

(2020) 01 PAT CK 0073

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10283 Of 2019

S. M. Zaheer Alam

APPELLANT

Vs

National Council For Teacher Education And Ors

RESPONDENT

Date of Decision : 14-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 29, 29(2), 30, 30(1)
Bihar State Universities Act, 1976 — Section 33(A)(1), 46, 57(B), 60
National Commission for Minority Educational Institutions Act, 2004 — Section 2(g)
National Council For Teacher Education Act, 1993 — Section 14(3), 17(1)

Citation : (2020) 1 PLJR 562

Hon'ble Judges : Shivaji Pandey, J;Partha Sarthy, J

Bench : Division Bench

Advocate : P.N. Shahi, Sarva Deo Singh, Sanjay Kumar, Alka Verma, Sunil Kumar Singh, Md. Azimuddin, Ranvijay Singh

Final Decision : Disposed Of

Judgement

1. Heard learned counsel appearing for the respective parties.
2. In the present case, the petitioner is challenging the letter no. C/IC/5895/19 dated 27.04.2019, by which the University has refused to counter sign the list of teachers submitted by the petitioner-institution and directed to furnish the details about the manner they have been selected in order to verify whether the selection has been made by properly constituted Selection Committee under Section 57B of the Bihar State Universities Act, 1976 (hereinafter referred to as "the University Act").
3. The facts of this case are that petitioner-institution namely, S.M. Zaheer Alam Teachers Training College, has been created by minority community, granted recognition as minority institution by the order dated 16.08.2016 passed by the National Commission for Minority Educational Institutions, New

Delhi, and treated the same to be a minority institution covered under Section 2(g) of the National Commission for Minority Educational Institutions

Act, 2004. In this regard, a communication was made by the Minority Commission (Annexure-8 to this writ petition). The State Government vide letter

no.466 dated 29.09.1994 (Annexure-2 to this writ petition), granted permanent approval for establishment of Institution in terms of the Bihar Non-

Government Physical Training College and Non-Government Teachers Training College (Control and Regulation) Act, 1982, wherein it has been

mentioned that as per the judgment of the Honâ??ble Supreme Court in the case of St. Stephens College vs. University of Delhi, 50% seats will be

filled up as per the reservation policy of the State Government and rest 50% seats will be filled up by the College, giving liberty to keep the seats

reserved for the minority class of students.

4. The Lalit Narayan Mithila University (hereinafter referred to as â??the L.N.M. Universityâ?) in view of judgment in L.P.A. Nos. 1123 of 1995 &

1124 of 1995, vide memo no.704- 715/96 dated 28.02.1996 granted permanent affiliation to the petitioner-institution for B.Ed. Course. The National

Council for Teacher Education vide letter no.32606 dated 31.05.2015 (Annexure-4 to this writ petition) mentioned that the said institution was granted

recognition for conducting B.Ed. course of one year duration with an annual intake of 150 from the academic session 1998-1999 and ultimately, in

terms of Section 14(3) (a) of the NCTE Act, granted recognition to the petitioner-institution for conducting the B.Ed. course of two years duration

with an annual intake of 150 for three basic units of 50 students each from the academic sessions 2015-2016 subject to fulfillment of the conditions

mentioned below.

5. As it appears that as a result of failure to give proper reply, the National Council for Teacher Education vide letter no. 59372 dated 21.02.2019

issued show-cause to different institutions including the petitioner-institution, mentioning therein that Eastern Regional Committee in its meeting held on

10-11.02.2019, considered the aforesaid matter and observed that the institutions mentioned below did not furnish compliance report and accordingly,

show-cause was issued under Section 17(1) of the NCTE Act, 1993, to comply the conditions mentioned below within 21 days from the date of issue

of the letter for taking appropriate decision by ERC.

â??a. Approved faculty list (current) by the concerned affiliating body along with requisite documents.

b. Approved building plan by the concerned competent Govt. Engineer/Authority.

c. Approved building completion certificate by the concerned competent Govt. Engineer/Authority.

d. FDRs towards Endowment fund and Reserve fund after conversion into joint operation mode as prescribed in the NCTE Regulations, 2014.

e. Confirmation on website updates of the institutions with all details along with affidavit.â??

6. For compliance of conditions set up by the N.C.T.E., a request letter has been given to the University for counter signature attaching the affidavit

on non-judicial stamp of Rs.1000/- but, the University has not obliged the College and asked to furnish the details about the manner the teachers have

been selected in order to verify whether the selection has been made in terms of Selection Committee constituted under Section 57B of the Bihar

State University Act, 1976.

7. Learned counsel for the petitioner-institution submits that the action of the University is per se illegal as they cannot interfere in the matter of

working and running the institution by the management. They can regulate but, cannot control the activities of the management of the institution. He

further submits that the action, by which the University has demanded information with respect to constitution of Selection Committee for selection of

teachers, is nothing but infringing upon the right of the minority institution to run the institution.

8. In support of the submission, learned counsel for the petitioner has placed reliance on the following decision:-

(i) The Governing Body of Karim City College and Ors. vs. The State of Bihar and Ors. reported in 1984 PLJR 86

(ii) T.M.A. Pai Foundation and Others vs. State of Karnataka and Others reported in (2002) 8 S.C.C. 481.

(iii) Manager, Corporate Educational Agency vs. James Mathew and Others reported in (2017) 15 SCC 595.

9. On the basis of the aforesaid judgments, it has been submitted that the University is infringing upon the right of the minority to administer its

institution, hence, the impugned order is liable to be set aside.

10. A counter affidavit has been filed by the L.N. Mithila University, wherein it has been stated that the University is well within the power to get

information about the manner the selection of teachers has been done. It has also been stated that though the petitioner has right to run the college but,

not in unbridled manner. They have right to administer the institution but should not be maladministration. It has also been stated that the University

has right to regulate the working of Institution in order to ensure the academic standard is maintained and the teachers who have been appointed are

duly qualified in terms of the provisions of the University Act. It is further stated that the letter of the University is in terms of Clause 5.4 of the

N.C.T.E. Regulations as well as Section 57B of the Bihar University Act, 1976.

11. Learned counsel for the University submits that N.C.T.E. prescribes the number of ministerial staffs including teachers with proper qualification to

be appointed by the institution. He further submits that the University has right to regulate but, has no right to control, inasmuch as, the qualification of

teachers is to be fixed and examination is to be conducted by the University as per curriculum.

12. By making the aforesaid submissions, learned counsel for the University submits that this Court may not interfere with the impugned order passed

by the University and dismiss this writ petition.

13. In the present case, the question has been raised that refusing to grant "No Objection" will amount to interference in the administration of

management of the institution by the University authority. It has been submitted that they do have a right to regulate the functioning of the

management but, the University does not have a right to interfere with the management and working of the minority institution in view of provisions as

enshrined in Article 29 and 30 of the Constitution of India, which stipulates that "all minorities, whether based on religion or linguistic, shall have the

right to establish and administer educational institutions of their choice". The administration of educational institution includes the selection of teacher

of their choice and the Government can only ensure that those who have been appointed do possess the requisite qualification prescribed by the

University. Further, the provisions of Section 57B of the Bihar University Act, 1976, should be read down in the manner that the University has only

power to regulate in the matter of selection and not to interfere with the same.

14. It will be relevant to quote Article 29 and 30 of the Constitution of India, which read as under:-

â??29. Protection of interests of minorities. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on

grounds only of religion, race, caste, language or any of them.

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.â??

15. At the same time, it will also be relevant to quote Sections 46, 57B and 60 of the Bihar State Universities Act, 1976, which read as under:-

â??46. Contribution by Government to the University. - (1) The State Government shall contribute annually to the University fund a

recurring grant out of the consolidated Fund of the State which shall include all expenses of recurring nature.

(2) The State Government shall calculate the amount of annual recurring grant in consultation with the Vice â?? Chancellor and the amount

may be revised at the expiry of a period of every five years.

(3) The State Government may, from time to time, contribute such additional grants to the University funds, as it may deem fit having regard

to the need of expansion and development of the University or the College.

57.B. Constitution of Selection Committee.

(1) The Selection Committee for appointment to the posts of Assistant Professor, Principal in affiliated colleges shall be constituted by the

University as follows:-

(i) The Chairman of the governing body of the college or the person nominated by the governing body, who being one of its members, shall

be the Chairman of the Selection Committee.

(ii) Principal of the College.

(iii) Head of the department of the faculty concerned in the College.

(iv) Three experts, not below the rank of professor and two out of them should be experts of the subject, shall be nominated by the Vice-

chancellor of the concerned University. In case of such colleges, which have been notified/declared as minority educational institution,

three persons nominated on behalf of the Chairman of the College who shall be from the list of five persons preferably from the minority

community and who have been recommended by the Vice-Chancellor of the University concerned from the panel of experts proposed by the

Academic Council of the University concerned and three persons out of them should be subject experts.

(v) The Governing body of the College may nominate two such subject experts who are not connected with that college and those persons

have been recommended by the Vice-Chancellor out of the panel of Subject Experts approved by the Academic Council of the University

Concerned.

(vi) An academician representing SC/ST/OBC/Minority/Women/Differently-abled categories, if any of candidates representing these

categories it the applicant, to be nominated by the Vice-Chancellor, if any of the above members of the selection committee do not belong to

that category.

(vii) presence of five members of the Selection Committee, which shall include three subject experts, shall form the quorum for the meeting

or the Selection Committee.

60. The Governing Body.- (1) There shall be a governing body for the management and administration of each affiliated College other than

a College owned and maintained by the State Government or a College established and administered by a minority community on the ground of religion or language or an affiliated technical or medical college.

It shall consist of following members-

- (i) Principal of the College- Ex Officio,
- (ii) a member elected by and from amongst the teachers of the College,
- (iii) a representative of the University nominated by the Vice Chancellor.
- (iv) an officer of the State Government posted in the district, being not below the rank of a sub- divisional magistrate, nominated by the Vice Chancellor.
- (v) a member elected by such donors from amongst themselves as have donated at least twenty five thousand rupees to the college,
- (vi) One member to be nominated by the Vice Chancellor, who is a member of the Parliament or the State Legislature and mainly resides in the district of the area in which the college is situated; and
- (vii) One member co-opted by the Governing body from amongst such educationists or persons residing in the district where the College is situated as are reputed for their academic interest.

(2) The term of office of the member of the Governing body, their powers and functions shall be such as are prescribed by the Statutes.

(3) Any act or proceedings of the Governing body of affiliated Colleges shall not be invalid merely because of any vacancy or vacancies in its membership.

(4) The Vice Chancellor shall constitute an adhoc committee for the management of the College so long as Governing body is not constituted in accordance with the provisions contained in sub-section (1).

(5) The Governing body / Managing Committee for the management and administration of a College owned and maintained by the Government, or established and administered by a minority community, on the ground of religion or language and declared, from time to time, as such by the State Government according to yard stick laid down by it, or of any affiliated technical or medical college, shall be constituted in accordance with the provisions prescribed in the Statutes.â??

16. Statute No.32 of the University Act deals with the management and constitution of Governing Body and clause -1 thereof, is as follows:-

32. STATUTES REGARDING GOVERNING BODY

Management and constitution of Governing Body.

1. There shall be a Governing Body constituted for management and administration of every admitted college other than college owned and

maintained by the State Government or College established and administered by religious linguistic minorities or admitted as Technical or

Medical colleges which shall consist of the following members:-

(i) Principal of the College- Ex- officio.

(ii) One teacher elected from and by the teachers of the College.

(iii) One representative of the University nominated by the Syndicate.

(iv) One Government Officer of the State Government not below the rank of the sub-divisional Magistrate posted in the district nominated by

the Syndicate.

(v) One member elected from amongst themselves by Donors who have donated not less than Rs.25,000/- to the college.

(vi) One member either of Parliament or the State Legislature residing in the district preferably of the locality where the college is situated

nominated by the Syndicate.

(vii) One member co-opted by the Governing Body from amongst the educationist or persons noted for their academic interest residing in the

district where the college situated;

Provided that in the case of colleges owned and maintained by the Government, the Governing Body consisting of seven members shall be

constituted by the Syndicate in consultation with the State Government;

Provided further that in the case of colleges established and administered by minorities based on religion or language or Medical /

Engineering colleges other than those maintained by the Government the Governing Body shall be constituted by the Syndicate after

considering the advice of the sponsors authorities of the college concerned. But where however the Syndicate is not able to satisfy itself

about the bonafides of sponsors authorities of any such college or for any other reason it may constitute an Ad-hoc committee consisting of not

more than 5 members.â??

17. Before dealing with the provisions, it will be appropriate to consider the judgments dealing with the issue of right and privilege of management of

minority institution. In this line, first judgment has been given by the Honâ??ble Supreme Court in the case of Kerala Education Bill (A.I.R. 1958

S.C. 956), wherein the Honâ??ble Supreme Court has upheld certain regulatory provisions in the matter of administration of the minority institution

but, not to interfere in the administration of minority institutions. The Honâ??ble Supreme Court did not uphold the validity of Clause- 14 and 15 of the

Kerla Education Bill. These Clauses authorizes to take over any aided school under certain circumstances. The Honâ??ble Supreme Court has found

that those clauses amounted to expropriation of the schools. Such stipulations leads to surrender of the right conferred to Minority Institution under

Article 30 of the Constitution.

18. This matter again came for consideration in the case of The Ahmedabad St. Xaviers College Society and another etc. vs. State of Gujarat and

another reported in AIR 1974 S.C. 1389, wherein the Honâ??ble Supreme Court has considered the right of minorities to establish the minority

institution and administer the same properly. The Honâ??ble Supreme Court has considered the judgment rendered in the case of State of Kerala

Etc. vs. Very Rev. Mother Provincial etc. reported in 1971 (1) S.C.R. 734, and held that the Government has right to regulate the courses of study,

the qualifications and appointment of teachers, the conditions of employment of teachers, the health and hygiene of students, facilities for libraries and

laboratories are all comprised in matters germane to affiliation of minority institutions. These regulatory measures for affiliation are for uniformity,

efficiency and excellence in educational courses and do not violate any fundamental right of the minority institutions. It has further been held that the

right to administer is said to consist of four principal matters. First is the right to choose its Managing or Governing Body. It is said that the founders of

the minority institution have faith and confidence in their own committee or body consisting of persons selected by them. Second is the right to choose

its teachers. It is said that minority institutions want teachers to have compatibility with the ideals, aims and aspirations of the institution. Third is the

right not to be compelled to refuse admission to students. In other words, the

minority institutions want to have the right to admit students of their choice subject to reasonable regulations about academic qualifications. Fourth is the right to use its properties and assets for the benefit of its own institution, but the right of administration does not mean the right of maladministration. Autonomy in administration means the right to administer effectively and manage and conduct the affairs of the institution. The University has a right to examine as to whether the Management of the minority institution is properly administering or they are not properly administering the minority institution. If there is maladministration, the university will take steps to cure the same.

19. It will be relevant to quote paragraph nos. 18, 19, 20 and 41 of the aforesaid judgment, which are as follows:-

18. This Court in *State of Kerala v. Very Rev. Mother Provincial, etc.* (1971) 1 S.C.R.734 = (AIR 1970 S.C. 2079) explained the necessity and importance of regulatory measures of system and standard of education in the interest of the country and the people. When a minority institution applies for affiliation, it agrees to follow the uniform courses of study. Affiliation is regulating the educational character and content of the minority institutions. These regulations are not only reasonable in the interest of general secular education but also conduce to the improvement in the statute and strength of the minority institutions. All institutions of general secular education whether established by the minorities or the non-minorities must impart to the students education not only for their intellectual attainment but also for pursuit of careers. Affiliation of minority institutions is intended to ensure the growth and excellence of their children and other students in the academic field. Affiliation mainly pertains to the academic and educational character of the institution. Therefore, measures which will regulate the courses of study, the qualifications and appointment of teachers, the conditions of employment of teachers, the health and hygiene of students, facilities for libraries and laboratories are all comprised in matters germane to affiliation of minority institutions. These regulatory measures for affiliation are for uniformity, efficiency and excellence in educational courses and do not violate any fundamental right of the minority institutions under Article 30.

19. The entire controversy centers round the extent of the right of the religious and linguistic minorities to administer their educational

institutions. The right to administer is said to consist of four principal matters. First is the right to choose its managing or governing body. It

is said that the founders of the minority institution have faith and confidence in their own committee or body consisting of persons selected

by them. Second is the right to choose its teachers. It is said that minority institutions want teachers to have compatibility with the ideals,

aims and aspirations of the institution. Third is the right not to be compelled to refuse admission to students. In other words, the minority

institutions want to have the right to admit students of their choice subject to reasonable regulations about academic qualifications. Fourth

is the right to use its properties and assets for the benefit of its own institution.

20. The right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not in an absolute

right. This right is not free from regulation. Just as regulatory measures are necessary for maintaining the educational character and

content of minority institutions similarly regulatory measures are necessary for ensuring orderly, efficient and sound administration. Das,

C.J. in the Kerala Education Bill case 1959 SCR 995 + (AIR 1958 SC 956) (supra) summed up in one sentence the true meaning of the right

to administer by saying that the right to administer is not the right to mal-administer.

41. Autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institutions. The

distinction is between a restriction on the right of administration and a regulation prescribing the manner of administration. The right of

administration is day to day administration. The choice in the personnel of management is a part of the administration. The university will

always have a right to see that there is no maladministration. If there is maladministration, the university will take steps to cure the same.

There may be control and check on administration in order to find out whether the minority institutions are engaged in activities which are

not conducive to the interest of the minority or to the requirements of the teachers and the students. In (1971) 1 SCR 734 = (AIR 1970 SC

2079) (supra) this Court said that if the administration goes to a body in the selection of whom the founders have no say, the administration

would be displaced. This Court also said that situations might be conceived when they might have a preponderating voice. That would also

affect the autonomy in administration. The provisions contained in section 33 A(1) (a) of the Act have the effect of displacing the

management and entrusting it to a different agency. The autonomy in administration is lost. New elements in the shape of representatives of

different types are brought in. The calm waters of an institution will not only be disturbed but also mixed. These provisions in section 33A

(1) (a) cannot therefore apply to minority institutions.â??

20. Identical issue came for consideration before this Court in the case of The Governing Body of Karim City College and Others vs. The State of

Bihar and Others reported in 1984 PLJR 86, in which provision was embodied that termination of employee is required to be approved by the

Commission, which was challenged to declare the same as ultra vires. This Court after considering the earlier judgments has held that Section 57A is

ultra vires to Article 30 of the Constitution of India. The portion which was impugned envisaged that the Governing Bodies of affiliated minority

colleges based on religion and language shall appoint, dismiss, remove or terminate the services of teachers or take disciplinary action against them

with the approval of the College Service Commission. This Court further held that it amounts to infringing upon the right of the minority institution. It is

not regulatory in nature but, it amounts to interfering in the administration in the matter of taking disciplinary action against the teacher, who has been

found to be involved in wrong doing and ultimately, declared the same to be ultra vires.

21. It will be relevant to quote paragraph nos. 4 and 5 of the judgment in the case of Governing Body of Karim City College (supra) said judgment,

which reads as under:-

â??4. The decisions dealing with the meaning and scope of Article 30 are numerous. The first important decision given by the Supreme

Court is in re: Kerala Education Bill. 1957, (A.I.R. 1958 Supreme Court, 956). Later, the article was considered at considerable length by a

Bench of nine Judges in St. Xavier College v. State of Gujarat (AIR 1974

Supreme Court, 1389). The position appears to be well settled that while the right of the minorities to establish and administer educational institutions of their choice cannot be violated, the reasonable restrictions by way of regulations for the purpose of ensuring educational standards can be legally placed. As was observed in *All Saints High School v. Government of Andhra Pradesh* (AIR 1980 SC 1042), the conditions of service which prescribed minimum qualification for the staff, their pay scales and laying down of safeguard which must be observed before they are removed from the service, are permissible measures of a regulatory character. These measures are adopted for improving and maintaining the educational standards of the institutions themselves. The question arises as to whether the impugned provision as contained in the Proviso to Section 57A (1) can be upheld as a permissible regulatory measure.

5. The Proviso challenged in the present case appears to be similar to several provisions which were considered in *All Saints High School v.*

Government of Andhra Pradesh (A.I.R. 1980 S.C. 1042). Certain sections of the Andhra Pradesh Recognised Private Educational

Institutions Control Act were challenged in their applicability to minority institutions and I propose to refer to the decision of the Supreme

Court in respect to Sections 3 (1) and 3 (2) of the Act. Section 3 (1) provided that the service of a teacher employed in any private institution

shall not be terminated except with the prior approval of the competent authority and in case of a contravention of this provision, the

affected teacher shall be deemed to continue in service. Section 3 (2) stated that where the proposal to terminate the service of a teacher is

communicated to the competent authority, that authority shall, if it is satisfied that there were adequate and reasonable grounds for such

proposal, shall approve it. The Supreme Court by majority opinion held Sections 3 (1) and 3 (2) to be violative of Article 30 of the

Constitution and, therefore, not applicable to the minority institutions. Mr. Justice Murtaza Fazal Ali observed that the State or any other

authority cannot under cover of adopting regulatory measures destroy the administrative autonomy of the minority institutions or to

interfere with the core of the management of the institution so as to render the

right of administration of management nugatory or illusory. It

is the inherent and fundamental right of the institution to deal with its employees or teachers and take necessary action against them. The

State could have taken care to make proper rules giving sufficient powers to the management in the manner it was to act and which was not

done. The induction of the outside authority over the head of the institution and making its decision final and binding on the institution was an

interference which could not be upheld. Chief Justice Chandrachud agreed with the conclusion of Mr. Justice Murtaza Fazal Ali so far as these two

sub-sections were concerned. The Chief Justice was invited by the respondent to read down Sections 3 (1) and 3 (2) so as to preserve their universal

application, but the suggestion was rejected. Mr. Additional Advocate General, appearing on behalf of the State in the present case also attempted to

save the impugned Proviso by a similar argument. He contended that the Statutes framed under Section 59 read with Section 34 of the Universities

Act give adequate guidelines for the exercise of power by the College Service Commission.â??

22. Identical issue also came for consideration before the Honâ??ble Supreme Court in the case of T.M.A. Pai Foundation and Others vs. State of

Karnataka and Others reported in (2002) 8 S.C.C. 481, where the issue with respect to right of minority to establish and administer the educational

institution as envisaged in Article 30(1) read with Article 29(2) of the Constitution of India came for consideration. The same has been culled out in

paragraph no.161 and the answer of the same has been culled out Question No.5(C), which reads as under:-

â??Q5(c). Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over

governing bodies, conditions of affiliation including recognition/ withdrawal thereof, and appointment of staff, employees, teachers and

Principal including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational

institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to a

university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-

teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling

agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the

management itself.

For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service,

a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be

presided over by a Judicial Officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions

bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the state, without

interfering with the overall administrative control of the management over the staff.

Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee.â??

23. Again this issue came for consideration before the Honâ??ble Supreme Court in the case of *Manager, Corporate Educational Agency vs. James*

Mathew and Other reported in (2017) 15 S.C.C. 595. The Honâ??ble Supreme Court after placing reliance on the decision rendered in the case of

T.M.A. Pai Foundation (supra) and other large number of cases has held that the management of the minority educational institution makes a

conscious choice of a qualified person from the minority community to lead the institution, either as the Headmaster or Principal, the Court cannot go

into the merits of the choice or the rationality or propriety of the process of choice. In that regard, the right under Article 30(1) of the Constitution of

India is absolute.

24. In view of the aforesaid discussions, it is very much clear that all minorities, whether based on religion or language, shall have the right to establish

and administer educational institutions of their choice. The right of administration includes the selection, appointment of teacher, headmaster and staffs

but, the Government would only ensure that those who have been selected have formally been appointed following the procedure of law and also

ensure those who were appointed possessing the requisite qualification fixed by the University in order to maintain the Pan India Standard comparing

with the standard of other educational institutions. In the case at hand, by the impugned letter, the University has refused to grant "No Objection"

and asked the petitioner- institution to inform the university as to whether the Selection Committee has been constituted in terms of Section 57B of the

Universities Act, 1976, for the purposes of selection of teachers in different faculties. Insistence has been made that the institution must satisfy, that

the Selection Committee for the appointment of teachers has been constituted in terms of recommendation of the University. The management has

right to appoint the Principal and teachers of their choice. No authority would interfere or tinker with the right of running the institution belonging to the

minority community. Sub-section 5 of Section 60 of the Bihar Universities Act, 1976, prescribes the Governing body/Managing Committee for the

management and administration of a College owned and maintained by the Government, or established and administered by a minority community, on

the ground of religion or language and declared, from time to time, as such by the State Government according to yardstick laid down by it. So, the

Government can ensure that the yardstick framed by the University has been satisfied by the minority institution. This provision itself shows that the

Legislature has conferred the power to the Government to fix yardstick within which the management of minority institution would function and

indicates the power which is regulatory in nature.

25. Section 57B of the Bihar State Universities Act, 1976, is the impugned provision having been challenged on the ground that this provision infringes

upon the right of the minorities to administer the institution as they cannot ask the minority institution as to whether the selection has been done on the

guidelines provided under Section 57B of the Bihar State Universities Act, 1976. In the case of The Ahmedabad St. Xaviers College Society and

another (supra) it has been held that minority institution has a right to select the persons of their choice and it includes the constitution of the

management. The constitution of Selection Committee is one of the most important facets and concomitant of running the administration of private institution. So, the University under the regulatory provision would ensure that the members of selection Committee did have requisite qualification but, cannot control the activities of the management of the institution. So, Section 57B of the University Act should be read down in the manner that University Commission will have to verify as to whether those who have been members of the Selection Committee, satisfy the proper qualification as has been provided under Section 57B of the Bihar State Universities Act 1976, to ensure that a fair procedure has been followed in the matter of selection of teachers and it has also to be ensured that the teacher who have been appointed possess the necessary and proper qualification prescribed by the University in order to maintain the teaching standard of the college to ensure that the students who are being taught by those teachers, must be able to compete with the products of other institutions. So, the letter dated 27.04.2019 is to be read down in the manner that the college will be obliged to produce the records in order to show that the persons who were the member in the Selection Committee are qualified persons and those persons who have been selected as teachers are possessing the necessary and requisite qualification. The University cannot interfere with the management of the institution but, they have authority to regulate.

26. In such view of the matter, the impugned letter no. C/IC/5895/19 dated 27.04.2019 is modified to the extent that the petitioner-institution will satisfy the University only to the extent that the persons, who were in the Selection Committee, were holding the requisite qualification and those who have been selected in different streams are possessing the necessary qualification in order to maintain the academic standard, so that the students of the institution can compete with the rest of the students coming out from different institutions.

27. With the aforesaid observations and directions, this writ petition stands disposed of.