
(2001) 09 RAJ CK 0055

In the Rajasthan High Court

Case No : Civil Special Appeal (W) No. 58 of 2001

State of Rajasthan and Others

APPELLANT

Vs

Vijay Shanti Educational Trust

RESPONDENT

Date of Decision : 21-09-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 25, 26, 27, 28
National Commission for Minorities Act, 1992 — Section 2

Citation : (2003) 4 RLW 2568

Hon'ble Judges : N.P. Gupta, J;M.R. Calla, J

Bench : Division Bench

Advocate : L.R. Mehta, R.L. Jangid, A.A.G, for the Appellant; M.S. Singhvi, for the Respondent

Final Decision : Allowed

Judgement

Calla, J.—This Special Appeal (Writs), preferred by the State of Rajasthan and the Rajasthan Minorities Commission, is directed against the judgment and order dated 15th of September, 2000, filed u/s 18 of the Rajasthan High Court Ordinance, 1949, passed by the learned Single Judge in S.B. Civil Writ Petition No. 2684/2000, whereby the petition has been disposed of with certain.

2. The original petition had been filed by Vijay Shanti Educational Trust, Chennai, against the respondents - State of Rajasthan through the Secretary, Medical and Health Department, Government of Rajasthan; the Secretary; Home Department, Government of Rajasthan, and the Rajasthan Minorities Commission, on 4th of August, 2000, seeking a declaration that the orders dated 1.8.2000 (Annex. 16) and 3.8.2000 (Annex. 17) with the petition, be declared to be illegal and be quashed, with consequential benefits to the petitioner and by an appropriate writ, order or direction, it may be declared that the Jain community is a religious minority in the State of Rajasthan and is entitled to exercise its right conferred by Article 30 of the Constitution of India and further, that the respondents be directed to permit the petitioner to grant admission to BDS

Course form Academic Session 2000-2001 against 50 % management quota in exercise of its rights as an Institution run by the religious minority and the respondents be restrained from interfering with the exercise of rights of the petitioner in the matter of admission so far as the management quota (to the extent of 50% of the seats) of a religious minority institution is concerned.

3. The petitioner claims to be a Charitable Trust, formed by Shri V.C. Jain with Sarva Shri Suresh Kumar Jain, Chandra Kumar Jain and Naresh Kumar Jain as the Trustees. The trust deed dated 24th February, 1999 has been placed on record as Annex. 1. The petitioner further claims that the petitioner - trust, which will be hereinafter referred to as "the Trust", had been created, inter alia, with the object to establish, support, upgrade, maintain, run and/or grant aid and other financial assistance to the schools, Vidhya mandirs, colleges, technical institutes, universities, libraries, reading rooms, hostels, boarding houses, laboratories etc. and to develop and advance education and diffusion of knowledge amongst the public in general. One of the objects of the petitioner Trust is that it will be established and maintained by the members of the Jain Community for charitable purposes. The petitioner Trust has been named "Vijay Shanti" which is the name of famous Jain Saint Acharya Vijay Shanti Surishwar Ji. The name of the Dental College at Udaipur is also in the name of Jain Saint Acharya Darshan Sagar Ji and the Trust therefore, claims to be an Institute established and administered by religious minority.

4. It has further been stated that Shri V.C.Jain, who has created this Trust, had already created two Trusts for charitable educational purposes in the city of Chennai. The names of these Trusts are Shri Educational Trust. It has been stated that these Trusts are actively working in Chennai for advancement of its objects and are running the educational institutions at Chennai in the names of Shri Chandra Prabhu Jain College, Shri Guru Shanti Women's College and Shri Guru Shanti Higher Secondary School and that all these institutions are for charitable purposes. It has been then stated that Shri V.C. Jain, being of Rajasthan origin, decided to establish educational institution in Rajasthan and, therefore, created this Trust. After creation of this Trust, the land measuring 10 Bighas was purchased at Udaipur for establishment of a Dental College and a Dental Hospital attached to it- After completing the request formalities, the petitioner Trust has also constructed building for college and hospital, the total constructed area measuring 50,000 square feet. By this lime, the petitioner has opens Rs. 3 Crores approximately in the establishment of Dental College and the Dental Hospital attached to it at Udaipur. It is the further case "of the petitioner that the Parliament has enacted Dentists Act, 1948 (hereinafter referred to as "the Act of 1948"), for regulating the education in the Dental Science. Under the Act of 1948, Dental Council of India has been established for carrying out the objects of the Act of 1948. That the Trust applied to the Dental Council of India for its permission to open a Dental College at Udaipur after creating infrastructure as per the norms of the council. The Council has conducted the inspection of the College constructed by the petitioner Trust and the facilities

provided therein. The Council has thereafter submitted its recommendation to the Government of India for grant of permission to the Trust to start and run the Dental College at Udaipur As per recommendations contained in the letter dated 25th January, 2000, & New Dental College has been established in the name of Darshan Dental College at Udaipur with 100 seats. The Trust had also moved the State Government for grant of Essentiality Certificate/N.O.C. for opening the dental college at Udaipur and the State Government vide letter dated 15th May, 1999 recommended the grant of such certificate with certain conditions. The University of Rajasthan initially granted No-objection Certificate on 24th August, 1999 for granting affiliation to the Trust and after conducting Inspection, wrote a letter dated 18th November, 1999 to the Dental Council of India that the petitioner Trust has adequate infrastructure and clinical material to fulfill the requirements of syllabus and regulations laid down by the Dental Council of India. In the meantime, the Trust applied to the State Government on 30.6.99 that whereas it represents a religious minority, it may be granted the status of religious minority institution. The Trust represented before the State Government that it has already obtained certificate of religious minority from the State Minorities Commission of Tamil Nadu on 23rd June, 1999. Thereupon, the Officer on Special Duty, Medical Govt. of Rajasthan informed the Trust vide its letter dated 7th September, 1999 that it should approach the Minorities Commission of Rajasthan for obtaining the status of the Religious Minority for the Trust. By this time, the Trust had already approached the Minority Commission of Rajasthan through its letter dated 3rd July, 1999 on the letter head of Darshan Dental College and Hospital, for grant of certificate of religious minority. The President of Minorities issued a "CERTIFICATE TO WHOMSOEVER IT MAY CONCERN" on 16th September, 1998 to the following effect:-

"This is to certify that Vijay Shanti Educational Trust, No. 3 Bleachers Road, Chennai-600002, represented by its Chairman Shri V.C. Jain & other Jain members is administered and managed by members of Jain Minority Community. The said trust is thus a Jain Minority Educational Institution. This trust have established and are administering and managing Darshan Dental College, Udaipur."

5. A letter dated 16th September, 1999 was also written to the Chief Minister of Rajasthan by the President of the Rajasthan Minorities Commission, that the proposal to include "Jains" in minority was pending before the Commission and since the Government of Tamil Nadu has already given the minority status to the Vijay Shanti Education Trust, action as per rules be taken for grant of minority status to this Institution in Rajasthan. After obtaining the certificate dated 16.9.99 as above, the Trust approached the State Government for permitting it to have 50 % admission in the First Year B.D.S. Course at its own level.

6. Before the State Government could take any decision on the application of the Trust, the President of the Minorities Commission of Rajasthan sent a letter dated 2nd February, 2000 to the Trust informing it that the certificate dated 16th

September, 1999 has been cancelled pending final decision to be taken by the Commission. A notice to this effect had also been published in the newspaper "Dainik Bhaskar", Jaipur Edition dated 4th February, 2000. Aggrieved from this communication dated 2nd February, 2000, the Trust preferred a writ petition, being No. 373/2000 before this Court. After hearing the parties on 19th May, 2000, the Court directed the petitioner to Submit a representation to the Government and the Government was directed to decide the same. The Trust then, submitted a representation before the Medical and Health Department, Government of Rajasthan, Jaipur on 25th May, 2000 and in response to the same, it received a reply from the Secretary, Medical & Health Department that the representation was required to be submitted to the Secretary, Home Department, and the Trust accordingly submitted the representation dated 12.6.2000 to the Home Department. Since the representation was not decided, when the matter came up before the Court on 18.7.2000, the Court directed the State Government to decide the representation of the petitioner Trust as early as possible but in no case later than 31st of August, 2000, but the State Government shall permit the Petitioner to give admission in the Dental Course in its capacity as a minority institution subject to the decision on the representation made by the petitioner and the petition was thus disposed of on 18.7.2000 at admission stage with the further clarification that if any adverse order is passed on the petitioner's representation, the petitioner will be at liberty to challenge the same. The Trust then issued the advertisement dated 30th July, 2000, inviting applications for admission to the First Year of B.D.S. Course for the Academic Year 2000 - 2001 to which a corrigendum was issued on 1st September, 2000. However, the state Government (Home Department), by its order dated 1st August, 2000, rejected the representation and the rejection was communicated by fax. Another order had been issued by the Medical & Health Department of the Government of Rajasthan on 3rd August, 2000 to the same effect and communicated to the Trust. These two orders dated 1st August, 2000 (Annex. 16) and 3rd August, 2000 (Annex. 17) were again challenged by way of writ petition under Article 226 of the Constitution of India filed on 4.8.2000 out of which the present appeal arises.

7. It appears that in the writ petition, Caveat was entered on behalf of the State of Rajasthan and, thereafter, when the matter came up before the Court on 22nd August, 2000, straight - way the matter was posted for final disposal on 28th of August, 2000. A reply dated 17th of August, 2000 had already been filed on behalf of respondent No. 3, i.e., the Rajasthan Minorities Commission, seeking to traverse the claim of the Petitioner on the basis that Notification dated 23rd October, 1993 had been issued by the Ministry of Welfare, Government of India, in exercise of the powers conferred by Clause (c) of Section 2 of the National Commission for Minorities Act, 1992 (Act 1992), which will be hereinafter referred to as "the Act of 1992" and that in terms of this Notification, Jains had not been included in the 5 minority communities. The Notification (Annex. R. 3/1), with the reply as aforesaid, shows that 5 communities, as under, were declared

as minority communities :-

1. Muslims.
2. Christians.
3. Sikhs.
4. Buddhists.
5. Zoroastrians (Parsies).

8. The case of the Commission was that whereas Jains were not included in these minority/Communities, the present Trust could not claim the status of the minority. It was also pleaded that according to the objects of the Trust, it was not meant only for the members of the Jain community alone and it was open for the welfare of the persons in general and so also, it could not be said to be a religious minority community Institutor, so as to claim the benefits of Articles 29 and 30 of the Constitution of India.

9. While replying para 25 of the writ petition, it was stated that the Trust had produced certain figures based on 1991 census with bifurcation of the population on percentage basis, but these figures were not supported by any document and further that, it was a pure question of fact which could not be determined while exercising extra ordinary powers by this Court under Article 226 of the Constitution of India. It was also stated that the representation of the Trust had been rejected on entirely different grounds and that these figures were not relevant, so far as the main controversy is concerned. As per para 25 of the petition, the figures based on 1991 census, were as under :-

Religious Communities.

Percentage to

Total population

Percent age Decadal

Growth Rate 1981-91

Hindu

89.08

+28.09

Muslim

08.01

+41.46

Sikh

01.48

+31.73

Jain

01.28

- 09.85

Christian

00.11

+21.28

Buddhist

00.01

- 00.90

10. It was also pleaded that the question of population of Jains in Rajasthan is irrelevant and even if the population of Jains is 1.28%, it does not constitute a religious minority, unless its status is so declared by the Central Government by issuing Notification under the provisions contained in the Act of 1992. It was also pleaded that the Trust had absolutely no case to claim any benefit or right, merely by saying that it belongs to the minority community. It was stated that Articles 29 and 30 of the Constitution of India had no application. To this reply, filed by respondent No. 3, no rejoinder was filed. The matter was seriously contested on behalf of both the sides and after hearing the learned counsel for both the sides ----- judgment and order was passed. ----- appeal was filed by the ----- than, its Medical & Health Department, Home Department and the Minorities commission. A reply dated 22.2.2001 to the writ petition had been filed on behalf of respondents No. 1 and 2, i.e., Medical & Health Department and Home Department of the Government of Rajasthan, contesting the case of the petitioner. This reply on behalf of respondents No. 1 and 2 was filed before the Division Bench in this appeal because the petition had been dismissed at admission stage and to this reply, a rejoinder dated 7th of March, 2001, was also filed before the Division Bench along with certain documents.

11. It appears that while the matter was pending before the Division Bench, an application dated 27th January, 2001, had also been filed by Jain Swetambar Nakoda Parshwanath Trust, Mewa Nagar through its Chairman, Shri Paras Mal Bhansali, for being impleaded as party and this Nakoda Parshwanath Trust was permitted to intervene in the matter. The intervenor has supported the case of the petitioner-appellant.

12. Before us, the learned Additional Advocate General, Shri R.L. Jangid, has assailed the judgment and order of the learned Single Judge, mainly on the following three grounds :

(1) That the Trust had failed to establish that it was a religious minority institution and that Darshan Dental College had not been ----- community, while ----- at pages 37, 38 39, 40 and 42, it was submitted that the objects of the Trust are not meant only for the Jains, but the welfare and scope of the Trust was open to the public in general and, therefore, it could not be said that it was a religious minority institution.

(2) While making reference to Section 2(c) of the Act, 1992 and the document (Ex. R. 3/1), it was argued that whereas the Jains have not been included in this Notification u/s 2(c) of the Act of 1992, there was no basis for the Trust to claim it as a religious minority institution. According to Mr. Jangid, incursion of any community in such Notification u/s 2(c), is a condition present or prerequisite for claiming the religious minority status.

(3) That in no case Jains can claim minority status and they are part and parcel of Hindus for the purpose of any Article or provision of the Constitution of India including Article 29 and 30 thereof. The question of availing the benefits of Articles 29 and 30 arises only when an institution is conferred the status of minority and whereas, such a status has not been conferred upon the trust, the case with regard to availing the benefits of Articles 29 and 30 of the Constitution of India is misconceived.

13. Before us in support of the submissions, as above, the learned Additional Advocate General, Shri Jangid, has relied upon the judgments rendered in *C. Salmuel v. District Educational Officer (1)*, *Andhra Kesari Educational Society v. State (2)* and *Shiva Nand Pandey v. Bhagwan Das Harlalka (3)*.

14. While answering the grounds, on which the impugned judgment and order was sought to be assailed, Mr. M.S. Singhvi, learned counsel for the Trust, made detailed reference to the pleadings of the parties in the case, about which we have already made reference herein above and on the basis of these pleadings, he submitted that merely because the activities and functions of the Trust extend to the public in general, it does not mean that the trust ceases to be a religious minority institution. It was contended by Mr. Singhvi that the Trust was already registered as a minority institution by the Commission in Chennai and, even in the State of Rajasthan, the case had been recommended and a certificate had been issued by the Commission, which was, later on, cancelled on a wholly erroneous ground that it was not included in the Notification issued u/s 2(c) of the Act of 1992. It was submitted that the National Commission for Minorities Act, 1992 is an Act made only to confer statutory status to the minority commission and while referring to the statement of subjects and reasons, he has submitted that the main task of the Commission is to evaluate the progress of the development of the minorities, to monitor the working of the safe-guards provided in the Constitution for protection of the interest of the minority and the laws enacted by the Central Government or the State Government, besides look to the specific complaints regarding the deprivation of the rights and safeguards of the minorities. It shall also cause studies, research and analysis to be

undertaken on the issues relating to socio- economic and educational development of the minorities and make recommendations for the effective implementation of the safeguards for the protection of interests of minorities by the Central Government or State Government. It may also suggest appropriate measures in respect of any minority to be undertaken by the Central Government or State Governments. According to him, this Act only regulates the development of the minorities and that is the basic and paramount object of this minority commission and his submission is that the rights" of the religious minorities which can be availed under Articles 29 and 30 of the Constitution of India, are not dependent on the inclusion or exclusion of any particular community in the Notification u/s 2(c) to be issued by the Central government. It was also pointed out that the definition of the minority as has been given in Section 2(c), is limited only for the purpose of this Act as is mentioned in the language of the Section itself. It says that "minority", for the purpose of this Act, means a community notified as such by the Central Government. He has further submitted that Whether any community is included or not in such a Notification u/ s 2(c), the minority status of any religious community has to be ascertained on the basis of data or density of the population or the strength of members belonging to such community in a particular State and that is the test whether a particular community is a religious minority or not. While referring to certain passages from the judgment of the learned single Judge, he has submitted that the Jainism is a separate and distinct religion and the members of this community do form a religious minority, in as much as, as per the data of 1991 census, Jains form only 1.26% of the total population in the State of Rajasthan. He has also submitted that the question as to whether a particular community should be treated as minority or not, has to be examined on the touch-stone of numerical strength of the population of that community Statewise, and not with reference to the country as a whole.

15. In support of the above submission, Mr. Singhvi has placed reliance on *In re Kerala Education Bill, 1957* (AIR 1953 SC 956), *D.A.V. College, Vs. State of Punjab and Others*, , *N. Ammad Vs. The Manager, Emjay High School and Others*, *St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc.*, *T.M.A. Pai Foundation and Others (II) Vs. State of Karnataka and Others*, and *State of H.P. v. Nikku Ram* (1995) 6 SCC 220).

16. We have heard learned counsel for both the sides, at length, have gone through the impugned judgment and order passed by the learned Single Judge and have also considered the principles as have been laid down in the various decisions which finds place in the order passed by the learned Single Judge and which have been cited by the parties before us.

17. Before we proceed to deal with the grounds as have been raised before us, we may observe that the Constitution of India is the fountain source of all laws in the country. The Constitution of India is based on the concept of trinity, i.e., creator - Lord Brahma, maintainer the Lord Vishnu and the ultimate Lord Shiva.

Three wings of the Constitution are Legislature i.e. the Creator (comparable with Lord "Brahma"), Executive as maintainer (comparable with Lord "Vishnu") and Judiciary as the ultimate watch dog (comparable with Lord "Shiva"). This being the conceptual aspect of the Constitution of India, we find from Articles 25 to 28, that the frame"s of the constitution provided for the farmers of the Constitution provided for the "Right to Freedom to Religions. Freedom of conscience and free profession, practice and propagation of religion in Article 25, Freedom to manage religious affairs in Article 26, Freedom as to payment of taxes for promotion of any particular religion in Article 27, and Freedom as to attendance at religious instruction or religious worship in certain educational institutions in Article 28. Thus, the rights as are conferred by Articles 25 to 28 are the rights with regard to freedom of religion. Article 25 of the Constitution of India is reproduced as under :

"Article 25. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-

(3) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(d) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.....

Explanation II. In Sub-clause (b) of Clause (2), the reference to Hindus shall be construed as including a reference to persons professing the sikh, Jains or Buddhist religion, and the reference to Hindu religion institutions shall be construed accordingly."

18. Under the heading "Cultural and Educational Rights," "Protection of interests of minorities" has been provided under Article 29 and "Right of minorities to establish and administer educational institutions" has been provided under Article 30. It goes without saying that rights under Articles 29 and 30 of the Constitution of India can be availed by the minorities and Article 29 deals with protection only inasmuch as it says that there should be no denial of 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 meaning thereby that no citizen shall be denied the admission to any educational institution on grounds only of religion, race, caste and language etc. In other words, it affords a protection against the denial of admission to any citizen on any of the grounds as have already been referred to above and Article 30" confers right on minorities to administer and establish educational institutions Therefore, it is open for any minority community to establish and administer

educational institutions and such educational institutions cannot be subjected to any discrimination by the State on the ground that it is under the management of a minority whether based on religion or language.

19. However, the question arises as to how the status of a community is to be ascertained as minority ? We would deal with this aspect of the matter a little later after dealing with the first two submissions which have been made by the learned Additional Advocate General Mr. R.L. Jangid as stated in the earlier part of this judgment.

20. In this context, it may be stated, with regard to the first submission made by the learned Additional Advocate General, that merely because the object of a Trust provides for functioning and scope of its activities to the members of the public in general and does not restrict it to members of that community alone, cannot be the basis for holding that it is not an institution of that particular community. Even if an institution or a Trust is created by members of a particular community, it may provide to take care of members of other communities also, and such benefits may be kept open for the public in general. But that can hardly be the test for the purpose of deciding as to whether it can claim the status of a minority community or not and, therefore, the first submission, which was made by the learned Additional Advocate General, in our opinion is not sustainable and the same is hereby rejected.

21. So far as the second ground relating to the Act of 1992 is concerned, we find that this Act is an Act to constitute a National Commission for Minorities and to provide for matters connected therewith or incidental thereto. The word "Minority" u/s 2(c) has been defined as under :

"2. Definitions - In this Act, unless the context otherwise requires"

(a)

(b)

(c) "minority", for the purposes of this Act, means a community notified as such by the Central Government;

(d)"

22. The Scheme of this Act shows that it is only an Act for the constitution of National Commission for Minorities and to lay down its function etc. No doubt the Central Government may notify a community as minority for the purpose of this Act it is evident from the scheme of the Act as a whole that this Commission is to take care of the development and protection of minorities. Once any community is notified as minority by the Central Government, the Commission has to see that such minority is not discriminated and that its development is regulated but that does not mean that the claim of a community about its minority status depends upon the notification u/s 2(c) of the Act of 1992 by the Central Government and without being notified as such, it cannot claim the rights of

minority under Article 29 and 30 of the Constitution in case it is able to show that in fact, it is a minority based either on religion or language.

23. We do fine on the basis of the submissions made by Mr. Singhvi on behalf of the respondent that the Act of 1992 is only regulatory for the development of the minorities and that mere exclusion or non-inclusion of "Jain community" in the Notification issued u/s 2(c) of the Act of 1992 is not the factor which can be said to be determinative for the purpose of ascertaining the minority status. The second submission made by the learned Additional Advocate General therefore, cannot be accepted.

24. Now, we come to the third submission.

25. While dealing with this submission, the question arises is that in the scheme of the Constitution as a whole and the various laws which have been enacted by the Parliament or the State Legislature, can it be said that on the basis of the arithmetic figures or percentage or density of the population of a particular community, the question of minority status can be conclusively decided ? On this aspect of the matter, coming to the judgment which has been impugned and its several portions to which emphatic reference was made by both the sides, we find that so far as the Jain Philosophy and Jainism as a religion is concerned, the judgment is pregnant with highly erudite and an enriched exposition of the Jain Philosophy, and perhaps, we cannot do better than what has been done by the learned single Judge, not only for the reason that the same is not required but also because in our considered opinion, the question of minority status of a particular community has to be answered not only on the basis of the arithmetic that the members of a particular religion are less in number or less than 50 % and, therefore, it is a minority institution but it must find its answer in the provision of the Constitution and the laws enacted thereunder.

26. The Parliament has enacted: (i) The Hindu Adoptions and Maintenance Act, 1956 [See Section 2(b)], (ii) The Hindu Marriage Act, 1955 [See Section 2(b)]. (in) The Hindu Minority and Guardianship Act, 1956 [See Section 3(b)] and (iv). The Hindu Succession Act, 1956 [See Section 2(b)]. All these Acts are applicable to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj; to any person who is a Buddhist, Jaina or Sikh by religion; to any other who is not a Muslim, Christian, Parsi or Jew by religion. It is, therefore, clear that not with standing the distinct and separate religious philosophy, Buddhists, Jains and Sikhs are subject to laws relating to Hindus to the exclusion of Muslims, Christians, Parsies or Jews by religion only. In this context, it appears that the Parliament which is the creator of laws under the Constitution has thought that basically whether a person is Buddhist, Jaina or Sikh by religion, is a Hindu. The learned Single Judge has observed in his judgment that even if the Acts which are applicable to Hindus, have been made applicable to Buddhists, Jains or Sikh by religion, that would not mean that they are all Hindus. In our opinion, there cannot be any classification or micro-classification so as to divide

Hindus in the context of Indian origin. Even if we accept, that the Jain religion is a separate and distinct religion by itself, the question still remains that, that by itself would not confer the minority status on the Jains. Basically, they are all Hindus. If we go on making classifications like this, it would be an endless process and perhaps the pious concept of "WE THE PEOPLE OF INDIA" would be defeated and frustrated and the people as a whole shall stand divided in innumerable parts so much so that it will become difficult to identify any majority vis-a-vis minority.

27. What is going to happen, if the Muslims on their start claiming further minorities on the basis of their being Siyas or Sunnis or Chhipas or Bohras, inasmuch as, they also practice different ideals, one would say O" MolJah, the other would say O" Allah Similarly in Hindus, if the Jains are treated separate religious minority, the other Hindu, who are worshippers of Shiva, would claim that they were separate religious minority. The other section of persons, who are worshippers of Devi or Shakti, would claim themselves as Shakti, saying that they are worshippers of power and they have their own different Gods and Goddesses and are therefore a separate religious minority. Similar would be the case with the Vaishnavas, who will claim that they belong to Vallabh Kul Sampraday pioneered by Prabhu Vallabhacharya and similarly, the Vaishnavas, who are worshippers of the Vishnu in different parts of the country, would claim a further minority status. Therefore, we find that such classification on the basis of practicing of a particular faith or school of thought cannot be conclusive or decisive for the purpose of conferring the minority status and the argument, which has been raised on figures, which are given in the census with regard to the density or thickness of the population of a particular community should also decide the question of minority status of that particular community, does not appear to be correct.

28. Even otherwise, the origin of Jain religion itself would show that there were religion itself would Rishabhdev who was a Rishi and, at page 7 of "Pauranik Kosh" by Rana Prasad Sharma, First Edition Samwat Year 2028 published by Gyanmandal Ltd., Varanasi-1, "Rishabh" has been described as under :-

_"kHk& iq- ?la-? ?1? egkjkt ukfHkds es:nsdh ds xHkZ ls mRiUu HkxoRizfr:i iq= rFkk vtukHK jkT; ds jktk dk uk ?Hkkx 5-4-3(7-3(11-2-24? Hkkxor ds vuqlkj jktk ukfHkds iq= ftudh ekrk dk uke lqnsdh Hkh Fkk] ij fo".kq ok;q rFkk czgeka iqjk.kkuqlkj egkjkuh es: Fkka ;g ,d ijegal ls Fks ftuds t;Urh ds xHkZ ls 100 iq= gq, FksA ftuesa lcls cM+s dk uke Hkkjr Fkk ?czgek 2-14-60&62(Hkkx 2-7-10(11-4-17(fo".kq 2-1-27(ok;q 33-50-51? buds 9 iq= 9 }hiksa ds jktk gq, 81 deZra= esa jr egkJhf=; czkge.k gq, vkSj dfo vkfn 9 _f"k gq,A ;s uoksa cMs+ HkxoRHkDr gq,A bUgha ukS ds vUrxZr vUrfj{k Hkh Fks ?Hkkx 11-2-15&50? ns-vUrfj{k ?Hkkx 5-4-11(11-2-21(?v viuk jkT; Hkkjr dks ns ;s ri djds flf? izkIr djus yxs ;gka rd fd eqga ds dadM j[kdj izk.k R;kx fd;kA foYl lkgc dk er gS fd bUgksaus eqag esa dadMh blfy, j[kh fd dqN [kk u ldssaA Hkxor ds vuqlkj bUgksaus if"peh Hkkjr esa tSu /keZ dk izpkj fd;k Fkk bUnz dh bZ";kZo"k buds jkT; esa vo`f"V

gqbZ fQj buds ;ksx or ls o`f"V gqbZ ?Hkkx 5-3-4 iwjk 1&3? jktk ds ukrs bUnz us t;Urh dk fookg buls dj fn;k Fkk ftlls buds 100 iq= gq,A okuizLFk esa ;g iqyg ds vkJe esa jgrs Fks vkSj ogha budh e`R;q gqbZ Fkh ?fo".kq 2-1-28&31?A

29. It has further been mentioned about Rishabhdev in this very "Pauranik Kosh" at P. 71-72 that Rishabhdev was name of one of the commanders of the army of lord "RAMA" which attacked "Lanka", he was put to state of being dead by "Indrajeet" and Hanuman revived him by bringing "Booti" from Rishabh mountain.

30. In Sanskrit - English Dictionary by Vaman Shivram Apter (Reprint Delhi 1979 - published by Motilal Banarsi Das Indological PubHshort and Book-sellers, Delhi-Varanasi-Patna, who was the Principal and Professor of Sanskrit in Pune, the meaning of word "Rishabh" has been given (at page 121, Col.2) as "The best or most excellent".

31. At different points of time, different known scholars, thinkers and visioners have given their own version with regard to the meaning of religion when Ved Vyas (who had created 18 Purans, nearing thereby having prepared 18 Purans), was asked as to what is the meaning of "Religion", he replied that, every body should remember two sayings welfare of others is the greatest "Punya" and causing pain, agony and suffering to others is the greatest "Sin", i.e. to say -

vk"Vn"k iqjk.ks"kq O;kIL; opua };%

ijksidkjk; iq.;k; ikik; ij ihMueA

32. I the Book, "A Study of Religion", Swami Vivekananda (Udbodhan Office, 1 Udbodhan Lane, Calcutta, Tenth Edition February 1978 published by Swami Vishwashrayananda) while quoting Swami Vivekananda from his lecture on The Hindu Religion" at Brooklyn, Dec. 30, 1894 at P. 125 it has been mentioned as under:

"Of the two hundred and ninety millions of people inhabiting India, only two millions are Christians. Sixty millions Mohammedans and all the rest are Hindus."

33. Shri P. K. Nijhawari, who keeps Guru Govind Singh in his high esteem as a model of a Hindu Hero, in his Book "Hinduism Re- defined" (Cyclical Concept of History), Vimal Publication, Bombay, dt. 25th Aug. 1982 has written at P. 5 that "The Vedas they say, are revealed by no less a God than Brahma himself but there is no medium through which it is done nor does it claim his authority. There are innumerable Rishis and Devtas singing different hymns but there is no central three discernible Hinduism, therefore, has no Messiah, no book and no church, Hence, It is apt to say that Hinduism is a leaderless churchless and bookless religion".

34. At page 9 of this book, Nijhawan has further stated that, "A Muslim belongs to an international brotherhood of the faithfuls. Not (or) dissimilar is the position in respect of Christianity though liberal thought has mellowed it considerably

during the last 200 years. As against that. Hinduism is only the proverbial Indian elephant which cannot be easily comprehended. Efforts generally result in conjuring UP fragmented and distorted pictures - each, according to one's own frame of reference. That's why, there is a lack of regimented thinking about Hinduism as a whole. That's why again, His difficult if not possible to hazard even a definition of what a Hindu or Hinduism it."

35. In Dharmshashtra ka Itihas (Prachin Evam Madhyakaalin Bhartiya Dharm Tatha Lok:Vidhiyan) Part-I, Third Edition 1980 published by Harishchandra Director, U.P. Hindi Sansthan, Lucknow, at the very outset, the meaning of word "religion" has been given at Page 4 to the effect that it is indicative of privileges of human being his duties and limitations.

36. The learned Single Judge, in his judgment, has referred to certain quotations from the Book "Cultural Heritage of India" by Cr. Sarvpalli Radhakrishnan. No doubt, the opinions have been expressed by the various scholars from time to time, and they are relevant and afford valuable guidance, but for the purpose of considering the question as to what is the religion and how Jain religion is a distinct religion, it has been quoted at page 38 of the judgment from Chapter 23 of the "Historical Survey of India" that in the earliest Brahmanic literature are found traces of the existence of a religious order which ranged itself strongly against the authority of the Vedas and the institution of animal sacrifice. Dr. S. Radhakrishnan was essentially a Teacher, a Great Philosopher, Visioners, Writer and Author in his own right, whose birth day is celebrated as "The Teacher Day" and the teachers of the whole country took pride, when he became the President of India. On the even of inauguration of Jodhpur University, which is now known as Jainarain Vyas University, when he came to Jodhpur on the inaugural function of the said University, the founder Vice Chancellor of Jodhpur University - late Shri B. N. Jha said in his speech that "India is pride of its No. 1, but prider are we that today one of us adorns the Office of the President of India". The designation of teacher by itself has throughout been a mark of respect, right from the system of Gurukul Pranali till the period of Mughal and thereafter. When Aurangjeb visited his father, who had been imprisoned by him and asked his father as to whether he requires anything while in jail, the father of Aurangjeb remained calm and asked him (Aurangjeb) that he required some boys whom he could teach to pass the time, Aurangjeb is said to have told his father that is appears that the air of emperorship had yet not gone out of his mind because the dignity of a teacher is as good as that of an Emperor and thus, a teacher is comparable with Emperor. Such has been the status of the Teacher throughout, so much so, that the teacher is kept on a very high pedestal and has also been treated at par with the father - when it is stated in the Sookties of Sanskrit that"

loZ=a fot;e bPNsr

iq=kr f"k";kr ijkt;%

[meaning thereby that a person desired to be victorious every where, but so far

as the father and teacher is concerned, they are happy to loose before the son and the pupil.]

37. Dr. Sarvapalli Radhakrishnan, who enjoyed the status of a teacher as above, and who has been quoted in the impugned judgment by the learned Single Judge has written so many books on religion and religious Philosophy and in his book, "Indian Religions", published by Orient Paperbacks, 1983 Edition while talking about Mahavira and his religion has written at P. 177 and onwards as under :-

"In Mahavira we have an example of a man who renounced the things of the world, who was not entangled in the bonds of matter but who was able to realize the inward dignity of his own self. How can we pursue this ideal ? What are the ways by which we can attain this self-possession Our scriptures tell us, if we wish to know the self, sravana, manana, "hididhyasana are to be practised. The Bhagavadgita says : tad Viddhi pranipatena pariprasnena sevaya The same three great principles were asserted by Mahavira when he mentioned darsana, Jinana, caritra. We must have visvasa, path, sraddha, that there is something superior to the things of this world. Mere faith blind unthinking fath, Will not do, We must have knowledge, manana, By reflection we convert the product of faith into product of enlighcement. But mere theoretical knowledge is not enough, vakya;rtha jnanamatrena na amrtan - we cannot get life eternal by textual learning. We must embody these great principles to our own life. Caritra, conduct is equally essential. We start with darsana, pranipata or sravana. We come to jnana, manana, or pariprasana; then we come to nididhyasana, seva or caritra. As the Jain thinkers put it, these are essential.

What are the principles of caritra, or good conduct, sadacarana ? The Jain teachers ask us to undertake different vows. Every Jain has to take five vows: not to kill anything, not to lie, not to take what is not given, to preserve chastity and to renounce pleasure in external things. But the most important of them all is the vow of ahimsa, the vow of non-violence, of non-injury to living beings. Some even renounce agriculture for it tears up the soil and crushes insects. In this world it is not possible for us to abstain from violence altogether. As the Mahabharata has it, jivo jivasya javanam "Life is the food of life".

What we are called upon to do is to increase the scope, so to say, of non-violence-yatnat alpatara bhavet. By our self- effort we must reduce the scope of force and increase the scope of persuasion. So ahimsa is the ideal which we have set before ourselves.

If we adopt that ideal we will get another consequence of it which is framed in the Jain doctrine of anekantavada. The Jains tell us that the absolute truth or kevala-jnana is our ideal. But so far as we are concerned we know only part of the truth. Vastu is anekadharmit-makam; it has got many sides of it; it is complex, it has man; qualities. People begin to realize this side of it or that side of it, but their views are partial, tentative, hypothetical. The complete truth is not to be found in these views. It is only realizable by the souls who have overcome

their own passions. This fosters the spirit which makes us believe that what we think right may not after all be right. It makes us aware of the uncertainties of human hypotheses. It makes us believe that our deepest convictions may be changeable and passing. The Jains use the fable of the six blind men dealing with the elephant. One takes hold of the ears and says it is a winnowing fan. Another embraces it and says it is a pillar. But each of them gives us only one partial aspect of the ultimate truth. The aspects are not to be regarded as opposed to each other. They are not related to each other as light is related to darkness; they are related to each other as the different colours of the spectrum are related to one another. They are not to be regarded as contradictors, they are to be taken merely as contraries. They are alternative ----- of reality.

The world today is in the throes of a new birth. While we aim at one world, division rather than unity characterizes our age. In a two-world pattern there is a temptation for many of us to think that this is right and that is wrong and we must therefore repudiate the other. Well, these are to be regarded as alternatives, so to say, as varying aspects of one fundamental reality. Overemphasis on any one aspect of reality is analogous to the attitude of the blind men in the fable each of whom described the shape of the elephant according to the part of the animal he touched.

Individual freedom and social justice are both essential for human welfare. We may exaggerate the one or underestimate the other. But he who follows the Jain concept of *anekantavada*, *saptabhanginaya*, or *syadvada*, will not adopt that kind of cultural regimentation. He will have the spirit to discriminate between the right and the wrong in his own and in the opposite views, and try to work for a greater synthesis. So the necessity for self - control, the practice of *ahimsa* and also tolerance and appreciation of others point of view - these are some of the lessons which we can acquire from the great life of Mahavira".

38. According to this work, the Mahavira is called Jina, i.e., conqueror, Dr. Radhakrishnan says that he did not conquer kingdom, but his own-self and therefore, he is called the "Mahavira". By study of self-purification and understanding, he raised himself to the position of a man who attained divine status. Self-conquest is the basic tenet of the Jain religion as founded by Mahavira. Who is called as Jina and commands members of the Jain community and Jains say "Jai Jitendra", may be because they follow this school of thought as founded by Mahavira.

39. The fact remains that basically, they are all Hindus and it would be found from the deeper study of the Jain religion that they worship the Hindu God and Goddess, like Ganesh, Laxmi and Saraswati. Therefore, in our opinion, merely because a particular school of thought is professed, may be with regard to non-violence and "Ahimsa Parmodharm", the message as was given by pioneer but Jainism is the same concept which has been coming right from the beginning as have been discussed here in above and similar views have been expressed by the different authors from time to time.

40. In yet another book, Hindi translation by Nandkishore Gobhil, published in 1998, - "Bhartiya Darshan" (Indian Philosophy), (Volume I) in Chapter VI "Jainiyon ka Anekantwadi Yatharthwad" at pages 232 and 233 Dr. S. Radhakrishnan has described "Jainmat" and "Vardhman" as under :-

1- tSuer

ftl izdkj ckS? ykxs cq? ?tkxfjr? ds vuq;k;h gS] tSuh ykxs ftu ds vuq;k;h dgs tkrs gSaA ftu dk rkRi;Z gS fotsrkA ;g mikf/k o/kZeku dks nh x;h gS] tks tSfu;ksa ds vfUre rhFkZdj FksA ;g ,sls L=h&iq:"kksa ds fy, Hkh iz;qDr gks ldrh gS ftUgksaus vius fuEudksfV ds LoHkko ij fot; ik yh gks vkSj bl izdkj loksZP; IRrk dk lk{kkRdkj fy;k gksA tSuer "kCn ladsr djrk gS fd tSun"kZu dk Lo:i eq[;r% uSfrd gSA

2- o/kZeku

o/kZeku] tks vk;q esa cq? ls cM+s vkSj muds ledkyhu Fks] ex/k ns"k] o/kZeku fcgkj izkUr] ds ,d {kf=; ljdkj ds f}rh; iq= FksA

tSu&ijEijk ds vuqlkj] tSun"kZu dk mnHko _"kHknso ls gqv] ftUgksaus dbZ "krkCnh iwoZ tUe /kkj.k fd;k Fkka bl izdkj dh i;kZIr lk{kh miyC/k gS ftlds vk/kkj ij dgk tk ldrk gS fd bZlk ls ,d "krkCnh iwoZ Hkh ,sls ykxs Fks tks _"kHknso dks iwtk djrs Fks] tks lcls igys rhFkZdj FksA blesa dksbZ lUnsg ugha fd o/kZeku ,oa ik"oZukFk ls iwoZ Hkh tSuer izpfyr Fkka ;tqosZan eas rhu rhFkZdjksa ds ukesa dk mYys[k gS&& _"k.k tSuer ds laLFkkid FksA bl lcesa tks dqN Hkh ,sfrgkfld rF; dk va"k gks] fdUrq tSuh ykxsksa dk fo"okl gS fd muds er dk izpkj cgqr iwoZ vusd ;qxksa ls egku rhFkZdjksa dh ijEijk es fdlh u fdlh rhFkZdj }kjk fd;k tkrk jgk gSA

o/kZeku ds vuq;k;h vf/kdrj dqyhu {kf=;ksa esa ls gh vk, Fks vkSj mUgksaus muds vUnj ls gh ,d leqnk; dk fu;fer la?kVu fd;k(ftlesa iq:"k ,oa efgyk,a nksuksa gh oxZ ds lk/kkj.k ukxfjd rFkk vkJeoklh InL; lFefyr FksA

41. It is very interesting to note that in this book it is mentioned that most of the followers of the Vardhman came from Kshatriya, and out of them, a sect was created, in which males as well as females were there, who were members of Ashram. It was because of the impact of the Vardham that the followers of both the sects Svetambar and Digambar joined it.

42. We may lastly refer to a book on Indian Philosophy by M. Hiriyanna, named as "Bhartiya Darshan ki Roop Rekha" translated by Dr. Goverdhan Bhatt, Smt. Manju Gupt and Shri Sukhveer Chaudhary as was first published in 1965 and, second time in 1973 by Rajkamal Prakashan Pvt. Ltd., Wherein about Jain followers, it has been stated at page 58 that life is not for knowledge, but the knowledge is for life; at pages 90 to 92 of it, "Karmkaandad"; at page 93, it speaks about "Brahamwad" and at page 95, "Ishwarwad", and while discussing the joint tendencies, at page 99, the meaning of the word "Avtar" has been so as to mean coming down of the God on the earth and word "Narain" has given the meaning as the son of the eternal man. In Chapter 6, at page 156, etymology of the word "Jin" has been given and it has been said that the word "Jain" has

come out from the word "Jin", which means victor who has controlled his own desire. At Page 163, "Anu-siddhant" has been discussed and it has been mentioned that the synonym of "Etam", i.e., "Anu" is found in Upanishad and, in this context, Jain philosophy has been discussed.

43. Therefore, the basic tenets, on which the philosophy of Jain religion is based, is that any person, who has made self- conquest, any person who believes in non-violence and who follows the instructions and messages as had been given by the Teerthankers, is a Jain. We have referred to the various authors and opinions which have been expressed in this regard, which indicate that the Jain religion by itself may be distinct religion in itself with many semblances and similarities with the cultural and religious heritage of Hindus, yet it cannot be said that Jains are not Hindus.

44. We think the cool breeze of our heritage must have been in the mind of the founding fathers of our Constitution while Including Explanation II under Article 25 of the constitution of India as under :

Explanation II. In Sub-clause (b) of Clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jains or Buddhist religion, and the reference to Hindu religion institutions shall be construed accordingly.

45. Thus, our constitution refers to Jains as Hindus and the same has been reflected in various enactments of laws made by the Parliament, leaving no room for doubt that notwithstanding the distinctive religion, Jains are basically and essentially inseparable from Hindus.

46. We may also briefly recapitulate the background in which the provisions of Articles 29 and 30 did come to be incorporated in the Constitution. And for this purpose, we may refer to the Constituent Assembly Debates. Discussion in this regard is at page -330 to 349 in Volume (2). The same are as under :

47. It may be recalled that as regards the minorities the Cabinet Mission had recognised in their report to the British Cabinet on May 6, 1946, only three main communities - General, Muslims and Sikhs. The Mission had recommended an Advisory Committee to be set up by the Constituent Assembly which was to frame the rights of the citizens, minorities, Tribals and excluded areas. The Cabinet Mission statement had actually provided for the cession of sovereignty to the Indian people subject only to two matters which were : (1) willingness to conclude a treaty with his Majesty's Govt. to cover matters arising out of transfer of power and (2) Adequate provisions for the protection of the minorities. Pursuant to the above, and paras five and six of the objective resolution, the constituent Assembly set up an Advisory Committee on January 24, 1947. The Committee was to consist of representatives of Muslims, the depressed classes or the scheduled castes, the Sikhs, Christians, Parsies, Anglo Indians, Tribals, and excluded areas, Decides the Hindus. As a historical fact it is safe to say that at a meeting held on May 11, 1949 a resolution for the abolition

of all reservations for minorities, other than the scheduled castes found would hearted support form an over whelming majority of the members of the Advisory Committee. So far as scheduled castes were concerned, it was felt that their peculiar position would necessitate special reservation for them for a period of ten years. It would not be wrong to say that the separate representation of the minorities which had been the feature of previous Constitutions and which had witnessed so much of communal tension and strife was given up in favor of joins electorates in consideration of the guarantee of fundamental rights and minorities rights, which it was decide to incorporate into the new Constitution. The Objective Resolutions can be taken into account as historical fact which moulded its nature and character. Since the language of the Preamble was taken form the resolution itself the declaration in the Preamble that India would be a Sovereign and Democratic Republic which would secure to all its citizens Justice, Liberty and Equality was implemented in Parts III and IV and other provisions of the Constitution. These formed not only the essential features of the Constitution, but also the fundamental conditions upon and the basis on which the various groups and interests adopted the Constitution as the Preamble hoped to create ONE UNIFIED INTEGRATED COMMUNITY.

48. From the above debates of the Constituent Assembly, it is clear that there were assumed to three main communities being - General, Muslime and Sikhs and it was perceived that muslim, the depressed classes, the scheduled caste, the Sikhs, Christians, Parsies, Anglo Indian, Tribals are the minorities and it was found that the peculiar conditions of scheduled caste necessitate special reservation for them for a period of ten years. With that, a proposal was for providing separate representation of the minorities (mentioned above) which had been the feature of the previous Constitution and which had witnessed so much of communal tension and strife, that it was given up in favour of joint electorates. And it was in consideration of this giving up, that the guarantees of fundamental rights, and minority rights was decided to be incorporated in the now Constitution.

49. Thus, it is to be borne in mind that the object of providing fundamental rights under Article 25 to 30 to the Constitution in favour of minorities was in consideration of giving up the right of separate representation in the Parliament/ Legislature and instead a Joint electorate having been set up. Obviously, therefore, what is to be seen is as to what were the minorities who did have a right of separate representation in the previous Constitution ? As largely those would be the communities who ca be said to be minorities. If the Assembly debated are considered from this stand point, Hindus as such were taken to be one community which obviously included all major sects, sub sects, faiths, beliefs, or denominations, vis-a- vis other communities mentioned above, Jains are neither included in other categories mentioned above nor do they partake the character of the other communities mentioned above, thus, if the question is considered from the stand point of the Constituent Assembly debates, Jains cannot be said to be a minority community. It is significant to note that till this

point, the numerical thickness of the populations of any particular community, whether in the whole of the country, or in any particular State was not at all a criteria for consideration.

50. In the present case, we are mainly concerned with interpretation of Article 30. As such, it is to be seen as to what is the meaning and scope of the term "minorities, whether passed on religion or language". To answer this question we may refer to the decision rendered by a Constitutional Bench of the Supreme Court in the case of *Yagvapurushdasji v. Mooldas* (10).

51. In this case, Hon'ble Supreme Court was considering the question as to whether the High Court was right in holding that the Swaminara an Sampradaya (Sect) to which the appellants therein belonged, is not a religion distinct and separate from the Hindu religion; and that the Temple belonging to the said Sect do come within the ambit of the provisions of the Bombay Hindu Places of Public Worship Act, 1956.

52. Para 27 to 37 of the judgment lead us to conclude that Jainism is clearly within the sweep of broad and progressive Hindu Religion.

53. It is not simply a question of certain seats in Dental College or medical College being given here or there. It is a question of giving minority status to Jains in the context of the national perspective in accordance with objects enshrined in the various articles of the Constitution of India, which run through out the Constitution as a fiber to save the fragmentation of Indian Society on the basis of professing different religions. If we start giving minority status or treating the followers of different schools of thoughts of religious. Philosophy, the whole Indian Society will disintegrate in several minorities such as "Shaves", "Shakts", "Vaishyas", "Vaishnavas", "Jains", and "Buddhists", and that too on the basis of their density in different States of our country with reference to the figures as a result of the census, ultimately, we think nothing would be left to treat the Hindus as minority and Hindus would stand reduced and divided in various groups of minorities. The moment persons following different sects being Hindus, start claiming minority status, because of a particular faith they profess, it would be a great irony of faith for this country and nothing would remain as majority. The freedom to profess any religion, is a fundamental right, but that freedom cannot be used for the purpose of claiming minority status so as to avail the benefits of Articles 29 And 30 of the Constitution of India.

54. We, therefore, conclude that Jains cannot claim minority status, they are part and parcel of "Hindus" for the purpose of all Constitutional Provisions and in absence of minority status, there is no question of availing the benefits for protection under Article 29 and 30 of the Constitution of India. The third submission made on behalf of the State is therefore accepted.

55. We have also examined the question of minority status with reference to the original petitioner Trust on the basis of whatever has been held by the learned Single Judge himself and whatever has been argued before us by Mr. Singhvi and

Mr. L.R. Mehta for Nakoda Trust, which is again a religious Trust, but even after examining the question, on the basis of what has been argued by them and what has been held by the learned Single Judge that Jainism is a separate and distinct religion and its population is only 1.28% in the State of Rajasthan, we have not been able to persuade ourselves to agree that any or either of these two Trusts are religious minority institutions. The question of minority status cannot be decided on the touchstone that any community which has a population less than 50% of the total population of the State is a minority community, the framers of the Constitution may have never thought that such a situation or contingency will arise and the status of minority shall be claimed by followers of different religions and therefore, neither the minority is defined in the Constitution, nor any mode as such has been prescribed to determine as to who should be conferred with the minority status. The rights under Articles 29 and 30 were claimed mostly by Muslims, Christians and Jews, etc., but now such rights are being claimed by followers of other communities also who claim to profess a separate and distinct faith or religion, although they all are essentially and basically Hindus. A stage has reached when the Legislature will have to think over as to what definite mode or uniform standards have to be prescribed for conferring or giving the minority status and lay down definite norms in this regard.

56. So far as the Courts are concerned, the judicial process cannot be made use of to claim to the benefit of Articles 29 and 30 and to capitalise the following of a particular ideology in contradistinction to the main and basic concept which has been flowing from Indian origin and cultural heritage and judicial process cannot be used to capitalise the benefit of Articles 29 and 30 of the Constitution of India. We are bound by the provisions of the Constitution. It is for the Legislature to think as to how to deal with this problem.

57. The upshot of the aforesaid adjudication is that the order dated 15th September, 2000, as has been passed by the learned Single Judge, with certain directions, cannot be sustained and the same is hereby set aside. The writ petition is dismissed. This special appeal succeeds and the same is hereby allowed. In the facts and circumstances of the case, parties are left to bear their own costs.