

(2019) 07 GAU CK 0038

In the Gauhati High Court

Case No : Writ Petition (C) No. 5072 Of 2012, 2040, 2127, 2224, 3222, 3322, 2174, 4970, 3254, 2344, 5489, 2609, 3123, 5552, 4658, 2543, 2464, 5265, 1402, 4874 Of 2014, 7811, 6942, 6278, 6218, 5083 Of 2015, 787 Of 2016, 5471 Of 2017, 630 Of 2018

Nurul Islam

APPELLANT

Vs

State Of Assam and 5 Ors.

RESPONDENT

Date of Decision : 22-07-2019

Acts Referred:

Assam Madrassa Education Provincialisation Act, 1995 — Section 2(b), 2(i), 2(o), 2(k), 2(p), 2(q), 3, 3(1), 4, 5, 5(1), 5(2), 5(3), 7, 54
Right Of Children To Free And Compulsory Education Act, 2009 — Section 1(5), 2, 2(n) (iii), 2(n)(iv), 3(1), 12(1)(b), 12(1)(c), 23(1)
National Commission For Minority Educational Institutions Act, 2004 — Section 10, 10(1)
Assam Secondary Education Act, 1961 — Section 3(m)
National Council For Teacher Education Act, 1993 — Section 2(m), 14
Assam Right Of Children To Free And Compulsory Education Rules, 2011 — Rule 2(20), 2(21), 2(22), 15
Constitution Of India, 1950 — Article 15, 19(1)(g), 21A, 29, 30, 30(1), 309

Citation : (2019) 07 GAU CK 0038

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : R.P. Kakoti, U.K. Nair, N. Dhar, A.K. Purkayastha, R. Dubey, A.R. Bhuyan, P. Goswami, B. Taid, P.J. Dutta, M.A.I. Hussain, A.M. Barbhuiya, Z. Hammad, F. Begum, H.A. Ahmed, P.L. Das, S.S. Rahman, A.Y. Choudhury, T.A. Choudhury, K. Gogoi, L. Khan, N. Kumari, T.U. Laskar, S. Dasgupta, A.B. Kayastha, J.M.A Choudhury, P. Kataki, R. Begum, M. Dutta, S.K. Singh, S. Sharma, H.R. Khan, A. Motalib, N. Islam, S. Sutradhar, I. Alam, A.S. Ahmed, B. Sinha, A.S. Ahmed, S. Saikia, F.U. Borbhuiya, K. Rahman, K. Bhatta, J.M. Sulaiman, M.R. Adhikari, P.J. Saikia, S.S. Roy, M. Phukan, Mrs. A. Gayan, J. Abedin

Final Decision : Dismissed

Judgement

1) Heard Mr. R.P. Kakoti, Mr. U.K. Nair, Senior Advocates, Mr. N. Dhar, Mr. A.K.

Purkayastha, Mr. P. Kataki, Mr. K. Bhuyan, Mr. R. Dubey, Mr. A.R. Bhuyan, Mr. B.P. Borah, Ms. R. Begum, Mr. A. Ali, Advocates, Mr. J. Abedin (S.C., Secondary Education Department), Mr. I. Alam (S.C., NETE), for the appearing parties in this batch of 28 writ petitions.

2) The nature of the challenge in these writ petitions:

a. For the sake of convenience, the writ petitions are segregated under four categories.

b. The petitioners in one set of writ petition, being W.P.(C) No. 5265/2014 claim that they are the Managing Committee of the concerned Madrassa and they have challenged the notification No. RMSA/TET/Madrassa/342/2014/1 dated 30.08.2014, by which the Secondary Education Department has imposed a condition that the Madrassa should select teachers (by various designations/posts called) from amongst eligible candidates who have cleared "Teacher Eligibility Test" (TET for short) examination on the ground that it infringes the right of the Managing Committee protected under Articles 29 and 30 of the Constitution of India as Madrassa are minority institution.

c. The petitioners in the second set of writ petitions, being W.P.(C) 5072/2012, W.P.(C) 2464/2014, W.P.(C) 5083/2015, W.P.(C) 6278/2015, and W.P.(C) 630/2018, are challenging the selection process being undertaken for appointment of teachers (by various names and designations called), without having cleared TET, amongst others, on the ground that it is discriminatory against the students desiring to study under Madrassa education system.

d. The petitioners in the third set of writ petitions, being W.P.(C) No. 7811/2015, W.P.(C) 1402/2014, W.P.(C) 2040/2014, W.P.(C) 2127/2014, W.P. (C) 2174/2014, W.P.(C) 2224/2014, W.P.(C) 2344/2014, W.P.(C) 2543/2014, W.P.(C) 2609/2014, W.P.(C) 3123/2014, W.P.(C) 3222/2014, W.P.(C) 3254/2014, W.P.(C) 3322/2014, W.P.(C) 4658/2014, W.P.(C) 4970/2014, W.P. (C) 5265/2014, W.P.(C) 5489/2014, W.P.(C) 5552/2014, W.P.(C) 6218/2014, W.P.(C) 6942/2014, W.P.(C) 5471/2017, are challenging the abandonment of the selection process that was being undertaken vide notification dated 12.09.2012 for appointment of teachers in Madrassas, without the requirement that the candidate should have cleared TET.

e. The petitioners in the fourth set of the writ petition, being W.P.(C) No. 787/2016 has projected that she is TET qualified and eligible for appointment as a teacher in Madrassa institutions. The petitioner claims that she was also selected in the previous recruitment process. Hence, the petitioner is seeking a direction to the authorities for appointing her.

3) On the facts and points of law urged by the respective counsel, the following two points have come up for determination by the Court in this bunch of writ petitions. They are as under:-

1) Whether the advertisement No. RMSA/TET/Madrassa/342/ 2014/1 dated 30.08.2014 issued by the Govt. of Assam, Secondary Education Department, by

which Teachers Eligibility Test (TET for short) of Madrassa Education for the unreserved posts in provincialised Madrassa Institutions is valid or the said advertisement is hit by Article 30(1) of the Constitution of India?

2) Whether the W.T. message under Memo No. ASE.164/ 2013/8 dated 21.12.2013 issued by the Commissioner & Secretary to the Govt. of Assam, Secondary Education Department to all Principals/Superintendents of Arabic Colleges/Title Madrassas and Senior Madrassas (Provincialised), by which the process of selection of teaching and non-teaching staff of provincialised Madrassa Educational Institutions, which was being held at the level of Superintendents of Madrassa and concerned Managing Committees was cancelled is sustainable?

Undisputed brief facts:

3) The Madrassa Education System consists of three levels of education programmes/ examination, viz., (a) Madrassa Intermediate Examination, which is equivalent to High Secondary School Leaving Certificate Examination (HSSLC or +12 level); (b) Madrassa Final Examination [Fajil-e-Marif (F.M)], which is equivalent to Bachelor of Arts Degree (B.A); and (c) Madrassa Title Examination [Mumtazul Muhaddisin (M.M.)], which is equivalent to Post Graduate Degree (M.A.).

4) As per Section 2(b) of the Assam Madrassa Education Provincialisation Act, 1995 (hereinafter referred to as "AMEP Act" for short), "Senior Madrassa" means an institution imparting Madrassa Education from Pre-senior Class I to Fazil-E-Marif (F.M.) final class stage (Graduate level), and Section 2(p) thereof, "Arabic College" means an institution imparting Madrassa Education upto Mumtazul Muhaddisin (M.M.) level, and that as per Section 2(q) thereof, "Title Madrassa" means an institution imparting Madrassa Education at Mumtazul Muhaddisin (M.M.) level (Post Graduate level). As per Section 2(i), "Madrassa" means a Senior Madrassa or a Title Madrassa or an Arabic College. Thus, in this order, wherever reference is made to a "madrassa institution", it must be read in the context for which such reference is made.

5) As per Section 2(k) of the AMEP Act, "Madrassa Education" means a system of education in which instruction is imparted in Arabic, Persian, Urdu, Quran, Tafsir, Hadith, Fiqh, Usul, Aqid, Montique, Hikmat, Islamic History along with general subjects like Mathematics, Science, Indian Language, English, Hindi, Social Studies, etc. at Secondary School level, in respect of which the syllabi, curriculum and examination is regulated by the Assam State Madrassa Education Board upto the level of Fajil-E-Marif (F.M.) and Mumtazul Muhaddisin (M.M.).

6) By virtue of notification No. ASE.258/ 2010/Pt.III/84 dated 12.09.2012 issued by the Secretary to the Govt. of Assam, Secondary Education Department, the process for filling up 470 posts of teacher lying vacant in various Madrassa Institutions under the Assam State Madrassa Education Board had been initiated. By letter No. DME.491/ Apptt./2010/129 dated 13.09.2012, the Director of Madrassa Education, Assam had directed the Principal/ Superintendent of all

Madrassas to issue advertisement as per the notification enclosed thereto, further directing that the selection procedure should be strictly complied to and that the selection procedure should be completed within one month from the date of advertisement and the same was required to be sent to the Office of the Director of Madrasa Education, Assam for approval. Accordingly, the Superintendent/ Secretary of various provincialised Madrasa institutions had issued their respective advertisements inviting applications for appointment of teachers in their respective Madrasas.

7) In the meanwhile, a public interest litigation, being PIL 48/2014 (The People's Society & anr. Vs. The State of Assam & 3 ors.) was instituted, wherein it was projected that teachers/ assistant teachers for the Madrasa institutions were proposed to be recruited without insisting on the prescribed mandatory qualification of having cleared "Teachers Eligibility Test" (TET for short). Hence, by virtue of order dated 17.06.2013 in PIL 48/2013, this Court was pleased to issue an interim direction to the effect that the process of selection should go on but the selection may not be finalized.

8) Thereafter, by virtue of a W.T. message dated 21.12.2013, the Commissioner Secretary to the Govt. of Assam, Secondary Education Department had cancelled the selection process that was initiated vide notification dated 12.09.2011, at all levels.

9) Thereafter, by order dated 22.01.2014 in PIL 48/2013, this Court had recorded the submissions made by the learned Addl. Advocate General of the State regarding the introduction of TET for recruitment of the teachers in provincialised Madrasas. Accordingly, while closing the said PIL as infructuous, it was ordered that the said statement made by the learned Addl. Advocate General on behalf of the State shall be complied with in letter and spirit by the State while making recruitment of the teachers in the concerned institutions strictly on the basis of the norms set out for selection.

10) Thereafter, the Govt. of Assam, Secondary Education Department, vide advertisement No. RMSA/TET/Madrasa/342/2014/1 dated 30.08.2014, introduced TET clearance as one of the minimum qualifications for teachers in respect of Madrasa education for filling up the unreserved posts in provincialised Madrasa Institutions of the State.

11) Challenging the said advertisement dated 30.08.2014, a writ petition was filed being WPC 4874/2014 (Md. Abdul Karim & anr. Vs. State of Assam & 3 ors.). In the said writ petition, this Court by order dated 15.10.2014, while issuing notice, held that the exemption of the Madrasa institutions from the application of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act for short) under Section 1(5) or of their right to establish and administer educational institutions of their choice, as guaranteed under Article 30 of the Constitution do not extend to prescription by the respondent authorities of the minimum qualifications, experience and other criteria bearing on merit for

making appointment of their teachers. It was further held that the impugned advertisement is all about prescribing the minimum qualification, experience and other criteria bearing on merit for appointment of teachers in the Madrassa institutions and does not interfere with the overall administrative control exercised by the management of such Madrassa institutions over their staff, or abridges/dilutes, in any other manner, their right to establish and administer the Madrassa institutions, and accordingly, this Court had rejected the prayer for passing any interim order against the said advertisement dated 30.08.2014. The said order dated 15.10.2014 passed in WP(C) 4874/2014 was challenged by filing an intra- court appeal which was registered as W.A. 246/2015 (Md. Abdul Karim & anr. Vs. State of Assam & 3 ors.). However, the said appeal was dismissed by order dated 01.09.2015.

12) In the meanwhile, the result of Madrassa TET 2014 was declared which is as follows:-

POST

CANDIDATES

PASSED CANDIDATES

APPLIED

ASSISTANT TEACHER (ALT) ASSAMESE

5923

197

LANGUAGE TEACHER

ASSISTANT TEACHER B.A.

13159

915

ASSISTANT TEACHER B.Sc.

3561

828

ASSISTANT TEACHER H.S. (PRE-SENIOR

66429

16754

SECTION)

ASSISTANT TEACHER HINDI

3593

46

F.M ASSISTANT TEACHER (PRE SENIOR

3788

499

SECTION)

F.M ASSISTANT TEACHER (SENIOR

4083

763

SECTION)

LECTURER

205

90

M.M ASSISTANT TEACHER

532

109

TOTAL

101273

20201

13) Apprehending that some non- TET qualified candidates will be appointed in the Madrassa institutions, a writ petition was filed before the Court, being WPC 5083/2015 (The All Assam Madrassa TET Qualified Candidates Association & 7 ors. Vs. The State of Assam & 4 ors.). This Court, by an order dated 09.09.2015, as an interim measure, directed that no candidate who had not passed the TET examination shall be appointed.

14) Against the hereinbefore referred order dated 22.01.2014 passed by this Court in PIL 48/2013, Rashid Ahmad Laskar & 3 others (who are also the petitioners in WP(C) No. 6942/2015, had filed Review Pet. 120/2014 (Rashid Ahmad Laskar & 3 Ors. Vs. State of Assam and 5 Ors.), and this Court by order dated 08.01.2016, while dismissing the said review petition, had observed that if the review petitioners are aggrieved by the order of the State Govt. dated 21.12.2013, they can certainly assail the legality and validity of such decision in an appropriate proceeding. The said observation was made as it was pointed out at the Bar that the said decision of the State was already under challenge in WPC 4874/2014.

15) The Secretary to the Govt. of Assam, Secondary Education Department, by a communication dated 11.09.2015, granted approval for filling up 199 sanctioned vacant posts in provincialised Madrassa institutions under the Directorate of Madrassa Education. It was, inter-alia, provided that the posts of all teaching staff excluding principal or the superintendent shall be filled up from amongst TET qualified candidate with B.T/B.Ed/B.El.Ed degree, etc. as per rule/Govt. policy wherever applicable. Thereafter, the Director of Madrassa Education had also issued a notification dated 17.09.2015 for decentralization of the process of appointment of candidates for teaching staff in Senior Madrassas, Title Madrassas and Arabic Colleges in the State wherein the criteria of selection was laid down, inter-alia, providing that the posts of all teaching staff excluding principal or the superintendent shall be filled up from amongst TET qualified candidate with B.T/B.Ed/B.El.Ed degree, etc. as per rule/Govt. policy wherever applicable. The said communication dated 11.09.2015 and the notification dated 17.09.2015 was challenged by filing a writ petition, being WPC No. 6942/2015 (Rashid Ahmad Laskar & 3 ors. Vs. State of Assam & 5 ors.), and this Court by order dated 18.11.2015, passed an interim direction that the communication dated 11.09.2015 and notification dated 17.09.2015 shall not be given effect to on the ground that the respondents cannot change the rules of game during a selection process and as the notification dated 12.09.2012 issued by the Secondary Education Department was very much in force.

Submissions of the Counsel favouring TET as one of the requisite qualifications for appointment of teaching staff in Madrassas:-

16) Mr. A.R. Bhuyan learned counsel has given a brief background including the brief history of madrassa education system in the State. It has been projected that the first attempt to streamline Madrassa Education was initiated in the year 1934 under the control of the then Director of Public Instruction, Assam. Thereafter, the process of further streamlining the Madrassa Education was done by virtue of Chapter - XI of the Assam Education Department Rules & Orders, 1955. Under Section 54 thereof, for encouragement and improvement of Islamic scholarship in the State, Assam State Madrassa Board was constituted with not more than 13 members, which would include (i) the Director of Public Instruction as its ex-officio Chairman; (ii) the Senior Inspector of Schools as ex-officio Member; (iii) the assistant Inspector of Schools for Muslim Education as ex-officio Secretary; (iv) the Principal, Deorail Title Madrassa as its non-official Member; (v) one Lecturer or Professor of Islamic subjects, Cotton College, Gauhati (now Guwahati) as its official Member; (vi) one Superintendent of a High Madrassa as its non-official Member; (vii) one Superintendent of a Senior Madrassa as its non-official Member. Accordingly, under Section 4 thereof, it was provided that subject to general supervision and control of the Government the Board shall be responsible for management and control of Madrassa education in the State and following types of institutions in particular, viz., (1) High Madrassas, (2) Senior Madrassas, and (3) Title Madrassas. The said Rules was revised vide Notification No. ASE.B(3)S 218/1996/382 dated 14.03.2013. In the meanwhile,

in or about the year 1965, 9 (nine) Madrassa was brought under the full grant-in-aid by the State. Thereafter, the Education Department by virtue of notification dated 30.03.1993, extended full grant-in-aid benefits to 25 more Madrassas with concurrence from the Finance Department. Subsequently, the State had enacted the Assam Madrassa Education Provincialisation Act, 1995 w.e.f. 27.10.1995 (hereinafter referred to as the "1995 Act").

17) It is further projected that earlier the affairs of Muslim Education was supervised by an officer of the rank of Assistant Inspector under Director of Public Instruction. However, in the year 1981, the said post was re-designated as Deputy Director of Madrassa Education. Thereafter, vide notification dated 24.10.2005, a separate Directorate of Madrassa Education was created under the Department of Secondary Education, Assam.

18) It is submitted that with a view to provide for the establishment of a National Council for Teacher Education with a view to achieving planned and coordinated development of the teacher education system throughout the Country, the regulation and proper maintenance of norms and standards in teacher education system and for matters connected therewith, the Central Government had enacted the National Council for Teacher Education Act, 1993 (NCTE Act for short). The NCTE Rules, 1997 came into force on and from 03.12.1997. Thereafter, the NCTE had issued a notification dated 03.09.2001, prescribing minimum qualification for recruitment of teachers. Thereafter, the Central Government had enacted the Right to Children to Free and Compulsory Education Act, 2009 (RTE Act, 2009 for short), which came into effect from 01.04.2010 as its appointed date. Subsequently, by notification dated 31.03.2010, the Central Government had authorised NCTE as the Academic Authority to lay down the minimum qualification for being eligible to be a teacher under the RTE Act, 2009. Thereafter, vide NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in School) Regulation, 2001 (NCTE Regulation, 2001 for short) it was, inter-alia, provided that appointments were to be made in accordance with the NCTE guidelines, further prescribing therein that Teachers for (i) Classes-I to V, and (ii) Classes VI to VIII were required to be TET qualified, apart from other prescribed educational qualification. The guidelines for conducting TET under the RTE Act, 2009 was notified 11.02.2011, which is contained in the Notification dated 23.08.2010, which came into effect from 29.07.2011.

19) The Government had required the Director of Madrassa Education, Assam to place before it the vacancy position of the provincialised Madrassas and accordingly, the said authority had submitted the list of 470 unreserved sanctioned vacant posts as on 01.06.2012, except Grade-IV posts, along with a draft advertisement. While on one hand on 11.09.2012, an advertisement was issued for TET of High and Higher Secondary Schools in accordance with NCTE guidelines, on the other hand on 12.09.2012, notification was issued to fill up the unreserved vacant post in various Madrassas. Consequently, Selection Boards were constituted in various Madrassas and the respective Madrassas had issued

advertisement to fill up vacant posts in the respective Madrassas.

20) It is submitted that by a notification dated 31.03.2010, the Central Govt. authorized NCTE as the "academic authority" to lay down the minimum qualification for becoming eligible to be a teacher under the RTE Act. Thereafter, vide notification under F.No.61-03/20/2010/NCTE/ (N&S) dated 23.08.2010, the NCTE had laid down the minimum qualifications for a person to be eligible for appointment as a teacher in Classes- I to V in a school referred to in clause (n) of Section 2 of the RTE Act, thereby prescribing the minimum qualification that a candidate should be (a) Senior Secondary (or its equivalent) with at least 50% marks and 2 - year Diploma in Elementary Education (by whatever name known) or Senior Secondary (or its equivalent) with at least 45% marks and 2 - year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure) Regulations, 2002 or Senior Secondary (or its equivalent) with at least 50% marks and 4- year Bachelor of Elementary Education (B.El.Ed.) or Senior Secondary (or its equivalent) which at least 50% marks in pre Diploma in Education by whatever may known with at least 50% marks and 2- year Diploma in Education (Special Education) and (b) Pass in the Teacher-Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the guidelines framed by the NCTE for the purpose. In respect of appointment of teachers for Classes VI to VIII, the minimum qualification prescribed is a (a) B.A/B.Sc. and 2- year Diploma in Elementary Education (by whatever name known) or B.A/B.Sc. with at least 50% marks and 1- year Bachelor in Education (B.Ed) or B.A/B.Sc. with at least 45% marks and 1- year Bachelor in Education (B.Ed), in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard or Senior Secondary (or its equivalent) with at least 50% marks and 4- year Bachelor in Elementary Education (B.El.Ed) or Senior Secondary (or its equivalent) with at least 50% marks and 4- year B.A/B.Sc. Ed or B.A. Ed/B.Sc. Ed. or B.A/B.Sc. with at least 50% marks and 1- year B.Ed. (Special Education) and (b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

21) It is submitted that under the RTE Act, free and compulsory elementary education is envisaged for children from first class to eighth class. It has been provided under Section 3(1) thereof that every child of age of 6-14 years including a child referred to in clause (d) or clause (e) of Section 2, shall have been right to free and compulsory education in a neighbourhood school till the completion of his/her elementary education.

22) Under the National Council for Teacher Education Act, 1993 (hereinafter referred to as "NCTE Act"), the National Council for Teacher Education (NCTE for short) is, inter-alia, authorized to lay down guidelines in respect of minimum qualification for employment as a teacher in recognized institutions. As per the NCTE Act, a "school" means any recognized school imparting pre-primary,

primary, upper primary, secondary or senior secondary education, or a college imparting senior secondary education and includes, inter-alia, a school receiving aid or grants to meet whole or part office expenses from the Central Govt., the State Govt. or a local authority.

23) Accordingly, it is submitted that as the Madrassa institution also imparts education from Classes I to VIII along with other prescribed curriculum, the imposition of the qualification of TET for recruiting teachers in Madrassas was valid because there cannot be two sets of teachers for imparting education for classes I to VIII, one set of classes having TET qualified teachers in respect of non-Madrassa schools and the other set of classes having non-TET qualified teachers for imparting education in Madrassas. It is submitted that this would lead to hostile discrimination of students studying in Madrassas in Class-I to VIII.

24) It is submitted that the Govt. of Assam had enacted the AMEP Act w.e.f. 27.10.1995 and accordingly, by virtue of the provisions of Section 3 and 5 of the AMEP Act, all the existing teaching and non-teaching staff of the Madrassas, which were previously covered under the deficit system of grant-in-aid under the Govt. of Assam were made Govt. employees w.e.f. 15.08.1994. Thus, refuting the claim by those opposing imposition of TET as one of the minimum qualifications for teaching in the provincial Madrassas, it is submitted that after the services of teaching and non-teaching staff of the Madrassas was provincialised, none of such Madrassa institutions retained their minority status anymore. It is submitted that the legality and validity of Sections 5(1) 5(2) and 5(3) of the AMEP Act was challenged by way of a writ petition before this Court, being W.P.(C) No. 4997/2009 (Managing Committee of Burunga Bazar Senior Madrassa & 3 ors. Vs. The State of Assam & 2 ors.). The said Act was challenged, amongst others, on the ground that the said provisions were contrary to and hit by the provisions of Article 30 of the Constitution of India. However, the said writ petition was dismissed by this Court by order dated 08.12.2009. It is submitted that the Madrassa Board was thereafter constituted by the State Govt. and the selection process of teaching and non-teaching staff as well as the principal/superintendent came under the control of the State Govt. It is submitted that the authority of the Govt. for constitution of Madrassa Education Board as well as the selection and appointment of the Principal and the Superintendent of various Senior Madrassas and Arabic Colleges of the State was challenged in a bunch of writ petitions, being W.P.(C) 113/2009, W.P.(C) 364/2009, W.P. (C) 396/2009 and W.P.(C) 1726/2009. This Court, by order dated 14.12.2009, disposed of the said writ petitions by directing the Chief Secretary to the Govt. of Assam to pass speaking orders in this regard. Accordingly, by a speaking order dated 09.06.2010, the Chief Secretary to the Govt. of Assam, had interfered with the selection and appointment for the posts of Principal and Superintendent of various Madrassas and Arabic Colleges by holding that the said posts are Govt. posts and the incumbents who hold the said posts are Govt. servant and that in absence of rules, all the corresponding rules applicable to other Govt. employee of similar grade will be applicable to the employees of the Madrassas.

Accordingly, it is submitted that as the services of the teaching and non-teaching staff as well as the Principal and the Superintendent of Madrasa institutions had been provincialised, such provincialised Madrasa institutions do not retain the characteristics of institutions covered by the provisions of Article 29 and 30 of the Constitution of India because as per the provisions of Section 3 and 5 of the AMEP Act, the Management of such institutions had been vested in the State Govt.

25) It is submitted that there are other Madrassas in the Country as well as in the State which imparts only Theological course and they do not impart modern academic courses like Mathematics, Science, Social Sciences, etc. and that the students who pass out from the said Madrasa institutions, though recognized as Islamic Scholars, are not qualified for appointment to service/ jobs in Government, Semi-Government, Corporations, Companies and/or other private organizations as the "Degree" conferred by the said Madrassas are not treated at par with the equivalent examinations of HSSLC, B.A. and M.A. In this regard, the learned counsel for the petitioner has referred to the well known Islamic University of the Country known as "Darul Uloom Deoband" located at Deoband, a town in Saharanpur District in the State of Uttar Pradesh. It is submitted that such Madrassas imparting purely theological education have retained their "minority" status and that the requirement of TET qualification is not at all necessary for holding teaching jobs in such Madrassas. It is submitted that in schools in the State, where the service of teaching staff have been provincialised, the State cannot be permitted to allow two distinct classes of teachers to impart education to the students, whereby one class of students following the non-Madrasa pattern of education will have TET qualified teachers, who are better qualified for teaching job and that there would be a second class of students in a Madrasa institution, who would be imparted education by non TET qualified teachers. But if the said situation is allowed, then the State would be depriving the students of Madrasa institutions the benefit of better qualified teachers holding TET as one of the minimum qualifications.

26) In support of the submissions, the learned counsel for the parties favouring TET has referred to the following decisions:-

- i. Kerala State Road Transport Corporation & Anr. Vs. Akhilesh V.S. & Ors., AIR 2019 SC 1663.
- ii. State of U.P. Vs. Anand Kumar Yadav & Ors., (2018) 16 SCC 560.
- iii. Karnati Ravi & Anr. Vs. Commissioner Survey Settlements & Land Records & Ors., (2018) 12 SCC 635.
- iv. Ranu Hazarika Vs. State of Assam & Ors., (2011) 4 SCC 798.
- v. Union of India & Ors. Vs. Tarun K. Singh & Ors., (2003) 11 SCC 768.
- vi. Union Territory of Chandigarh Vs. Dilbagh Singh & Ors., (1993) 1 SCC 154.

vii. Arup Kr. Medhi & Ors. Vs. The State of Assam & Ors., W.A. 32/2019, decided on 28.03.2019.

viii. Arup Kr. Medhi & Ors. Vs. The State of Assam & Ors., 2018 (4) GLT 1006.

ix. Union of India & Ors. Vs. Debasish Chowdhury & Ors. 1999 (2) GLT 68.

The stand of the Govt.:-

27) The learned Standing Counsel for the Secondary Education Department has submitted that in principle, the State respondents support the selection and appointment of TET qualified teachers for teaching in provincialised Madrasa institutions. By adopting the submissions made by the learned counsel Mr. A.R. Bhuyan, it is submitted that in the proceeding of PIL 48/2013, the Addl. Advocate General for the State, with due instructions from the Govt., had made a statement before this Court that the State Govt. has decided to introduce TET in the provincialised Madrasahs and accordingly, the said PIL 48/2013 was closed by order dated 22.01.2014, having been rendered infructuous. Thereafter, by order dated 02.06.2014, passed by this Court in Cont. Case (C) No. 254/2014, the Division Bench of this Court had directed to State to implement the directions contained in the order dated 22.01.2014 in PIL 48/2013 within 6 (six) months. Accordingly, in view of the stand of the State before this Court, the advertisement dated 30.08.2014 was issued by the Secondary Education Department in respect of TET of Madrasah Education in accordance with NCTE Regulations. It is also submitted that the entire recruitment process which had previously been instituted vide notification dated 12.09.2012 had been cancelled vide W.T. message dated 21.12.2013 issued by the Commissioner and Secretary to the Govt. of Assam, Education (Secondary) Department and, as such, the recruitment process that was initiated by way of hereinbefore referred advertisement dated 30.08.2014 was a fresh recruitment drive, which cannot be said to be a continuation of the recruitment process that was initiated by the previous notification dated 12.09.2012. Hence, the learned Standing Counsel for the Secondary Education Department has submitted that this is not a case where the rules of the game have been changed after the game has started.

28) It is further submitted that as the entire recruitment process that had been initiated by notification dated 12.09.2012 was cancelled by virtue of W.T. message dated 21.12.2013, the Secretary to the Govt. of Assam, Secondary Education Department, by an order dated 12.07.2016, had instructed the Director of Madrasah Education to terminate the services of 49 out of 52 candidates appointed in 7 numbers of Madrasahs. In this regard, it is submitted that the said order dated 12.07.2016 was challenged by filing three writ petitions before this Court. However, by order dated 25.07.2016, passed by this Court in WP(C) 4305/2016 (Md. Monjur Ahmed & 42 ors. Vs. State of Assam & 8 ors.), the directions contained in the said communication dated 12.07.2016 was suspended. In the said context, it is submitted that the other writ petitions challenging the order dated 12.07.2016 are WP(C) 4608/2016 (Hasina Dilruba

Vs. State of Assam & 5 ors.), WP(C) No.4838/2016 (Md. Muktar Hussain Vs. State of Assam & 5 Ors.). In support of the submissions, the learned Standing Counsel for the Secondary Education Department has relied on the following citations:-

- i. Pramati Educational And Cultural Trust (Registered) & Ors. Vs. Union of India & Ors., (2014) 8 SCC 1.
- ii. Secy., Malankara Syrian Catholic College Vs. T. Jose & Ors., (2007) 1 SCC 386.
- iii. Union of India & Ors. Vs. Tarun K. Singh & Ors., (2003) 11 SCC 768.
- iv. T.M.A. Pai Foundation & Ors. Vs. State of Karnataka & Ors., (2002) 8 SCC 481.
- v. Union Territory of Chandigarh Vs. Dilbagh Singh & Ors., (1993) 1 SCC 154.
- vi. Cyril E. Fernandes Vs. S. Myria Lydia & Ors., AIR 1977 SC 2145.
- vii. The State of Assam & Anr. Vs. Ajit Kumar Sarma & Ors., AIR 1965 SC 1196.
- viii. Union of India & Ors. Vs. Debasish Chowdhury & Ors. 1999 (2) GLT 68.

Stand of counsel opposing TET clearance as a qualification for appointment of teaching staff in Madrassas:-

29) It is submitted that as the selection process was initiated vide notification dated 12.09.2012 issued by the Secondary Education Department, thereby decentralizing the process of selection through a constituted selection board by the Managing Committee of the Senior Madrasa and Governing Body of the Title Madrasa and Arabic Colleges as provided in the said notification dated 12.09.2012. However, by one stroke of pen i.e. by W.T. message dated 21.12.2013, the entire selection process was cancelled by alleging vague and incorrect reasons. It is submitted that without citing any instance where money had changed hands for securing the appointment of teaching and non- teaching staff in provincialised Madrassas, a very vague allegation was made in the said W.T. message to portray that large scale anomalies had occurred in the selection process of appointment of teaching and non-teaching staff of provincialised Madrasa Educational Institutions being held in the level of Superintendents of Madrasa and concerned Managing Committees, further alleging that illegal monetary transactions have also occurred in some institutions in giving viva-voce marks, thereby depriving the meritorious candidates, further mentioning therein that many organizations and individuals, on many occasions, had not only approached the State Govt. but also moved this High Court for redressal of their grievances. It was also mentioned therein that a PIL had also been moved before this Court challenging the validity of the selection process and thereby on the aforesaid grounds the selection process was cancelled. By referring to the said W.T. message, it is submitted that the Secondary Education Department has not been able to produce a single paper to support any of the allegations based on which the W.T. message dated 21.12.2013 was issued and moreover, the notice of this Court has not been brought to any writ petition or PIL filed before this

Court to challenge the selection process. Accordingly, by referring to the copy of the note sheets of file bearing No. ASE.164/13 and file No. ASE.319/15/Pt., which was obtained under the Right to Information Act, it has been highlighted that in the note- sheet, it was mentioned that in file No. ASE.164/2013 from which the message dated 12.12.2013 was issued, no papers/records, etc. regarding complaint/ allegations were found available and that the said note-sheet also indicated that the then Education Minister in his note dated 26.02.2016 had indicated that the Joint Secretary (Secondary Education) enquired into the matter as per his direction regarding issue of W/T message dated 21.12.2013 by the Govt. by which the selection process was cancelled and that it appeared from the enquiry report that no records or papers regarding complaint/anomalies were found in the concerned file and it is clear that the said W/T message was issued without any basis and accordingly, the Education Minister recorded his opinion that the process of selection of the remaining Madrassa institutions which had been stopped due to the W/T message should be re-initiated for completing the process of appointment. Hence, it is submitted that the W.T. message dated 21.12.2013 was baselessly and whimsically issued and, as such, the said W.T. message was liable to be set aside and quashed and the selection process which was initiated by virtue of notification dated 12.09.2012 should be completed without insisting that the teaching staff should be TET qualified.

30) It is submitted that pursuant to the earlier selection process, 52 appointments had been made in 7 Nos. of Madrassa institutions, out of which the services of 3 appointees had already been terminated and that the remaining 49 candidates are still continuing with their service. Hence, if the said appointments are valid, there was no reason for cancelling the selection and appointment process initiated by notification dated 12.09.2012. It is further submitted that assuming for the sake of argument but not admitting that some irregularity/ illegality was committed in the process of selection and appointment of teaching and non- teaching staff in a particular institution, it was open to the Government to prosecute the guilty by lodging an ejahar before the investigating agencies, but because of some stray local incident, it was not open to the State Govt. to cancel the entire selection process which was being carried out in a decentralized manner at the Madrassa institution level. It is submitted that the cancellation of selection process has affected the life and liberty and right to livelihood of thousands of aspiring candidates of an opportunity of being selected and appointed in provincialised Madrassas without having TET qualification, which was earlier not there and was subsequently introduced long after the notification dated 12.09.2012 was issued and acted upon. It is further submitted that before the earlier selection process was cancelled by W.T. message dated 21.12.2013, no inquiry was conducted and no candidate was heard before the selection process was cancelled.

31) On the non- application of the NCTE Act and the RTE Act on Madrassa institutions, it is submitted that it was nobody's case that any course or

curriculum had been framed under the NCTE Act for imparting education in a Madrassa institution. It is also submitted that nothing has been brought on record that under Section 14 of the NCTE Act, recognition was given to any Madrassa institution offering course or training in teacher education or that any recognition was given to any institution offering teacher education applicable for Madrassas. It is also submitted that if the minimum qualification including the TET qualification is prescribed in accordance with law i.e. by way of any Act, Rules or notification, it would be a different matter altogether, but in the present case in hand, the TET qualification was introduced by way of an advertisement dated 30.08.2014. Moreover, it is submitted that Madrassa institutions are excluded from the purview of the RTE Act and, as such, there is no valid reason for introducing TET qualification for teaching in the Madrassa institutions. In the said context, it is also submitted that Rule 2(22) of the Assam Right of Children to Free and Compulsory Education Rules, 2011 (hereinafter referred to as "2011 Rules") provides for a school management committee, however, the Madrassa institutions do not have a school management committee as per the requirement under the said Rule 2(22). It is also submitted that under Rule 15 of the 2011 Rules, minimum qualification for the purpose of Section 23(1) of the RTE Act, has not prescribed and as the Madrassa course is totally different from the courses covered by the RTE Act, the imposition of TET qualification for appointment of teaching staff in a Madrassa institution was not sustainable on facts and in law. It is submitted that the Govt. interference in the matter of appointment of teaching and non-teaching staff in the Madrassa institutions are ultra vires Article 30 of the Constitution of India. In this regard, by referring to the copy of affidavit-in-opposition filed in PIL 48/2013, it is submitted that a stand was taken therein by the Govt. of India, Ministry of Human Resource Development, Department of School Education and Literacy that Madrassa institutions are kept out of the RTE Act. Accordingly, it is submitted that the concession given by the Addl. Advocate General of the State in PIL 48/2013 to introduce TET was dehors any Act, Rules or notification, more so, when the RTE Act and the NCTE Act do not apply to the Madrassa institutions and that such concession cannot bind the State and cannot be acted upon, being contrary to law and contrary to the provisions of Article 30 of the Constitution of India.

32) Accordingly, it is submitted that the notification dated 12.09.2012 was a valid notification and the recruitment could be allowed to be carried on in terms of the said decentralized process of appointment at Madrassa level. In support of his submissions, the learned counsel opposing the introduction of TET as one of the qualifications for being appointed as teaching staff in Madrassas have relied on the following case citations:-

- i. Sundeep Kumar Bafna Vs. State of Maharashtra & Anr., (2014) 16 SCC 623.
- ii. Gurjesh Shrivastava & Ors. Vs. State of Madhya Pradesh & Ors., (2010) 10 SCC 707.
- iii. Madan Mohan Sharma & Anr. Vs. State of Rajasthan & Ors., (2008) 3 SCC 724.

- iv. Basic Education Board, U.P. Vs. Upendra Rai & Ors., (2008) 3 SCC 432.
- v. Union of India & Ors. Vs. Rajesh P.U., Puthuvalnikathu & Anr., (2003) 7 SCC 285.
- vi. Ambika Prasad Kedia & Ors. Vs. State of Assam & Ors., C.A. No. 1717/1987 with C.A. Nos. 1718 to 1721/1987 and 1374/1987, decided on 25.07.1995.
- vii. Punjab Land Development And Reclamation Corporation Ltd. Vs. Presiding Officer, Labour Court, Chandigarh & Ors., (1990) 3 SCC 682.
- viii. P. Mahindra & Ors. Vs. State of Karnataka & Ors., (1990) 1 SCC 411.
- ix. Municipal Corporation of Delhi Vs. Gurnam Kaur, (1989) 1 SCC 101.
- x. Jugalkishore Kedia & Ors. Vs. The State of Assam & Ors., Civil Rule 113/1978, decided on 08.05.1987.
- xi. Chandrika Jha Vs. State of Bihar & Ors., (1984) 2 SCC 41.
- xii. State of Maharashtra & Anr. Vs. Thakur Bharat Singh, AIR 1967 SC 1170.

33) In these bunch of writ petitions, there are two other sets of writ petitions. One writ petition is by persons who are not the aspirants for being appointed as teaching or non- teaching staff in Madrassas, but claim to have interest in the autonomy of Madrasa institutions, being W.P.(C) 4874/2014. The learned standing counsel for the Secondary Education Department has raised strong objection on maintainability of the said writ petitions on the ground that the said petitioners have no locus standi to challenge the recruitment process as they are not the job aspirants. Heard Mr. N. Dhar, the learned counsel for this set of writ petitions. The other writ petition is by a female aspirant who had applied for being appointed in the previous process initiated by notification dated 12.09.2012. It is projected that in addition to other qualification, she has also cleared TET examination and therefore, the said petitioner now seek early disposal of these writ petitions so that the competent authorities conclude the selection and appoint her. Heard Mr. A.K. Purkayastha, learned counsel in W.P.(C) No. 787/2016.

34) Having heard the learned counsel appearing for the parties, the voluminous materials available on record have been perused.

35) The learned counsel for the parties herein have brought to the notice of this Court various previous litigations involving the issue of Madrasa education before this Court, which would have some bearing in the present case, viz., (i) W.P.(C) 4997/2009, (ii) W.P.(C) No. 113/2009, (iii) W.P.(C) 3740/2010, (iv) W.A. 175/2011, (v) PIL No. 48/2013, (vi) Cont. Case (C) No. 254/2014, (vii) W.P.(C) 4874/2014, (viii) W.A. No. 246/2015 arising out of W.P. (C) 4874/14, and (ix) W.P.(C) No. 5083/2015.

36) It appears that on 10.04.2013, People's Society (petitioner in PIL 48/2013) had submitted a representation before the competent authorities to conduct TET

under the RTE Act and then proceed with the selection and appointment. The said Society then preferred a Public Interest Litigation before this Court, which was registered as PIL No. 48/2013, inter-alia, praying for a direction to conduct TET for teachers to be appointed in Madrassas. By an interim order dated 21.12.2013, this Court had allowed the selection to proceed but directed that such selection may not be finalized. However, in the meanwhile, by virtue of a W.T. message dated 21.12.2013, the entire recruitment process initiated vide notification dated 12.09.2012 was cancelled by the Commissioner and Secretary to the Govt. of Assam, Education (Secondary) Deptt. Thereupon, the PIL No. 48/2013 was closed by order dated 22.01.2014, having been rendered infructuous, recording therein the submissions made by the learned Senior Addl. Advocate General of the State to the effect that the selection process was cancelled/ revoked and that the Government had decided to introduce TET in the Madrasa teacher recruitment process. Consequently, an advertisement was issued for TET in respect of Madrasa Education in accordance with the NCTE Regulations. Thereafter, application for review of the order dated 22.01.2014 passed by this Court in PIL No. 48/2013 came to be filed, which was numbered as Review Petition No. 120/2014. This Court by an interim order dated 17.12.2014, allowed the selection to proceed but directed that the same may not be finalized. The TET result was declared on 11.03.2015. Upon a plain reading of the order dated 08.01.2016, passed by this Court in R.P. 120/2014, it appears that the notice of this Court was not brought to the order dated 02.06.2014, passed by this Court in Cont. Case (C) No. 254/2014, whereby direction was issued to implement the directions contained in the order dated 22.01.2014 in PIL 48/2013 within 6 (six) months.

On minority institution status of Madrassas:

37) As per the provisions of Section 2(I) of the AMEP Act, "Managing Committee" in relation to any Senior Madrasa means the Managing Committee as constituted by the Government. As per the provisions of Section 2(o) thereof, "Provincialisation" means taking over the liabilities for payment of salaries including dearness allowances, medical relief and such other allowances as admissible to the Government servants of similar category and gratuity, pension, leave encashment etc. as admissible, under the existing rules, to the Government servants serving under the Government of Assam. Section 3 of the AMEP Act provides that subject to the provision of Article 309 of the Constitution of India, all employees of Madrasa, which was hitherto covered by deficit scheme of grants-in-aid under the Government of Assam shall be deemed to have become the employees of the Government on and from the appointed day. As per the provision of Section 5 of the AMEP Act, the administration and control of all employees of all Madrasa, the services of whose employees are provincialised, shall vest in the Government. It is also provided that the Government may reconstitute or replace the Managing Committee of Governing Body of such Madrasa.

38) It is seen that if a "minority institution" wants to retain such character, the provisions of Section 10(1) of The National Commission for Minority Educational Institutions Act, 2004 provides as follows - "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." In the present case in hand, it does not appear from the materials available on record that it is anybody's case that the provisions of Section 10(1) of the 2004 Act was invoked and the Madrassa in question was declared to be a minority institution. Thus, after provincialisation of the services of the teaching staff in 74 Madrassas in the State, such Madrassas have lost their minority status.

39) It is seen that the provisions of Sections 5(1), 5(2) and 5(3) of the AMEP Act has been held to be constitutional by order dated 08.12.2009 in W.P.(C) 4997/2009. Thereafter, while dealing with the challenge to the selection for the posts of provincialised Principal and Superintendent of Arabic Colleges, Title Madrassas and Senior Madrassas, and incidental challenge to the very constitution of the Selection Board and State Madrassa Education Board, this Court by order dated 14.12.2009, inter-alia, held that the institutions (i.e. Madrassas) are under the deep and pervasive control of the Govt. of Assam and the said institutions had accepted all the benefits extended to them by the Government.

40) In any case, it is not open for the respective writ petitioners who have applied for being selected and appointed as teaching staff in the concerned Madrassa institution to claim that such Madrassas were minority institution, because, at best it could have been an issue between the Managing Committee or a Governing Body (by whatever name called) of the concerned Madrassa and the Government who had provincialised service in the concerned Madrassas, but the existence of such dispute, if there be any, has not been brought to the notice of the Court, as such, the Court has no hesitation to hold that the various writ petitioners, who had applied for selection and appointment as teaching staff in Madrassas have no right to claim that the said concerned Madrassas were minority institution as such declaration cannot be given (i) unless such prayer is actually made; (ii) all persons, who might be affected by such declaration are arrayed as parties to the writ petition and have been served notice for hearing on such prayer; and (iii) by various advertisements made by the respective Madrassas, by referring to Sec. 5(2) of the AMPE Act, applications were invited for filling up various vacant posts in the pay-band prescribed under Revision of Pay Rules. 2010, advertised by the Secondary Education Department. Moreover, the said advertisements were made consequent to the Notification No. ASE.258/2010/Pt.III/84 dated 12.09.2012 issued by the Secondary Education Department, Govt. of Assam.

41) Thus, in the present case in hand, the concerned Madrassas for which teacher selection process had been initiated are no longer minority institutions

because of the AMEP Act, more so, when the vires of Sec.5(1) to 3(3) of the AMEP Act has been upheld by order dated 08.12.2009 in W.P.(C) No. 4997/2009. The ratio of the case of Pramati Educational & Cultural Trust (supra), comes to the aid of the persons in favour of the imposition of TET as one of the qualifications for selection and appointment of teaching staff in the Madrassa institutions as a non- minority institution. The relevant paragraphs 54 to 56 of the case of Pramati Educational & Cultural Trust (supra) is reproduced herein below:

"54. Under Article 30(1) of the Constitution, all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. Religious and linguistic minorities, therefore, have a special constitutional right to establish and administer educational schools of their choice and this Court has repeatedly held that the State has no power to interfere with the administration of minority institutions and can make only regulatory measures and has no power to force admission of students from amongst non- minority communities, particularly in minority schools, so as to affect the minority character of the institutions. Moreover, in *Kesavananda Bharati Sripadagalvaru V. State of Kerala & Anr.* (1973) 4 SCC 225 Sikri, CJ., has even gone to the extent of saying that Parliament cannot in exercise of its amending power abrogate the rights of minorities. To quote the observations of Sikri, CJ. in *Kesavananda Bharati Sripadagalvaru v. State of Kerala & Anr.* (supra):

"178. The above brief summary of the work of the Advisory Committee and the Minorities Sub-committee shows that no one ever contemplated that fundamental rights appertaining to the minorities would be liable to be abrogated by an amendment of the Constitution. The same is true about the proceedings in the Constituent Assembly. There is no hint anywhere that abrogation of minorities' rights was ever in the contemplation of the important members of the Constituent Assembly. It seems to me that in the context of the British plan, the setting up of Minorities Sub- committee, the Advisory Committee and the proceedings of these Committees, as well as the proceedings in the Constituent Assembly mentioned above, it is impossible to read the expression "Amendment of the Constitution" as empowering Parliament to abrogate the rights of minorities."

Thus, the power under Article 21A of the Constitution vesting in the State cannot extend to making any law which will abrogate the right of the minorities to establish and administer schools of their choice.

55. When we look at the 2009 Act, we find that Section 12(1)(b) read with Section 2(n) (iii) provides that an aided school receiving aid and grants, whole or part, of its expenses from the appropriate Government or the local authority has to provide free and compulsory education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent. Thus, a minority aided school is put under a legal obligation to provide free and

compulsory elementary education to children who need not be children of members of the minority community which has established the school. We also find that under Section 12(1)(c) read with Section 2(n)(iv), an unaided school has to admit into twenty-five per cent of the strength of class I children belonging to weaker sections and disadvantaged groups in the neighbourhood. Hence, unaided minority schools will have a legal obligation to admit children belonging to weaker sections and disadvantaged groups in the neighbourhood who need not be children of the members of the minority community which has established the school. While discussing the validity of clause (5) of Article 15 of the Constitution, we have held that members of communities other than the minority community which has established the school cannot be forced upon a minority institution because that may destroy the minority character of the school. In our view, if the 2009 Act is made applicable to minority schools, aided or unaided, the right of the minorities under Article 30(1) of the Constitution will be abrogated. Therefore, the 2009 Act insofar it is made applicable to minority schools referred in clause (1) of Article 30 of the Constitution is ultra vires the Constitution. We are thus of the view that the majority judgment of this Court in *Society for Unaided Private Schools of Rajasthan v. Union of India & Anr.* (supra) insofar as it holds that the 2009 Act is applicable to aided minority schools is not correct.

56. In the result, we hold that the Constitution (Ninety-third Amendment) Act, 2005 inserting clause (5) of Article 15 of the Constitution and the Constitution (Eighty-Sixth Amendment) Act, 2002 inserting Article 21A of the Constitution do not alter the basic structure or framework of the Constitution and are constitutionally valid. We also hold that the 2009 Act is not ultra vires Article 19(1)(g) of the Constitution. We, however, hold that the 2009 Act insofar as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra vires the Constitution. Accordingly, Writ Petition (C) No.1081 of 2013 filed on behalf of Muslim Minority Schools Managers' Association is allowed and Writ Petition (C) Nos.416 of 2012, 152 of 2013, 60 of 2014, 95 of 2014, 106 of 2014, 128 of 2014, 144 of 2014, 145 of 2014, 160 of 2014 and 136 of 2014 filed on behalf of non-minority private unaided educational institutions are dismissed. All I.As. stand disposed of. The parties, however, shall bear their own costs."

42) Thus, in respect of the petitioners, who are the aspiring candidates and are opposing TET, who do not represent the Madrassas, this Court is inclined to observe that as the provisions of Section 5(1), 5(2) and 5(3) of the AMEP Act has withstood the test of constitutionality in *W.P.(C) No. 4997/2009*, and moreover, as the founders or the erstwhile Managing Committee of the respective Madrassas (by whatever name called), as existed prior to provincialisation of services have not challenged the provincialisation of the services of the teaching and non teaching staff including that of Principal and Superintendent of such Madrassas, it is not open to such petitioners to claim that the Madrassa institutions are 'minority institutions' within the meaning of Article 29 and 30 of

the Constitution of India.

43) In view of the above discussions and having seen that upon provincialisation of service, the Madrassas in reference are not getting grants- in- aid and accordingly, the ratio of the case of Jugalkishore Kedia (supra) and Ambika Prasad Kedia (supra), are not found to apply under the facts and circumstances of the present cases.

44) Thus, in any Madrassa, where the Government has provincialised the service of all employees, and the Managing Committee or the Governing Body (by whatever name called), has been constituted or replaced by the Government, such Madrassa are deemed to have lost their character as a "minority institution", save and except unless the competent authority i.e. the Minority Commission decides otherwise in exercise of its powers under Section 10 of the National Commission for Minority Educational Institutions Act, 2004.

On legality or otherwise of the W.T. message dated 21.12.2013:

45) As indicated hereinbefore, by a W.T. Message under Memo No. ASE.164/2013/8 dated 21.12.2013, the Commissioner Secretary to the Govt. of Assam, Secondary Education Department had cancelled the selection process of teaching and non-teaching staff of 74 Madrassas, which was initiated by notification dated 12.09.2012. The learned counsel challenging the said W.T. message have submitted that the reasons disclosed in the said W.T. message could not be substantiated by any cogent or admissible evidence regarding any anomaly in the selection process in any particular madrassa institution. By referring to the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, AIR 1952 SC 16, it is submitted that in the said case, it has been held by the Supreme Court of India that "... public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant or of what was in his mind, or what he intended to do. As such orders are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed they must be construed objectively with reference to the language used in the order itself." However, it is seen in the present case in hand that the W.T. message had clearly spelt out the reasons for cancelling the selection process and in this regard, the State is not making any subsequent endeavour to explain their conduct. Rather, the sequence of events, as it unfolds before this Court is that the selection process initiated by notification dated 12.09.2012 is challenged by filing PIL 48/2013. In course of pendency of the said PIL 48/2013, by way of W.T. message dated 21.12.2013, the process of selection and appointment that was initiated by notification dated 12.09.2012 was cancelled. Thereafter, the proceeding of PIL was closed by order dated 22.01.2014 as the matter had been rendered infructuous. It is seen that in the order dated 22.01.2014, this Court had recorded the submissions made by the Addl. Advocate General of the State to the effect that the State Govt. had decided to introduce TET in the provincialised Madrassas, thus, this is not a case where the

learned Addl. Advocate General of the State had relied on the WT message dated 21.12.2013, but he appears to have made his submissions on the strength of instructions received by him. Thereafter, by order dated 02.06.2014, passed by this Court in Cont. Case (C) No. 254/2014, the Division Bench of this Court had directed to State to implement the directions contained in the order dated 22.01.2014 in PIL 48/2013 within 6 (six) months. Accordingly, in view of the stand of the State before this Court, the advertisement dated 30.08.2014 was issued by the Secondary Education Department in respect of TET of Madrassa Education in accordance with NCTE Regulations.

46) The learned counsel opposing TET have heavily relied on the note sheets contained in two official files, i.e. bearing No. ASE.164/13 and file No. ASE319/15/Pt. In this connection, the Court is of the considered opinion that notes entered in the note-sheets are merely the opinion of the person who had authored it. Therefore, unless, such notes are reduced in form or orders and communicated to the concerned person, no vested right flows to such person merely from the noting made in official files, where various officials and authorities give their opinion or views, which are personal to them. Moreover, it is seen that although it is projected that the Education Minister in his note dated 26.02.2016 had indicated that the Joint Secretary (Secondary Education) enquired into the matter as per his direction regarding issue of W/T message dated 21.12.2013 by the Govt. by which the selection process was cancelled and that it appeared from the enquiry report that no records or papers regarding complaint/anomalies were found in the concerned file and it is clear that the said W.T. message was issued without any basis and accordingly, the Education Minister recorded his opinion that the process of selection of the remaining Madrassa institutions which had been stopped due to the W.T. message should be re-initiated for completing the process of appointment, but such note was never implemented by the State. Nothing is shown before this Court that there was an order restraining the State Government from implementing the note dated 26.02.2016 given by the Education Minister. Moreover, no material is produced before this Court that as a fall-out of the noting made by the Education Minister in the note-sheet, any departmental proceeding was initiated against the concerned official who had sent the said W.T. message dated 21.12.2013 for stalling the selection process on false grounds. Thus, presumption would be in favour of the correctness of the contents of the W.T. message dated 21.12.2013, for which the said W.T. message was not recalled or cancelled by the competent authority, and the stalled selection process was not restored.

47) The Court is of the opinion that on the ground that there were anomalies in the selection process, such process was cancelled by W.T. message dated 21.12.2013. The said decision did not targeting any particular Madrassa of any particular appointment. The exercise had involved selection and appointment of 407 Assistant Teachers in 74 numbers of Madrassas and many other non-teaching staff and thus, the exercise would have involved thousands of candidates, as such, the Court is unable to hold that the said decision is tainted

with malice or was mala fide. This also indicates that without such elaborate exercise, it may not be possible to weed out beneficiaries of illegality. Thus, the ratio of the case of Rajesh P.U., Puthuvalnikathu (supra) and Girjesh Shrivastava (supra) would not apply in this case. According to the Court, as reasons were assigned by the Commissioner & Secretary to the Govt. of Assam, Secondary Education Department, the selected candidates have no vested right of being heard before any decision is taken by the Secondary Education Department to cancel the selection process. It was sufficient for the authorities to rely on inputs received regarding illegal monetary transactions in some institutions in giving viva-voce marks, thereby depriving the meritorious candidates, and cancel the selection process. In this regard, the Court finds support from the case of Dilbagh Singh (supra). Paragraph 12 thereof is quoted herein below:-

"12. If we have regard to the above enunciation that a candidate who finds a place in the select list as a candidate selected for appointment to a civil post, does not acquire an indefeasible right to be appointed in such post in the absence of any specific Rule entitling him for such appointment and he could be aggrieved by his non-appointment only when the Administration does so either arbitrarily or for no bona fide reasons, it follows as a necessary concomitant that such candidate even if has a legitimate expectation of being appointed in such posts due to his name finding a place in the select list of candidates, cannot claim to have a right to be heard before such select list is cancelled for bona fide and valid reasons and not arbitrarily. In the instant case, when the Chandigarh Administration which received the complaints about the unfair and injudicious manner in which select list of candidates for appointment as conductors in CTU was prepared by the Selection Board constituted for the purpose, found those complaints to be well founded on an enquiry got made in that regard, we are unable to find that the Chandigarh Administration had acted either arbitrarily or without bona fide and valid reasons in cancelling such dubious select list. Hence, the contentions of the learned counsel for the Respondents as to the sustainability of the Judgment of CAT under appeal on the ground of non-affording of an opportunity of hearing to the Respondents (candidates in the select list) is a misconceived one and is consequently rejected."

48) It is also seen that notwithstanding that the legality of W.T. message dated 21.12.2013 has been challenged before this Court in several writ petitions, being analogously taken up for hearing now, from the note- sheet of the two files, it appears to the Court that while the Education Department had taken up upon itself to ascertain the veracity of the allegations contained in the W.T. message. But, it appears that the said exercise was dropped without reaching any conclusion.

49) Under such circumstances, as the WT message dated 21.12.2013 had clearly indicated the reasons for cancelation of process of selection and appointment of teaching and non- teaching staff against unreserved, vacant and sanctioned posts in Senior Madrassas, Title Madrassas and Arabic Colleges, except the posts

of Principals/ Superintendents and Grade-IV under the Director of Madrassa Education, Assam, the Court is of the considered opinion that such cancellation was justified and, as such, the Court is inclined to dismiss the challenge to the said W.T. Message under Memo No. ASE.164/2013/8 dated 21.12.2013, issued by the Commissioner Secretary to the Govt. of Assam, Secondary Education Department.

50) Moreover, the process of selection to a public office cannot be permitted to be sustained by a Court of law, if such selection process stands vitiated by allegations of malpractice. In this regard, this Court finds support from the observations made by the Supreme Court of India in the case of Tarun K. Singh (*supra*).

On the imposition of TET:

51) As indicated hereinbefore, it has been held, inter-alia, by this Court by order dated 14.12.2009 in W.P.(C) 113/2009 that the provincialised Madrassa institutions were under the deep and pervasive control of the Govt. of Assam and the said institutions had accepted all the benefits extended to them by the Government. In view of the provisions of the AMEP Act, upon selection, the teaching staff, with which we are concerned, would become Govt. servants after their appointment against the vacant and sanctioned posts.

52) This Court is conscious of the fact that in connection with PIL 48/2013, a submission was made on behalf of the State by the learned Addl. Advocate General of the State that the selection process of 470 teachers for the provincialised Madrassa institutions all over the State which was impugned in the writ petition by means of the said PIL has since been revoked by the State Government by their order dated 21.12.2013. His further statement was to the effect that consequent upon the revocation, the State Government has now taken a decision to introduce TET for recruitment of the teachers in these provincialised Madrassa institutions. Thus, the said PIL was closed as infructuous, but by directing that the statement made by the learned Addl. Advocate General on behalf of the State shall be complied with in letter and spirit by the State while making recruitment of the teachers in the connected institutions strictly on the basis of the norms set out for selection.

53) It is seen that thereafter, by order dated 02.06.2014, passed by this Court in Cont. Case (C) No. 254/2014, the Division Bench of this Court had directed to State to implement the directions contained in the order dated 22.01.2014 in PIL 48/2013 within 6 (six) months. This was followed by the advertisement dated 30.08.2014, issued by the Secondary Education Department in respect of TET of Madrassa Education in accordance with NCTE Regulations. It is also seen that this Court by order dated 08.01.2016 in R.P. 120/2014, had permitted the petitioners therein to challenge the W.T. message dated 2.12.2013 and took note that W.P. (C) 4874/2014 had been filed for the purpose.

54) The Court is of the considered opinion that taking note of the fact that the

concern of the State was that there should be an improvement in the quality of teachers imparting education in Madrassa institution. Therefore, viewed from such angle, it is the prerogative of the State as an employer to determine what qualification one must hold to serve as a Government Servant in a particular job. No material has been brought on record to show that TET qualification is not essential for students of Class-I to Class-VIII, who are educated in Madrassas institutions, which are under all- pervasive control of the State Government. It is seen that the School Management Committee for Madrassas (by whatever name called) is constituted by following the provisions of Section 5(1) of the AMEP Act and, as such, some element of Government control is exercised over the Madrassas where the service of teaching and non- teaching staff had been provincialised. As mentioned hereinbefore, by a speaking order dated 08.06.2010, passed by the Chief Secretary to the Government of Assam in compliance of order dated 14.12.2009 in W.P.(C) 113/2009, the Principal and Superintendent of Madrassas were held to be government servants. Moreover, by order dated 10.03.2011, passed by this Court in W.P.(C) No. 4228/2010, the order dated 08.06.2010, passed by the Chief Secretary to the Government of Assam was upheld. The Assam State Madrassa Board is also constituted by the State as is seen from Government notification dated 14.03.2013.

55) In view of the ratio laid down in the case of Pramati Educational & Cultural Trust (supra), while the RTE Act, 2009 may not be applicable in Madrassas where the service of teaching and non- teaching staff including Principal and Superintendent have not been provincialised, but it is and will be the prerogative of the State to implement the RTE Act and give effect to the notifications issued by NCTE, prescribing norms and qualification of teaching staff in respect of the provincialised staff, where the Madrassas are no longer wearing the garb of a purely minority institution. It is seen that in respect of such provincialised Madrassas, it has not been brought to the notice of this Court that their status as a "minority institution" has been declared under Section 10 of the National Commission for Minority Educational Institutions Act, 2004 or under any other law in force. Thus, the protection of Article 30 is not found to be available to such institutions notwithstanding that in advertisements for recruiting teaching and non- teaching staff, as well as in the notification dated 12.09.2012, reference has been made to the provisions of Article 30(1) of the Constitution of India. Thus, the Court is of the considered opinion that it is open for the State to prescribe the minimum qualification for being recruited as a Government Servant in vacant and sanctioned posts.

56) No one would doubt that the children are the future of our Country tomorrow. Thus, it should be the endeavour of the State to ensure that a teacher appointed in vacant and sanctioned posts hold a minimum prescribed standard. It is also well known that standards and/or qualifications for being appointed as teaching staff for Class-I to V and for Class- VI to VIII has been laid down by an expert body. Thus, when an expert body has set up and/or laid down a particular teaching standard, it would not be advisable to the Court to substitute an expert

view with its own, when no material has been brought on record to show after due study that TET syllabus is wholly unnecessary for imparting education to students in their formative Classes I to V and Class- VI to VIII. Moreover, if any parent desires that his ward would only pursue theological course in Madrasa, it is open to them to get such student enrolled in non- provincialised Madrassas, i.e. "minority institutions" where education is imparted in theological courses only. It would not be out of context to note that in paragraph 16 of the case of Jugalkishore Kedia (supra), cited by the learned counsel opposing TET, it has been mentioned that "... The appointment of teachers is an important part in educational institutions. The qualifications and character of teachers are important. The right of minority institutions to administer institution implies the obligation and duty of the minority institutions to render the very best to the students ..." The said observation still holds good, even for a madrasa, where service of teaching staff have been provincialised.

57) It is the opinion of the Court that by providing minimum qualification for appointment as teacher in Madrasa institution to the effect that such candidate must have cleared TET is only a regulatory method to ensure that the purported minority institution give the best teachers to the students and that in Madrasa Institutions where the services of the teaching and non teaching staff including Principal and Superintendent are provincialised and they are Government servants, the Government must have the prerogative to have its say in the matter of appointment of teachers so that availability of quality teaching staff is ensured in the process. The imposing of condition that the teachers in Madrasa institutions where their services have been provincialised must have passed- out TET, cannot be said to be violative of Article 30(1) of the Constitution of India. Moreover, it appears that it was a policy decision by the Government to introduce TET to be one of the minimum criteria to appoint teachers in Madrassas, such a policy decision is aimed to benefit the student community at large as such, the Court would be loath to interfere with such beneficial policy decision as such a decision is not found to be violative of the Constitution of India or any other statutory provisions.

58) It is seen that Madrasa Intermediate Examination is equivalent to High Secondary School Leaving Certificate Examination (HSSLC or +12 level). Thus, teachers of such Madrassas do impart education to Classes equivalent to Class-I to VIII of a regular Central or a State Board. The counsel supporting TET have made an attempt to demonstrate that under the RTE Act, free books and other facilities are being provided to Madrassas where services have been provincialised.

59) It is submitted that it is well settled that a candidate does to get any right to the post by merely making an application for the same, but right is created in his favour for being considered for the post in accordance with the terms of the conditions of the advertisement and the exacting recruitment rules. By referring to the case of P. Mahindra (supra), it is submitted that the right of a candidate

applying for a post in response to the advertisement cannot be affected by amendment of any rule unless the amending rule is retrospective in nature. Accordingly, it is submitted that the introduction of TET was a subsequent event and as the petitioners had applied for the post pursuant to advertisement dated 12.09.2012 on such accrued right cannot be taken away by subsequent advertisement dated 30.08.2014. In the said context, the Court is of the considered opinion that as the earlier recruitment process had been cancelled by virtue of W.T. message dated 21.12.2013, and the new process was initiated by advertisement dated 30.08.2014, no added right had accrued in favour of any candidate applying under the earlier recruitment process. Moreover, as TET has been introduced as eligibility criteria for securing job as a teacher in Madrassa institutions, at the insistence of prospective candidate the requirement of TET cannot be set aside by holding that the subsequent selection process is deemed to be a continuation of the recruitment process initiated by notification dated 12.09.2012, which would amount to grant right to the non-TET qualified teachers to secure jobs as teacher in various Madrassas where service of teaching and non-teaching employees including that of Principal and Superintendent had been provincialised. Hence, the ratio of the cited case does not apply under the facts unique to this case.

60) As per Rule 2(20) of the Assam Right of Children to Free and Compulsory Education Rules, 2011 (2011 Rules for short) it is provided that "Lower Primary School" means all school imparting elementary education upto Class-V, and as per Rule 2(21) of "Upper Primary School" means all schools imparting elementary education upto Class-VIII. The said 2011 rule is required to be read in consonance with the scheme of the RTE Act. It would be pertinent to mention herein that under the provision of Section 1(5) of the RTE Act, it has been provided that nothing contained in the Act shall apply to Madrassas, Vedic Pathshalas and educational institutions primarily imparting religious instructions. In this context, if the definition of "Madrassa Education" is provided in Section 2(k) of the AMEP Act, the system of education referred therein not only includes religious instructions alone, but it includes education imparted in respect of general subjects like Mathematics, Science, Indian language, English, Hindi, Social Studies, etc. at the secondary school level. This makes the students of these Madrassas eligible to seek appointment in jobs in sectors other than being a religious scholar alone. The definition of "Secondary Education" is required to be understood from the provisions of Section 3(m) of the Assam Secondary Education Act, 1961 which defines "secondary education" to mean such education as is designed to meet the needs of the stage which follows immediately the primary education and precedes immediately the stage of degree or diploma education controlled by any University established by law in India or by a board constituted by Govt. for this purpose. Accordingly, having taken note of the submissions made by the learned Standing Counsel for the Secondary Education Department that in the concerned 74 Nos. of Senior Madrassas, Title Madrassas and Arabic Colleges imparting instruction at the

secondary level, where the services of 1418 teachers and supporting staffs of different categories employed therein had been provincialised, apart from religious instructions, education is also imparted with general subjects like Mathematics, Science, Indian language, English, Hindi, Social Studies, etc. neither the said schools are institutions only imparting religious instructions and that the teacher appointed therein are Govt. servants. Therefore, notwithstanding anything contained in the RTE Act, the Govt. would have unfettered right to provide a minimum qualification for a person to be appointed as provincialised teachers in Madrassas.

61) It is sought to be projected by the learned counsel opposing TET that as per the AMEP Act, the management of these schools vests in the Govt. and the Managing Committee or the Governing Body as the case may be of such Madrassa shall exercise such function as may be specified by the Govt. or under the Rules made under the said Act and by referring to Section 2(22) of the 2011 Rules which provides for "School Management Committee (SMC)", it is submitted that the Madrassas are not covered by Rule 2(22) of the 2011 Rules. This appears to be a non-issue because by pre-fixing the words "Madrassa" or "School" before the words "Managing Committee" or "Governing Body" referred to under Section 5 of the AMEP Act, would not change the meaning intended to convey. The nomenclature, in the opinion of the Court, would hardly make any difference because of the fact that by virtue of Section 5 of the AMEP Act, with effect from the appointed day, the administration, management, and control of all employees of all Madrassa, the service of employees are provincialised under the provision of Section 3 or Section 7 as the case may be, has vested in the Govt. and it is further provided that the Managing Committee or Governing Body, as the case may be, of such Madrassa shall exercise such functions as may be specified by the Govt. or under the Rules made under the said Act, until such Managing Committee or the Governing Body as the case may be is either reconstituted or replaced under the rules prescribed. Therefore, merely because of particular Managing Committee or Governing Body of any provincialised Madrassa has a nomenclature different from the name mentioned under Section 5 of the AMEP Act, such Madrassa, per se, would not be construed to be excluded from the purview of the AMEP Act, 1995. Moreover, as the said issue is not found to be germane to the 2 (two) points of determination framed herein, the opinion of the Court is not to be read as an authoritative determination concerning the nomenclature of the Managing Committee and, as such, in this order, the Court has enlarged the meaning of words "Managing Committee" to include "Managing Committee" of Madrassas by whatever name called. Moreover, it is nobody's case that the Managing Committee of the 74 Madrassas where services were provincialised had not been reconstituted by the appropriate Govt.

62) As the services of all the teaching and non-teaching staffs including Principal and the Superintendent have been provincialised in the 74 Madrassas imparting education of religious nature and also general subjects, the cover of umbrella of the 2011 Rules to these Madrassa institutions appears to be in public interest

because this is not a case where any of the 74 Madrassas have raised any objection to Provincialisation of service of the teaching and non-teaching staffs. The application of the 2011 Rules to such Madrassas is also not a subject matter of challenge in any of the writ petitions. In the said context, it is seen that Rule 15 of 2011 Rules gives power to the Government to prescribe minimum qualification for a person to be eligible to be a teacher. It is also seen that the order in the nature of mandamus was issued by this Court by order dated 22.01.2014 in PIL 48/2013, for the inclusion of TET clearance/pass as one of the minimum qualifications along with other necessary qualification for being appointed as teaching staff in Madrasa institutions. Thus, the introduction of TET to be one of the minimum qualifications to be a teacher in Madrassas where service of teaching staff have been provincialised, cannot be faulted. The Government, being the employer has unfettered right to fix a minimum qualification for a person to hold a particular government job. Therefore, the recruitment process initiated vide subsequent advertisement dated 03.08.2014 is found to be a valid exercise by the Govt.

63) One of the submissions by the learned counsel opposing TET was that the advertisement dated 30.08.2014 was issued by the TET Empowered Committee of Rashtriya Madhyamik Siksha Abhijan (RMSA), Assam and, as such, it was submitted that the competent authority was Director and/or Deputy Director of Madrasa Education. In this regard, on perusal of the said advertisement, it is found mentioned therein as follows - "With a view to offering quality education in the Provincialised Madrasa institutions of Assam, the Govt. of Assam has fixed the minimum standard of qualification for teacher's eligibility for the Madrasa institutions under the Directorate of Madrasa Education in accordance with NCTE Regulation." Thus, it is clear that it is the Government who has fixed TET as one of the minimum qualifications for a teacher at provincialised Madrassas, and such criteria have not been fixed by RMSA, which is a mere agency to implement the Government decision to conduct examination/ test.

64) By referring to the case of Municipal Corporation of Delhi (supra) and Sundeep Kumar Bafna (supra), the learned counsel opposing TET has submitted that the order dated 22.01.2014 passed by this Court in PIL 48/2013 must be treated to be per incuriam as the said order containing a direction that "... the statement made by the learned Addl. Advocate General on behalf of the State shall be complied with in letter and spirit by the State while making recruitment of the teachers in the connection with institutions strictly on the basis of norms set out for selection ...", was delivered without any argument, without reference to the relevant Act or Rules conferring power to the State to impose the qualification of TET. This issue has two facets, firstly, the Court is not inclined to accept the said submission because of the fact, that in the discussions herein, the Court has arrived at a decision that the inclusion of TET as one of the essential minimum qualification for being appointed as teachers in Madrassas, where service of teaching staff has been provincialised.

65) The other aspect is that against order dated 22.01.2014, passed in PIL 48/2013, Rashid Ahmad Laskar & 3 others [who are also the petitioners in WP(C) No. 6942/2015], had filed Review Pet. 120/2014 (Rashid Ahmad Laskar & 3 Ors. Vs. State of Assam and 5 Ors.), and this Court by order dated 08.01.2016, while dismissing the said review Petition, observed that if the review petitioners are aggrieved by the order of the State Govt. dated 21.12.2013, they can certainly assail the legality and validity of such decision in an appropriate proceeding. The said observation was made as it was pointed out at the Bar that the said decision of the State was already under challenge in WPC 4874/2014. Therefore, while the writ petition assailing order dated 21.12.2013 is entitled to be heard on merit, as the Review Petition was dismissed, the said order dated 22.02.2014 had attained finality. Therefore, in the backdrop of the fact that PIL 48/2014 (The People's Society & anr. Vs. The State of Assam & 3 ors.) was instituted to challenge the proposed recruitment of teachers/assistant teachers for the Madrassa institutions without mandatory qualification of TET. In the said context, the Addl. Advocate General of the State had conveyed to the Court that the State had taken a decision to introduce TET for recruitment of teachers in these Madrassa institutions. Under such circumstances, the directions as contained in the order dated 22.01.2014 in PIL 48/2013 was passed. Thus, the Court does not find that while passing the order in PIL 48/2013, there arose any occasion for the Court to record any further arguments or to refer to any legal provisions as projected by the learned counsel opposing TET. Accordingly, the Court is not inclined to treat the said order dated 22.01.2014 in PIL 48/2013 as per incuriam, more so, when the Court is hearing the writ petition filed by Rashid Ahmad Laskar & 3 Ors. i.e. W.P.(C) 6942/2015, who were the review petitioners. In connection with the point raised, the Court is of the considered opinion that it appears from the statement made by the learned Addl. Advocate General of the State as indicated in the order dated 22.01.2014 that the State Government had taken a decision to introduce/ implement TET and such decision was merely conveyed by the Addl. Advocate General of the State to the Court. The said decision of the Government is found to be in interest of students of the concerned Madrassas, involving greater public interest for imparting modern education together with religious instructions to the students and moreover, the State as a model employer, must have some freedom to impose a "minimum qualification" for a person aspiring to be a particular post as a Government servant, in this case a teacher in Madrassa.

66) The executive power of the State extends to matters required to be prescribed by framing rules under the Act concerned. Where the statute requires certain things to be done subject to rules, taking action in relation to those things without framing rules would not render that action invalid. This ratio has been laid down by this Court in the case of Jantia Hill Truck Owners Association, (2009) 8 SCC 492 (para-23). In the present case in hand, it is seen that school education including Madrassas involves various Acts, Rules, and notifications. Few of them, which is referred in this case are the NCTE Act, the NCTE Rules,

the NCTE Regulations, the National Commission for Minority Educational Institutions Act, 2004, the Assam Education Departmental Rules & Orders, 1955, the AMEP Act, the RTE Act, the 2011 Rules, the Assam Secondary Education Act, 1961. As already indicated hereinbefore, the Government has the power under Section 15 of the 2011 Act to prescribe minimum qualification for appointment of teacher in Madrassa institution. Thus, the executive is found to have the powers to include TET as one of the essential minimum qualification for being appointed as teachers in those Madrassas where service of teaching staff has been provincialised.

67) In view of the discussions above, the Court is inclined to hold that the advertisement bearing No. RMSA/TET/MADRASSA/342/2014/1 dated 30.08.2014 by the Govt. of Assam, Secondary Education Department is in the better interest of the student community of Madrassas where services of teaching and non-teaching staff including Principal and Superintendent have been provincialised and, accordingly, it is valid. The first point of determination is answered in the affirmative and in favour of the validity of the said advertisement dated 30.08.2014. Resultantly, it is held that the said advertisement is not hit by Article 30(1) of the Constitution of India. Accordingly, it would be open to the Secondary Education Department and the Directorate of Madrassa Education to act in accordance with the same. As the advertisement dated 30.08.2014 is a fresh recruitment process, it was open for the Government to revised educational qualifications and, as such, the ratio of the case of Madan Mohan Sharma (supra) does not apply on the distinguishable facts of this case.

68) It is nobody's case that if a person who has the qualification mentioned in Section 2(m) of the NCTE Act does not have the necessary qualification for being appointed as the teacher of 74 provincialised Madrassas in the State, where education is imparted on subjects other than theological subjects. Accordingly, on facts the present cases are distinguishable from the facts involved in the case of Basic Education Board, U.P. (supra), cited by the learned counsel opposing TET. The prayer for striking down of the requirement of passing out TET examination as one of the minimum qualifications for a person to be eligible for appointment as a teacher in Class- I to VIII in a Madrassa covered by the AMEP Act laid down by the NCTE under Section 23(1) of the RTE Act cannot be considered or allowed and hence, rejected.

69) Thus, the recruitment drive initiated by (i) notification No. ASE.258/2010/Pt.III/84 dated 12.09.2012 issued by the Secretary to the Govt. of Assam, Secondary Education Department, the process for filling up 470 posts of teacher lying vacant in various Madrassa Institutions under the Assam State Madrassa Education Board, and (ii) communication under Memo No. DME.491/ Apptt./2010/129 dated 13.09.2012, the Director of Madrassa Education, Assam had come to an end on being cancelled by W.T. message under Memo No. ASE.164.2013/8 dated 21.12.2013. The second point of determination is answered accordingly.

70) Consequently, as regards, 49 teaching staff, who were appointed in 7 Madrassas pursuant to notification No. ASE.258/ 2010/Pt.III/84 dated 12.09.2012, this Court is constrained to observe that as this Court has upheld the validity of W.T. message under Memo No. ASE.164/ 2013/8 dated 21.12.2013 issued by the Commissioner & Secretary to the Govt. of Assam, Secondary Education Department, it would be open to the Secondary Education Department and/or the Directorate of Madrasa Education, Assam to take such measure as they may be so advised.

71) It is the considered opinion of the Court that as the entire recruitment process which had previously been instituted vide notification dated 12.09.2012 had been cancelled vide W.T. message dated 21.12.2013 issued by the Commissioner and Secretary to the Govt. of Assam, Education (Secondary) Department and, as such, the recruitment process that was initiated by way of hereinbefore referred advertisement dated 30.08.2014 was a fresh recruitment drive, which cannot be said to be a continuation of the recruitment process that was initiated by the previous notification dated 12.09.2012.

72) However, before parting with the records, it would be open to the Secondary Education Department, Govt. of Assam including the Directorate of Madrasa Board to give a one- time opportunity to the non - TET candidates who had participated in the previous recruitment drive that was initiated vide advertisement dated 12.09.2012 to clear TET examinations within a particular time frame to be eligible for future recruitment and for the said purpose, the willing candidates may be provided with an opportunity to claim relaxation of age upto a certain upper limit to be set up by the competent authority, when employment opportunity so arises in future.

73) As a result, the following writ petitions, viz., W.P.(C) 5072/2012, W.P.(C) 2464/2014, W.P.(C) 5083/2015, W.P.(C) 6278/2015, W.P.(C) No. 787/2016 and W.P.(C) 630/2018 stands partly allowed to the extent that the Secondary Education Department and the Directorate of Madrasa Education may go ahead with the recruitment process initiated vide advertisement bearing No. RMSA/TET/MADRASSA/342/2014/1 dated 30.08.2014 by the Govt. of Assam, Secondary Education Department. Consequently, the following writ petitions stands dismissed, viz., W.P.(C) 1402/2014, W.P.(C) 2040/2014, W.P.(C) 2127/2014, W.P.(C) 2174/2014, W.P.(C) 2224/2014, W.P.(C) 2344/2014, W.P.(C) 2543/2014, W.P.(C) 2609/2014, W.P.(C) 3123/2014, W.P.(C) 3222/2014, W.P.(C) 3254/2014, W.P.(C) 3322/2014, W.P.(C) 4658/2014, W.P.(C) 4970/2014, W.P.(C) 5265/2014, W.P.(C) 5489/2014, W.P.(C) 5552/2014, W.P.(C) 6218/2014, W.P.(C) 6942/2014, W.P.(C) 7811/2015, and W.P.(C) 5471/2017.

74) As regards W.P.(C) No. 4874/2014, the petitioners have no personal interest in the matter as they are not seeking any personal relief in the said writ petition, as such, on the said ground, the petitioners are not found to be entitled to any relief in the said writ petition, accordingly, the said writ petition stands dismissed. Nonetheless, it would be relevant to mention herein that by the order

dated 15.10.2014 passed in W.P.(C) 4874/14, this Court had held that the impugned advertisement is all about prescribing the minimum qualification, experience and other criteria bearing on merit for appointment of teachers in the Madrassa institutions and does not interfere with the overall administrative control exercised by the management of such Madrassa institutions over their staff, or abridges/ dilutes, in any other manner, their right to establish and administer the Madrassa institutions. The said finding by this Court had attained finality vide order dated 01.09.2015, passed by this Court in W.A. 246/2015 (Md. Abdul Karim & anr. Vs. State of Assam & 3 ors.), and is reiterated again.

75) As regards W.P.(C) No. 5265/2014 is concerned, though the writ petition is dismissed, but as this writ petition is by persons claiming to be the Managing Committee and they have challenged notification No. RMSA/TET/Madrassa/342/2014/1 dated 30.08.2014, on the ground that it infringes the right of the Managing Committee protected under Articles 29 and 30 of the Constitution of India as Madrassa are minority institution, the Court is inclined to observe that the Managing Committee of a Madrassa covered by the AMEP Act is constituted/ reconstituted or replaced by the Government. They have no independent right to lay down their own guidelines, but such Managing Committee (by whatever name called) is required to strictly adhere to the Government guidelines. It is reiterated at the cost of repetition that the Madrassas covered by the AMEP Act are not minority institutions.

76) Although all the appearing senior counsel and counsel have given their best effort, but before parting with the records, the Court would like to put on record its appreciation for the assistance given to the Court by Mr. A.R. Bhuyan, Mr. R. Dubey, Mr. J. Abedin, and Mr. B.P. Borah, learned counsel.