

(2005) 04 GAU CK 0017
In the Gauhati High Court
Case No : Writ Petition (C) No. 321 of 2004

Patkai Christian Academy and Another	APPELLANT
Vs	
State of Manipur and Others	RESPONDENT

Date of Decision : 18-04-2005

Acts Referred:

Constitution of India, 1950 — Article 19(1), 25, 26, 26(1), 29
Manipur Secondary Education Act, 1972 — Section 2, 48(2), 48(4), 49(2), 49(4)

Citation : (2005) GLT 859 Supp

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : N. Kotiswor Singh and G. Puspa, for the Appellant; A. Jagatchandra Singh, for the Respondent

Judgement

T. Nandakumar Singh, J.—This writ petition is required to be discussed keeping in view of the accepted principle of law that "the right of minorities under Article 30(1) of the Constitution of India to establish and administer the educational institutions has been judiciously construed as defined in minority institutions. What is expressed in terms of a right under Article 30(1) of the Constitution of India in fact described the institutions in respect of which the protection of Article 30(1) can be claimed. Unless the educational institution has been established by a minority, it cannot claim the right to administer it under Article 30(1) of the Constitution of India."

2. Heard Mr. N. Kotiswor Singh, learned Counsel for the Petitioners and Mr. A. Jagatchandra Singh, learned Sr. Govt. Advocate for the Respondents.

3. The factual matrix leading to the filing of the present writ petition is required to be discussed at threadbare. The writ Petitioner No. 1, "Patkai Christian Academy", is an educational institution established by Christian Academy Trust in the year 2001 at "Changraphung", Sangshak, Ukhrul District, Manipur inspired by the desire to provide first rate education in the State of Manipur specially amongst the poor and underprivileged sections of the society. The Patkai

Christian Academy was created by the dedicated educationalists believing Christians with support from Christians. The foundation of the Patkai Christian Academy was inspired by the Christian principle that truth is revealed by God through Christ. The management of the Academy is of Christian values which are incorporated in the bye-laws of the Patkai Christian Academy. Article III of the bye-laws of the Academy form the basis of the educational programme of the Patkai Christian Academy. The relevant extract of the Articles III of the bye-laws are quoted hereunder:

1. We believe that the sixty-six canonical books of the Bible as originally written were fully inspired by God, hence free from error. They constitute the only infallible guide in faith and practice.

2. We believe in one God, eternally existing in three persons: Father, Son and Holy Spirit

3. ... etc.

4. As per Section 2 of Article v. of the Bye-Laws of the Academy, all the members of the Board of Trustees are to be confessing Christians and who agree with the School's doctrinal statement as mentioned in the Bye-Laws of the Academy. Therefore, the Patkai Christian Academy was founded on Christian Principle managing by confessing Christians' ideals as enumerated in the Bye-Laws of the Academy. As such the main factual thrust of the present Writ petition is that the Patkai Christian Academy is a minority educational institution established and managed by persons belonging to Christian faith and as such it is entitled to the fundamental rights conferred upon the religious minority by the Constitution of India in addition to other fundamental rights available to all the citizens of the country.

5. At present Classes-I to VII are opened in the said Patkai Christian Academy and it has the plan to increase upto Class-VIII within the next Academic Session with the grant and affiliation with the "Council or Indian School Certificate Examinations, New Delhi". The Patkai Christian Academy intends to introduce classes upto Class-XI gradually for fulfillment of the aims and objects under which minority institution was established. The Patkai Christian Academy so as to enable it attains and retains high educational standards for the students sought to affiliate the Academy to the "Council of Indian School Certificate Examinations, New Delhi" which is known for its high standard. For affiliation to the "Council of Indian School Certificate Examinations, New Delhi," the Academy made necessary enquiries with the said Council and in the course of the enquiries, the Academy was informed that "the schools seeking for affiliation to the "Council of Indian School Certificate Examinations, New Delhi" should obtain "Certificate of Recommendation" or "No Objection Certificate" from the State Deptt. of Education concerned as per condition No. 2 of the "Conditions for Provisional Affiliation of Schools with the "Council of Indian School Certificate Examinations, New Delhi." Since the minority institution, i.e. the Patkai Christian Academy, was

established in the State of Manipur, the concerned State Education Department would be the Education Department (Schools), Govt. of Manipur. Accordingly, the minority institution, i.e. the Patkai Christian Academy, approached the Commissioner, Department of Education, Govt. of Manipur by filing an application dated 04.08.2002 (Annexure-A/2 to the writ petition) requesting to issue "No Objection Certificate" to the Academy for seeking affiliation to the "Council of Indian School Certificate Examinations, New Delhi". It is pertinent to mention that the Patkai Christian Academy is not seeking any grant-in-aid from the State Govt., Manipur and it is a private Un-aided Minority Institution. After receiving the said application of the Patkai Christian Academy dated 04.08.2002, the Under Secretary (Education(S), Govt. of Manipur called some informations from the Directorate of Education(S). Govt. of Manipur as to whether the School Managing Committee will be asked to affiliate to the Board of Secondary Education, Manipur (for short BSEM) as and when the School develops and opens Classes upto Class-X. The Headmaster of the Patkai Christian Academy under his letter dated 28.06.2003 informed the Commissioner, Education(S), Govt. of Manipur that the School management intends to seek affiliation to the Council for the Indian School Certificate Examinations(ICSE), New Delhi and not to the Board of Secondary Education, Manipur (BSEM) now or in future. The said letter dated 28.06.2003 of the Headmaster, Patkai Christian Academy (Annexure-A/5 to the Writ petition) was forwarded to the Director of Education(S), Govt. of Manipur by the Dy. Secretary, Education(S). Govt. of Manipur under his letter dated 02.09.2003 (Annexure-A/6 to the writ petition) to furnish comment at an early date.

6. The Respondents without giving any opportunity of being heard to the Patkai Christian Academy issued an order being No. 12/I/03-SE(S), Imphal the 7th January, 2004 (Annexure-A/1 to the Writ petition) that the State Govt. shall not issue "No Objection Certificate" to the schools of this State for affiliation to the Central Board of Secondary Education (CBSE) and the Council of Indian Schools Certificate Examinations(ISCE), New Delhi. The only reason for refusal to issue "No Objection Certificate" under the said order of the Govt. of Manipur dated 07.01.2004 was that as a result of affiliation of more and more Schools of the State of Manipur to the CBSEJSCE and NOS, the number of candidates enrolled for the HSLC Examination of the Board of Secondary Education, Manipur in the past few years have been decreasing fast. For easy reference to the said order of the Govt. of Manipur dated 07.01.2004, it has been quoted hereunder in entirety:

ORDERED BY THE GOVERNOR: MANIPUR

Imphal, the 7th January, 2004.

No. 12/I/03-SE(S): Whereas, some of the schools of Manipur are seeking affiliation with the Central Board of Secondary Education (CBSE), New Delhi and Council for the Indian Schools Certificate Examination (ISCE), New Delhi in lieu of the affiliation with the Board of Secondary Education, Manipur;

And whereas, for seeking affiliation with the CBSE or ISCE, a school of Manipur requires a "No Objection Certificate" of the Government of Manipur;

And whereas, as a result of affiliation of more and more schools of the State of Manipur to the CBSE and ISCE and NOS, the number of candidates enrolled for the HSLC examinations of the Board of Secondary Education, Manipur in the last few years has been decreasing fast;

Now, the Government of Manipur is, therefore, pleased to order that the State Government shall not issue "No Objection Certificate" to the Schools of this state for a affiliation to CBSE or ISCE.

By orders and in the name of the Governor

Sd/-(P. Bharat Singh) Commissioner (Edn/S), Govt. of Manipur.

7. From the bare perusal of the said order of the Govt. of Manipur dated 07.01.2004, it is crystal clear that the only reason for refusing to issue "No Objection Certificate" to the minority institutions, i.e. the Patkai Christian Academy, was for the purposes of giving undue advantage and sympathizing the Board of Secondary Education, Manipur (BSEM) at the cost of the interest of the minority institutions and also the rights of the minority guaranteed under Article 30(1) of the Constitution of India. Article 30 of the Constitution of India reads as follows:

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

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

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

8. The minority institution, i.e. the Patkai Christian Academy, approached the Chief Executive and Secretary, Council for the Indian Schools Certificate Examinations, New Delhi by filing a representation dated 07.02.2004 stating that the Patkai Christian Academy was established in 2001 and have the classes from Class-I to V, which will be upgraded to Class-VII for 2004 academic session and the Academy has been denied "No Objection Certificate" by the Govt. of Manipur, but the Academy was exploring to obtain No Objection Certificate. Under the circumstances, the case of the Academy for affiliation to the Council for the Indian Schools Certificate Examination, New Delhi maybe considered.

9. In reply to the said application of the Council dated 07.02.2004, Education

Officer, Council for the Indian School Certificate Examinations under his letter dated 16.02.2004 informed the Academy that only when the Academy obtained "No Objection Certificate" from the Department of Education, Govt. of Manipur, the Provisional Affiliation of the Academy will be considered. The Petitioners again approached the Commissioner (Education/S), Govt. of Manipur by filing a representation dated 10.03.2004 (Annexure-A/9 to the writ petition) for reviewing the order dated 07.01.2004, and the said representation dated 10.03.2004 reads as follows:

Date: 10 March, 2004

To,

The Commissioner (Edn/s),

Govt. of Manipur.

Sub: Request for No Objection Certificate (NOC) for affiliation to Council for the Indian School Certificate Examination (ISCE), New Delhi.

Sir,

Kindly refer to our request letter for NOC dated 4th August 2002 and subsequent correspondence No. 2/11/2002-SE(s).

I am aware of the orders issued by the Commissioner (Edn/s) in the name of His Excellency Governor of Manipur, not to issue NOC to the Schools of Manipur for affiliation to CBSE or ISCE (dated 7th January 2004).

In this regard, I beg to state that till date; (1) There is not a single school in the State of Manipur affiliated to ISCE and (2) There are only about 20(twenty) schools in the State of Manipur affiliated to CBSE, more than half of these are centrally managed schools, catering primarily to the needs of the children of Central Govt. employees in the State. Further, most of these schools were affiliated to CBSE more than a decade ago.

It is, therefore, factually erroneous to deny NOC for affiliation on the assumption that "the Manipur in the last few years has been decreasing fast, as a result of affiliation of more and more schools of the State of Manipur to the CBSE and ISCE.

On the basis of the circumstances cited above, may I request you to kindly review your earlier order and reconsider giving us NOC so as to facilitate early affiliation to ISCE.

Thanking you.

Yours faithfully, Sd/- Yangahan Phungshok Academic Dean Patkai Christian Academy

10. The Petitioners having no alternative approached this Court by filing the

present writ petition for quashing the said order of the Govt. of Manipur dated 07.01.2004 and also for a direction to the State Govt. i.e. the Respondent No. 1, to issue "No Objection Certificate" in favour of the Patkai Christian Academy so as to enable the Academy to seek affiliation to the Council for the Indian School Certificate Examinations (ISCE), New Delhi. The main grounds for filing the present writ petition are that:

(1) the impugned order dated 07.01.2004 has infringed the fundamental rights of the Petitioners as guaranteed under Article 30(1) of the Constitution of India and as such the rights guaranteed by the Constitution to the minorities, whether on the basis of religion or language, to have the right to establish and administer educational institutions of their choice, have been denied for the Patkai Christian Academy;

(2) the impugned order dated 07.01.2004 is also violative of the fundamental rights guaranteed under Article 19(1)(g) of the Constitution of India inasmuch as restrictions imposed by the impugned order dated 07.01.2004 are neither said to be in the interest of the general public nor it can be said to be reasonable;

(3) the impugned order dated 07.01.2004 for imposing a blanket ban on the issue of "No Objection Certificate" for glooming and giving undue advantage to the Board of Secondary Education, Manipur (BSEM) is highly arbitrary;

(4) the State Govt. while passing the impugned order dated 07.01.2004 did not differentiate between the educational institutions already affiliated to the Board of Secondary Education, Manipur (BSEM) and seeking affiliation to the Council of Indian Schools Certificate Examination and those educational institutions, like the Patkai Christian Academy which were not yet affiliated to any Board but seeking a fresh affiliation to the Council for the Indian Schools Certificate Examinations, New Delhi. In the event of allowing affiliation by the CISE in respect of the institutions already affiliated to the Secondary Education seeking new affiliation to the Council for the Indian Schools Certificate Examinations, New Delhi, there maybe decreased in the number of candidates enrolled for HSLC Examination of the Board of Secondary Education, Manipur. But in the event of affiliation of the institute, like the Patkai Christian Academy which were not affiliated to the Board of Secondary Education, Manipur, to the Council for the Indian Schools Certificate Examinations, New Delhi, there shall be no question of decreasing the number of candidates enrolled for HSLC Examinations of the Board of Secondary Education, Manipur;

(5) the impugned order dated 07.01.2004 also suffers from vice of wednesbury unreasonableness;

(6) In the Manipur Secondary Education Act, 1972 enacted by the State Govt. to deal with the secondary education in the State of Manipur, under which the Board of Secondary Education was established, there is no provision under which it is mandatory for all the educational institutions including the minority institutions in Manipur to affiliate to the BSEM. Such being the situation there is no provision

for issuing the impugned order dated 07.01.2004 by the State Government forgiving undue advantage to the Board of Secondary Education, Manipur under the Manipur Secondary Education Act, 1972;

(7) the impugned order dated 07.01.2004 is patently unlawful as the State Government has no jurisdiction to issue the same by imposing a blanket ban on the issue of "No Objection Certificate" without considering all its institutions; and

(8) refusal of the Govt. of Manipur to issue "No Objection Certificate" by issuing the impugned order dated 07.01.2004 will arbitrarily harm the academic career of the students of the minority institution, i.e. the Patkai Christian Academy.

11. The State Respondents, i.e. the Respondents 1 and 2 filed their affidavit in opposition in the present writ petition. The ground for opposing the present writ petition as well as for issuing the impugned order dated 07.01.2004 was that on the receipt of a letter from the Chairman, Board of Secondary Education, Manipur that many schools in the state have now got affiliation with the CBSE and if more and more schools of the state go to CBSE or ISCE, the existence of the Board of Secondary Education, Manipur become threaten, the matter was placed before the Cabinet. The Cabinet in its meeting held on 03.05.2003 decided to stop further issuance of "No Objection Certificate" to the schools of the State of Manipur for affiliation to CBSE or ISCE. From the perusal of the affidavit in opposition of the Respondents 1 and 2, it is crystal clear that the refusal to issue of "No Objection Certificate" is only for protecting the interest of the Board of Secondary Education, Manipur at the cost of rights of the minority guaranteed under Article 30(1) of the Constitution of India.

12. In the above factual background, this Court is required to see as to whether the Patkai Christian Academy is really a minority institute contemplated in the Article 30 of the Constitution of India and also what are the criteria for deciding a particular institute of a state is a minority institute or not?

13. The Apex Court in re. the Kerala Education Bill, 1957 Spl. Ref. No. 1 of 1985, reported in AIR 1958 SC 956 (Seven Judges) held that the minority for the purposes of Articles 29 and 30 of the Constitution must be determined by reference to the entire population of the concerned state. The Apex Court in D.A.V. College, Bhatinda, etc. Vs. The State of Punjab and Others, held that the Arya Samaj is who were a part of the Hindu community in Punjab are a religious minority in the State of Punjab. The relevant portion of the judgment in DAV College (supra) is quoted hereunder:

5. * * * * On the other objection that the Arya Samaj is neither a linguistic or religious minority nor is it a religious denomination we held that it was unnecessary to go into the question of whether it is a separate religious denomination for the purpose of Article 26(1)(a) or a linguistic minority for the purposes of Article 30(1) because in our view it would be sufficient for the Petitioners if they could establish that they had a distinct script of their own and they were a religious minority, to invoke the protection of Articles 29(1) and

30(1). We had in those writ Petitions held that what constitutes a linguistic or religious minority must be judged in relation to the State inasmuch as the impugned Act is a State Act and not in relation to the whole of India. In this view we rejected the several contentions which are also urged in these petitions namely that Hindus being a majority in India are not a religious minority in Punjab and held that the Arya Samaj is who are part of the Hindu Community in Punjab are a religious minority and that they had a distinct script of their own the Devnagri which entitled them to invoke the guarantees under the aforesaid provisions of the Constitution.

The Apex Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, had discussed the important point in order to determine the existence of a religious or linguistic minority in relation to Article 30, what is the unit the state or the country, as a whole? and held that the concerned state would be the unit. Para-74 and 75 of SCC in T.M.A. Pai Foundation and Ors. (supra) are quoted hereunder:

74. We now consider the question of the unit for the purpose of determining the definition of "minority" within the meaning of Article 30(1)." "75. Article 30(1) deals with religious minorities and linguistic minorities. The opening words of Article 30(1) make it clear that religious and linguistic minorities have been put on a par, in so far as that article is concerned. Therefore, whatever the unit whether a state or the whole of India for determining a linguistic minority, it would be the same in relation to a religious minority. India is divided into different linguistic States. The States have been carved out on the basis of the language of the majority of persons of that region. For example, Andhra Pradesh was established on the basis of the language of that region viz. Telugu. "Linguistic minority" can, therefore, logically only be in relation to a particular State. If the determination of "linguistic minority" for the purpose of Article 30 is to be in relation to the whole of India, then within the State of Andhra Pradesh, Telugu speakers will have to be regarded as a "linguistic minority". This will clearly be contrary to the concept of linguistic States.

14. From the ratio laid down by the Apex Court for determining the minorities contemplated in Article 30 of the Constitution of India whether based on religion or language, the concerned state in which the educational institute is established shall be the unit and such being the situation, this Court is required to see as to whether the Christian population of the State of Manipur or the residents of the State of Manipur professing Christian religion is a minority in the State of Manipur. In this regard, the learned Counsel of both the parties had agreed to refer to "the Statistical Hand Book of Manipur, 1999 printed and published by the Directorate of Economics and Statistics, Govt. of Manipur, Imphal for the purposes of finding out the population of the State of Manipur by religion according to 1991 census. According to the population of religion of the 1991 census, out of the total population of Manipur, i.e. 18,37,149; Christian population is only 6,26,669. Therefore, the Christians are minorities in the State

of Manipur. As stated earlier, what is expressed in the term of a right under Article 30(1) in fact describes the institution in respect of which the protection of Article 30(1) can be claimed. Thus, the educational institute, i.e. the Patkai Christian Academy, that is the minority institute which had been established by a minority can claim the right to administer it under Article 30(1) of the Constitution of India.

15. After finding that the Patkai Christian Academy is a minority institute contemplated in the Article 30 of the Constitution of India, this Court is required to see as to whether the minority institutions, like the Patkai Christian Academy, have the right to establish and administer the said educational institutions of their choice by affiliating to the Council for the Indian Schools Certificate Examinations, New Delhi and denial of their rights by the State Government by issuing the impugned order dated 07.01.2004 is justified or not. Mr. N. Kotiswor Singh, the learned Counsel for the Petitioners in order to solidify his submissions that the minorities, i.e. Christian of the State of Manipur, have the right guaranteed by the Article 30(1) of the Constitution to seek affiliation of the "Patkai Christian Academy, i.e. Minority Institution," to the Councils of their choice, i.e. the Council for the Indian Schools Certificate Examinations, New Delhi, refer the following decisions of the Supreme Court:

- 1) In re The Kerala Education Bill 1957. Spl. Ref. No. 1 of 1958, reported in AIR 1958 SC 956 (V 45 C 136) (7 Judges) (supra);
- 2) State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.,
- 3) State of M.P. and Anr. v. Thakur Bharat Singh, reported in AIR 1967 SC 1170 (5 Judges);
- 4) The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, (9 Judges);
- 5) All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others, (3 Judges);
- 6) Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others,
- 7) St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc., (6 Judges);
- 8) N. Ammad Vs. The Manager, Emjay High School and Others, (2 Judges);
- 9) Manager, St. Thomas U.P. School, Kerala and Another Vs. Commissioner and Secretary to General Education Department and Others,
- 10) C/M. St. John Inter College Vs. Girdhari Singh and Others,
- 11) Father Thomas Shingare and Others Vs. State of Maharashtra and Others,
- 12) Manager, St. Thomas U.P. School, Kerala and Another Vs. Commissioner and

Secretary to General Education Department and Others, ;

13) T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others,

16. Regarding the power of the State Govt. to impose restrictions on the right of minorities to administer un-aided institutions, the Apex Court in *Father Thomas Shingare* (supra) in para No. 19 of AIR, held that the Article 30(1) belongs to the same category as Articles 25, 26 and 29 and confers on minority's religious and linguistics, right to establish and maintain their own educational institutions without any interference or hindrance from the State. In other words, the minority should have right to live and should be allowed by the State to live their own cultural life as regards religious and language. Again the Apex Court in *Ahmedabad St. Xavier's College* (supra) held that Article 30(1) covered institutions imparting general secular education to achieve of Article 30 so as to enable children of minorities to go out in the world fully equip which will be wrong to read Article 30(1) has restricted the right of the minority to establish and administer of educational institutions of their own choice only two cases whether such institutions are concerned with language, script or culture of the minority.

17. Regarding the reasonable restrictions on the right of the minorities to establish and administer educational institutions and their choice, we can safely refer to the decisions of the Apex Court in: (i) *In Re. Kerala Education Bill, 1957* (supra) wherein the Apex Court held that the right to administer cannot be encompass the right to mal-administer, and (ii) *Unni Krishnan JP v. State of A.P.* (supra) wherein the Apex Court held that the minorities while exercising their rights to establish and administer educational institutions, commercialization of education cannot and should not be permitted.

18. Regarding the right of the minorities to administer and establish the minority's institution of their choice, we may also refer to the decisions of the Apex Court in (i) *State of Kerala v. Very Rev. Mother Provincial* (supra) that:

4. The impugned Act consists of 78 sections divided into 9 chapters. The main attack in the Petitions is against Chapter-VIII headed "private colleges" consisting of Sections 47 to 61 and some provisions of Chapter-IX, particularly Section 63. The High Court has declared that subsections (2) and (4) of Section 48, Sub-sections (2) and (4) of Section 49, Sub-sections (1), (2), (3) and (9) of Section 53, Sub-sections (2) and (4) of Section 56, Section (except to some extent) are offensive to Article 19(1)(f) in so far as citizen Petitioners are concerned and additionally, in so far as the minority institutions are concerned, offensive to Art 30(1), and therefore void. The Petitions were, therefore, allowed except two Petitions (OPS No. 2339 and 2796 of 1969) filed by Sree Sankara College Association and the Nair Service Society since the Petitioners were companies and were not entitled to the benefit of Article 30(1) not being minority institutions and not entitled to Article 19(1)(f) not being citizens. Section 63 was, however, held to offend Article 31(2) and not saved by Article 31A(1)(b) and this

declaration was in favour of all the Petitioners. It was also declared void as offending Article 30(1) in so far as the minority institutions were concerned. The rest of the Act was declared to be valid and the challenge to it was rejected. There was no order about costs.

8. Article 30(1) has been construed before by this Court. Without referring to those cases it is sufficient to say that the clause contemplates two rights which are separated in point of time. The first right is the initial right to establish institutions of the minority's choice. Establishment here means the bringing into being of an institution and it must be by a minority community. It matters not if a single philanthropic individual with his own means, founds the institution or the community at large contributes the funds. The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by a member of that community. It is equally irrelevant that in addition to the minority community others from other minority communities or even from the majority community can take advantage of these institutions. Such other communities bring in income and they do not have to be turned away to enjoy the protection.

9. The next part of the right relates to the administration of such institutions. Administration means "management of the affairs" of the institution. This management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right.

19. The Apex Court in *All Saints High School (supra)* held that while the state or any other statutory authority has no right to interfere with the internal administration or the management of the minority's institutions, the State can take regulatory measure to promote the efficiency and excellence of the educational standards and issue guidelines for the purposes of ensuring security of services of the teachers and other employees of the institutions.

20. The Apex Court in *Manager St. Thomas U.P. School Kerala and Anr. (supra)* held that "the right of minorities under Article 30(1) to establish and administer educational institutions had been judiciously considered as defined in minority's institution what is expressed in terms of a right under Article 30(1) in fact describes the institutions in respect of which protection of Article 30(1) can be claimed. It has, therefore, been held that unless the educational institutions have been established by a minority it cannot claim the right of the minority under Article 30(1).

21. From the careful perusal and application of judicial mind to the numerous cases cited by the learned Counsel for the Petitioners, mentioned above, it has been clear under the law that:

1) the State Govt. has a very limited power to impose any restriction on the right

of the minority to administer educational institutions so long as such institutions are un-aided by the State Govt.;

2) the very limited power of the State Govt. to impose restrictions on the right of the authority to administer un-aided minority institutions are only;

(a) to prevent nefarious practice of misusing school administration for making huge profit by collecting exorbitant sums from the parent by collecting such sum either as fees or donation;

(b) to prevent the management of the minority's un-aided institutions to collect money from persons as quid pro quo for giving them appointment on the teaching or non-teaching staff of such institutions;

(c) the State Govt. can take up actions to restrict on the right, of the minority to administer un-aided minority's institutions for preventing commercialized activities intended to reap rich dividends by holding education as a facade.

22. From the above discussions of the laws laid down by the Apex Court in the cases cited above, this Court is of the firm view that the right of the minorities guaranteed under Article 30(1) of the Constitution of India to establish and administer the said minority's unaided institute, i.e. the Patkai Christian Academy, of their choice by affiliating to the Council for the Indian Schools Certificate Examinations, New Delhi cannot be denied by the State Govt. by issuing the impugned order dated 07.01.2004 inasmuch as the reasons for denying or restricting the right of the minorities to establish and administer un-aided minority's institutions, i.e. the Academy Christian Academy, by their own choice by passing the impugned order dated 07.01.2004 do not come within the reasonable restrictions which can be imposed by the State Govt. to the un-aided minority's institutions according to the laws declared by the Apex Court mentioned above. Accordingly this Court has no alternative but to quash the impugned order dated 07.01.2004 and direct the Respondent Nos. 1 and 2 to issue "No Objection Certificate" in favour of the minority's institutions, i.e. the Patkai Christian Academy, so as to enable them to affiliate to the Council of their own choice, i.e. the Council for the Indian Schools Certificate Examinations, New Delhi expeditiously, preferably within a period of 2(two) months from the date of receipt of this judgment and Order. No order as to costs.