for welfare of the minorities and not exclusively for Muslim Community.

45. At this juncture, we also proceed to take note of the fact that thereafter Commission was constituted with Justice Rangnath Mishra as Chairman for identifying criteria for socially and economically backward classes among the religious and linguistic minorities and to suggest various welfare measures for minorities including reservation and the said Commission also made its recommendations and therein also recommendations have been made as to in what way and manner the condition of the minority community is to be improved.

Modalities Suggested For Implementing the Recommendations.

"I. The Commission is not suggesting any amendment in the Constitution - as it is fully convinced that none of its recommendations requires for its implementation any amendment of the Constitution and that each of these can be fully implemented by legislative or/and administrative action.

II. All Central and State Acts, Statutory Rules and Regulations be suitably amended to implement those of Commission's recommendations which in the opinion of the Ministry of Law and Justice or any another concerned authority may require such amendments.

III. More specifically, it is recommended that the following legislative actions which are required either for the implementation of some of the recommendations stated above or otherwise in the interest of the welfare of Minorities:--

(a) Enactment of a detailed law to enforce the dictates of Article 30 of the Constitution;

(b) Amendment of the National Commission for Backward Classes Act 1993;

(c) Amendment of the Constitution (Scheduled Castes) Order 1950 and the

Constitution (Scheduled Tribes) Order 1951 as also of the Central and State lists of the Scheduled Castes and Scheduled Tribes;

(d) Review of the laws and rules, processes and procedures, relating to selection and notification of OBCs at the Central and State levels;

(e) Enactment of a law to clothe with statutory status and judicial enforceability the Prime Minister's 15-Point Programme for Minorities 1983 as modified in 2006;

(f) Amendment of the National Commission for Minorities Act 1992 and the National Commission for Educational Institutions Act 2004 so as to make it necessary for the government to appoint as the chairpersons and members of these bodies - through a Search Committee as in the case of the National Human Rights Commission - only reputed experts in the constitutional, legal, educational and economic matters relating to the Minorities;

(g) Necessary amendments in the Wakf Act 1993 and all the Rules framed under its provisions;

(h) Review and necessary overhaul of the laws, rules, regulations, procedures and processes relating to the National Minorities Development and Finance Corporation and the Maulana Azad Education Foundation.

IV. The following administrative measures which are required either for the implementation of some of the recommendations or otherwise in the interest of the welfare of Minorities:--

(a) Establishment of a Parliamentary Committee to consider and decide in the light of the Constitution policy matters relating to the minorities;

(b) Establishment of a National Committee consisting of Chairpersons of NHRC, NCW, NCBC, NCST, NCSC, NCM, NCMEI, NMDFC, CLM, Central Wakf Council and Maulana Azad Foundation along with nominated experts for monitoring the educational and economic development of the Minorities;

(c) Creation of similar bodies in all the States/UTs for the same purpose and consisting of local top-level officials dealing with Minority-related matters and independent experts;

(d) Establishment of a National-level Coordination Committee consisting of representatives of all the nationalized banks and other financial institutions to work under the RBI for monitoring credit flow to the Minorities;

(e) Establishment of State Minorities Commissions and Minority Welfare Departments in all those States and UTs where these do not exist as of now;

(f) De-centralization of all Minority related schemes, programmes and plans so as to create suitable district-level mechanisms for their day-today implementation;

(g) Revision of the list of Minority Concentration Districts as suggested by the

NCM in 1990s and initiating special educational, economic and general welfare measures there through the local administration;

(h) Appointment of Minority Welfare Committee consisting of officials and local experts in all districts of the country to act the nodal agencies of NCM, State Minorities Commissions and all other Central and State-level bodies working for the Minorities."

46. Justice Rangnath Mishra's report has been tabled on the floor of the Parliament but till today no resolution has been passed to ensure its acceptance/implementation. Central Government has constituted Committee known as Post-Sachar Evaluation Committee headed by Professor Amitabh Kundu alongwith six others, for reviewing the implementation of the recommendations made by Justice Sachar Committee on the Social, Economic and Educational status of the Muslim Community of India. Report has been submitted on 9.10.2014 to Union Ministry for Minority Affairs.

47. Both the Sachar Committee as well as Justice Rangnath Mishra's Commission while making recommendation has been conscious of this fact that until and unless declaration is not made that members of minority community are socially and economically backwards, special provisions for their advancement cannot be made in terms of Clause (4) and (5) of Article 15 of Constitution of India.

48. The Constitution permits preferences for three categories of groups (i) Scheduled Caste (ii) Scheduled Tribes (iii) Other (socially & economically) Backward Classes. The Constitution itself does not define these group, nor does it provide any standard by which they may be determined. In reference of Scheduled Castes and Scheduled Tribes it does prescribe a method and agency for designating them. The President is empowered to specify, after consulting the Governor of State, those "castes, races or tribes or parts of or groups within castes, races and tribes which shall for purposes of the Constitution be deemed to be Scheduled Castes in relation to that State. President may similarly specify "tribes and tribal communities or parts of or groups within tribes or tribal communities to be Scheduled Tribes. Section 24 of Article 366 defines Scheduled Castes as those so designated under Article 341 ; Section 25 of Article 366 defines Scheduled Tribes as those designated under Article 342 . No definition of "backward classes" appears at any point in the Constitution and neither any method and agency has been provided for its determination. Under Article 340 , the Constitution, however, establishes a Backward Classes Commission to be appointed by the President to investigate the conditions of socially and educationally backward classes and to make recommendation as to the steps that should be taken by the Union or any State to remove difficulties and improve their condition. Apex Court in the case of Indira Sawhney (supra) has extensively dealt with as to how identification of backward class of citizens can be carried out as for the purpose of identification there is no set or recognized method nor does any statutory instrument prescribe it. Recommendation has

also been made for constitution of Commission both at Central level and at the level of States for examining requests of inclusion and complaints of over inclusion or non-inclusion in the list of OBCs and to advise the Government, which advice is ordinarily binding upon the Government and where the Government chooses not to accept the advice, it has to record reasons. Identification of backwardness is an ever continuing process of inclusion and exclusion.

49. Articles 15(4) , 15(5) and 16(4) refer to same classes of backward citizens, but they do not refer to identical remedies. While Articles 15(4) and (5) speak of special provisions for the advancement of backward classes, Article 16(4) expressly permits the State to make reservation of appointment or posts in public services in favour of such classes. The special provision contemplated in Article 15(4) is an emphatic reference to the affirmative action which the State may adopt to improve the conditions of disadvantaged members of the backward classes of citizens. Previously Article 15(4) and 16(4) were seen as an exception to the equality enshrined under Article 15(1) and 16(1) and such view has been dealt with differently in the case of *State of Kerala and Another Vs. N.M. Thomas and Others*, , by mentioning that Article 16(4) is not an exception to Article 16(1) and it is an emphatic way of putting the extent to which equality of opportunity could be carried out viz even to the point of making reservation. Said judgment has been taken note of once again in the case of *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.*, as well as in the case of *Ashoka Kumar Thakur Vs. Union of India (UOI) and Others*, .

50. On the same analogy Article 15(4) is not an exception to Article 15(1) but only an emphatic manifestation of equality flowing from Article 15(1) of Constitution. Article 15(3) , 15(4) and 15(5) empowers the State to make special provision for women and children; special provision for the advancement of any socially and educationally backward classes of citizens/SC/ST category candidates; special provisions for the advancement of any socially and educationally backward classes of citizens/SC/ST relating to admission to educational institutions. Such conferment of authority on State Government to make special provision in no way would imply that State is not at all empowered to frame policies outside the framework of the special provisions provided for. Social schemes are referable to Article 15(1) of Constitution of India as well as Article 46 that enjoins the State to promote with special care the educational and economic interest of weaker sections of the people and to protect them. State is free to frame policy outside the framework of special provisions with the rider that said policy should not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them.

51. Under the constitutional provisions Article 14 , 15 and 16 form part of a string of constitutionally guaranteed rights and these rights supplement and compliment each other. Article 14 permits reasonable classification having a nexus to the object to be achieved. The equal protection of the laws is a pledge

of the protection of equal laws but laws may classify and the very idea of classification must flow from inequality. Discrimination is the essence of classification. Equality is violated if it rests on unreasonable basis. The concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Those who are similarly circumstanced are entitled to an equal treatment. Equality is amongst equals. Classification is, therefore, to be founded on substantial differences which distinguish persons grouped together from those left out to the groups and such differential attributes must bear a just and rational relation to the object sought to be achieved. Classification is to be founded on substantial differences which distinguish persons grouped together from those left out of the groups and such differential attributes must bear a just and rational relation to the object sought to be achieved. The rule of parity is the equal treatment of equals in equal circumstances. The rule of differentiation is enacting laws differentiating between different persons or things in different circumstances. The circumstances which govern one set of persons or objects may not necessarily be the same as those governing and her set of persons or objects so that the question of unequal treatment does not really arise between persons governed by different conditions and different sets of circumstances. The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position and the varying needs of different classes of persons require special treatment. The legislature understands and appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based upon adequate grounds. The rule of classification is not a natural and logical corollary of the rule of equality, but the rule of differentiation is inherent in the concept of equality. Equality means parity of treatment under parity of conditions. Equality does not connote absolute equality. A classification in order to be constitutional must rest upon distinctions that are substantial and not merely illusory. The test is whether it has a reasonable basis free from artificiality and arbitrariness embracing all and omitting none naturally falling into that category.

52. On these parameters it has to be found as to whether in the present case the policy decision, that has been so taken, wherein 25% of the benefits scheme in question has been blocked in favour of members of minority community could be dubbed as just and reasonable, in the facts of present case.

53. The record in question reflects that as per the financial availability 40 lakh families have been the target fixed by the State Government keeping in view the budgetary constraints and availability of funds. Earlier Rani Laxmi Bai Pension Scheme was being implemented in Uttar Pradesh with a coverage of about 24 lakh beneficiaries and the budgetary provision for the same was about Rs. 1200/- crores and the said scheme in question has been done away with and in its place new Samajwadi Pension Yozna scheme has been introduced and the budgetary allocation has been increased to Rs. 2400/- crores and each beneficiary family is to receive Rs. 500/- per month. The scheme in question has

been sought to be implemented, as per the facts and figures so supplied, as follows;

"SAMAJWADI PENSION SCHEME - GO dated 7.2.2014

TARGET FIXED:-- 40 lacs families.

40 lacs figure has been fixed looking into the budgetary constraints and availability of funds. Earlier Rani Laxmi Bai Pension Scheme was being implemented in UP with a coverage of about 24 lacs beneficiaries and the budgetary provision for the same was about Rs. 1200 crores.

Now for this Samajwadi Pension Scheme, the budgetary allocation has been increased to Rs. 2400 crores and each beneficiary family is to receive Rs. 500/- per month instead of Rs. 400/- per month under Rani Laxmi Bai Pension Scheme.

Rani Laxmi Bai Pension Scheme has been closed w.e.f. 1st April, 2014 and replaced by the Samajwadi Pension Scheme.

1. CATEGORY WISE BREAK UP:

SC/ST - 30% - (12 lacs families)

(a) Total population of the State as per 2011 census. The population of the State is approximately 20 crores.

(b) Share of SC/ST population - about 20.25% - about 4.20 crores.

(c) Percentage of poor SC/ST Families (below poverty line). -about 34% on the basis of BPL survey carried out by Rural Development Department.

(d) Under erstwhile Rani Laxmi Bai Scheme, the actual number of SC/ST beneficiaries was roughly around 11 lacs (48%). By fixing target at 30%, all these beneficiaries could have been covered under the new Samajwadi Pension Scheme as they have been provided first priority in the present Scheme.

(e) SC & ST figure has been mentioned 30%. This 30% has been found out as out of total population in UP, the percentage of SC/ST population is about 21%, but further considering the BPL population of SC/ST is about 34%, so from 21% the figure has been increased to 30% so that most SC/ST eligible families get coverage. Thus, by granting 9% increase, over population share, the proportion of poor have also been duly covered.

(f) Similar process has been adopted in Minority and OBC & General category and this is the process which is being adopted throughout the country to provide maximum number of coverage of these social welfare schemes.

MINORITY - 25% - (10 Lacs families)

(a) Share of Minority population - about 19.55% - about 3.90 crores in total population of State.

(b) Percentage of poor Minority Families (below poverty line). -about 33%.

(c) Under erstwhile Rani Laxmi Bai Scheme, the actual number of Minority beneficiaries was roughly around 4 lacs (18%). By fixing target at 25%, all these beneficiaries could have been covered under the new Samajwadi Pension Scheme and about 6 lacs new Minority families fulfilling the eligibility criteria under the Scheme could also be benefitted.

OBC & GENERAL Category - 45% - (18 Lacs families)

(a) Share of OBC & General Category population - about 59% -about 11.80 crores in total population of State.

(b) Under erstwhile Rani Laxmi Bai Scheme, the actual number of OBC & General Category beneficiaries was roughly around 8 lacs (33%). By fixing target at 45%, all these beneficiaries could have been covered under the new Samajwadi Pension Scheme and about 10 lacs new OBC & General Category families fulfilling the eligibility criteria under the Scheme could also be benefited.

54. In 2014-15 against the target of 40 lacs pension could be disbursed to about 33.35 lacs beneficiaries. The categorywise share percentage is as under:

"SC/ST : 31.17%

Minority : 20.20%

OBC & Gen : 48.61%"

55. This much fact has been accepted before this Court that before proceeding to take into account for fixation of 25% quota, the Sachar Committee report has been relied upon. Sachar Committee Report has been criticised on the premises that Committee has not evolved any procedure known to law to find out the social and educational backwardness amongst Muslim society based on the basis of relevant dates. The Committee has not discovered any caste or occupational group within Muslim society who may be said to be backward. Sachar Committee has not afforded opportunity to non-minority group who may establish their case in comparison to so called backwardness amongst Muslim society and further after the approval of the lines and method adopted by Mandal Commission, the report of Sachar Committee is of no use and cannot be taken into consideration. As far as Sachar Committee report is concerned, it only deals with and has been constituted to prepare report on the social, economic and educational status of Muslims in India. Sachar Committee report is only confined to take care and prepare report on social, economic and educational status of Muslims in India. The Sachar Committee in reference of the Muslim OBCs and affirmative action proceeds to suggest that Muslims in India, in terms of their social structure, consist of three groups (i) Ashrafs, (ii) Ajlafs and (iii) Arzals. These three groups require different types of affirmative action. The second group Ajlafs/OBCs need additional attention which could be similar to that of Hindu OBCs. The third group those with similar traditional occupation as that of the SCs, may be designated

as Most Backward Classes (MBCs) as they need multifarious measures, including reservation, as they are cumulatively oppressed. Sachar Committee report also desires affirmative action in the shape of suggestions, that have been given. Criticism of Sachar Committee Report, as has been done, was not at all required in the facts of the case for the reason that undisputed position is that the class that was being dealt with by the State Government was a class of "Below Poverty Line" (BPL) category. Below Poverty Line (BPL) is an economic benchmark and poverty threshold used by Governments to indicate economic disadvantage and to identify individual and households in need of government assistance/aid. The object of scheme was to promote;

"(a) Right to Education,

(b) Enhance learning outcomes by making atleast 70% attendance in the school.

(c) Promoting Literacy

(d) Ensuring reduction in Child mortality rate through regular immunization.

(e) Reduction in maternal mortality rate by making institutional delivery in the hospitals.

(f) improving general health of children."

56. In the present case population and poverty has been made foundation and basis for fixing the percentage of beneficiaries. Petitioners are submitting that Constitution recommends benefit in favour of socially and economically backward and in order to arrive at a conclusion in the said direction a requisite exercise is required to be undertaken. In the present case, Sachar Committee report has been made foundation and basis for blocking 25% of the resources based on the same, wherein label of minority has been colourably used, whereas the fact of the matter is that State Government has been eyeing on the members of one particular religious community and based on their population and poverty the resources have been sought to be distributed.

57. At a first glance arguments appear to be attractive but on deep down consideration it is found from the original record in question that scheme is not framed on the basis of religion. Six minorities notified under Section 2(c) of the National Commission for Minorities Act 1992 are Sikhs, Christians, Parsi, Buddhist, Jain and Muslims, they have been grouped together for common treatment being different in the matter of common descent, language or religious faith from majority inhabitants. Minorities are thus a class in themselves and minorities does not mean only Muslims and, it appears, as Muslims are largest minority at national level with country-wide presence, their presence on the scene is much more felt as compared to other five notified minorities in this backdrop religious taint is being attributed to it. This is not a correct way to look into the scheme of thing provided for. Equal protection of laws does not mean that all persons must be dealt with identically irrespective of circumstances that would be formal equality. True and substantive equality requires that distinction

be made having relevance to the purpose for which classification is made. Constitution has special provisions for vulnerable sections of the society, including minorities. This is not appeasement but it means that it has provided for substantive equality as opposed to mere formal equality. Here minorities as a group has been used only for the purposes of identifying class of citizens who have lagged behind in progress. Grouping of minorities for the purposes of identifying class of citizens who have lagged behind in progress is vastly different issue from protection of their rights and interest to establish and administer educational institution under Article 29 and 30 of Constitution.

58. We can not loose sight of the fact, that in the State of U.P., Muslims are accepted to be minorities and cover 74% of the minority population and no one from Christians, Siksh, Buddhists, Parsis and Jains have come forward complaining that for remaining minority population in spite of the fact that there existed BPL category families, they have been deliberately left out. Even petitioners have not brought any such instance/example before this Court. Once such is the existing state of affairs that Muslims cover 74% of the minority population, and we are dealing with BPL category families, then merely because they happen to be Muslims, they will not loose their identity of being a "minority". In the State of U.P. the benefit, here, is not being extended on account of religion rather on account of the fact that said benefit is to be extended to "minorities".

59. Population and poverty are not the exclusive indica/determining factor of social and educational backwardness. A blind eye, however, cannot be turned to the poor, who are covered by the provision "economically backward classes". Apex Court in the case of Indra Sawhney (supra) has clarified that the expression "weaker section" of the people is wider than the expression "backward class" of citizens, which is only a part of weaker section. Backward classes comprise only those who are socially or economically backward. The term weaker sections does not necessarily refer to group or class. It connotes all sections of the society which are rendered weaker due to various causes e.g. poverty, natural calamity or physical handicap. The problem is that only 40 Lakh families as per financial constraints are to be benefited. The takers are more i.e. there are too many people becoming eligible on the basis of economic criteria. In such a situation the policy makers will have to take a call as to how social scheme is to be implemented and given effect to by maintaining delicate balance that does not infringe our constitutional scheme.

60. Here original record of deliberations has also been summoned and looked into and as per the records 25% of the benefit of pension scheme has been blocked in favour of minorities. It is true that Sachar Committee report has been relied upon, but the fact of the matter is that the scheme in question is to cater the needs of people from all section of the society, all the beneficiaries are from Below Poverty Line (BPL) i.e. on poverty front they constitute one class. Amongst BPL families, distribution is to be done. Apex Court in the case of Ashoka Kumar

Thakur Vs. Union of India (UOI) and Others, , took the view that legislations/ schemes should come forward that provides low income parents/guardians with financial incentives so that they may send their children to school. Present scheme in question has its traces in the aforementioned scheme, as here one of the conditions of granting pension of Rs. 500/- is that the child should go to the school with 70% attendance. The impugned scheme is quite different from reservation for admissions to educational institution or reservations in public employment. The main focus of benefit through the pension scheme is for poor people of the State, who are below poverty line, and keeping in view financial constraints 40 Lakh families have been targeted and each beneficiary family is to receive Rs. 500/- per month, subject to fulfilment of various terms and conditions. Policy makers have to deal with diverse problems arising out of an infinite variety of human relations, in this background they have the powers of laying down policy to attain particular objects and for said purpose it has large powers of selection or classification of people and things upon which policy is to operate.

61. Here framing of scheme, as already noted above, has not been assailed in toto and to a limited extent, challenge has been maintained. Article 14 and 15(1) of Constitution permits reasonable classification. Once for minorities who form a class in itself with the object to see and ensure that their children also go to the school and receive education in consonance with the provision of Article 21A and Right to Child Education Act 2009 incentive scheme in the shape of providing pension has been made, then it cannot be said that special provision is made for the benefit of one class at the cost of, or to the detriment of other class. Once the State Government in its wisdom has fixed target to extend benefit to 40 Lakh families from BPL category to give them pension, linking the same to various welfare schemes such as compulsory education to children by ensuring their 70% attendance in school and by ensuring maternity to be ensured at maternity centres and in the said direction to ensure welfare of minorities and to see that their social condition also improves has blocked 25% of the said benefits, out of 100% in favour of minorities, then to say that it violates Article 14 or 15(4) cannot be accepted, once the ultimate goal of the same is to provide equality and promote educational and economic interest of weaker section.

62. Economic reservation in the shape of providing pension wherein it is limited to reasonable number in favour of minorities based on total population, can be said to be based on permissible classification, in the facts of the present case. Equality clause is intended to serve socio-economic justice to the people. Minority status is conferred decided by taking State as a Unit. State if it finds that a minority community is not equally placed with the majority community, socially or economically, is empowered to take steps to minimise inequalities and bring that community at par with those communities which are otherwise well placed in the social fabric of the society. Minorities are a class in themselves and State is not prohibited in making welfare scheme for the minorities belonging to

weaker section, provided it does not overreach and undermine the constitutional provisions. Here the scheme in question does not overreach and undermine the Constitutional provisions for the reasons already indicated above.

63. We would also make a mention of fact that here PIL had been argued on merits first and lastly on the issue of locus. As here the writ petition in question is being dismissed on merits, the issue of locus, being merely academic, is being left to be answered.

64. Consequently challenge made is bereft of merit and same is dismissed, accordingly.