
(2014) 06 MEG CK 0002
In the Meghalaya High Court
Case No : WP (C) No. 102/2012

Sujata Gupta

APPELLANT

Vs

The State of Meghalaya

RESPONDENT

Date of Decision : 24-06-2014

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 15, 15(5), 16
Societies Registration Act, 1860 — Section 13, 14

Citation : (2014) 06 MEG CK 0002

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—The questions call for decision in the present writ petition are "whether the reservation policy of the State of Meghalaya as provided under Articles 15(5), 16(4), 16(4-A) and 16(4-B) of the Constitution of India can be made applicable to the minority educational institution viz. Rilbong P.N. Chaudhuri Higher Secondary School, Shillong which was established as a linguistic and cultural minority educational institution"? and; (ii) "to what extent the State Govt. can control the administration of the minority educational institution which is an aided school or un-aided school recognized by the Govt."?

2. Heard Mr. S Sen, learned counsel for the petitioner and Mr. ND Chullai, learned Sr. GA assisted by Mr. H Kharmih, learned counsel for the respondents No. 1-8. Also heard Mr. K Paul, learned counsel for the respondents No. 9 & 10.

3. Factual background:- The Bengalees are the linguistic minority community in the State of Meghalaya. As per the census report of the year 2001 Bengalees form 8% of the total population in the State of Meghalaya. The Bengali community being the linguistic minority community in the State of Meghalaya has the fundamental rights guaranteed under Articles 29(1) and 30(1) of the Constitution of India. Articles 29 and 30 of the Constitution of India are reproduced hereunder:-

Article 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.

Article 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.

The Bengali community of Meghalaya, in exercise of their fundamental right to protect and preserve their language and culture and the right to establish the minority educational institution based on language, had decided to foster the school for the education of their children. The linguistic minority community i.e. Bengali community held a meeting on 17.07.1949 in Rilbong, Kench's Trace in presence of the people of Bengali community of Rilbong and its neighbouring areas at Rilbong Bengali Primary School for the topic or subject (i) to take measures for the development of the Bengali minority of the area; (ii) to promote educational, cultural and linguistic advancement of Bengali speaking of the area and; (iii) such other steps and after prolonged discussion, unanimously passed a resolution for establishing a linguistic minority educational institution for upbringing the Bengali speaking boys and girls by imparting higher education and also the Bengali speaking children would get an opportunity of higher education and inspiration to safeguard and preserve the Bengali language and culture. The translated copy of the proceedings of the meeting held on 17.07.1949 is quoted hereunder:-

Translated copy

A general Meeting was held on 17th July 1949 (in Bengali 1 la Sraban 1346) in Rilbong, Kench's Trace in presence of the people of Bengali community of Rilbong and its neighbouring areas at Rilbong Bengali Primary School. The subject of the meeting was:-

1. To take measures for the development of the Bengali minority of the area.
2. To promote educational, cultural and linguistic advancement of Bengali

speaking people of this area.

3. Such other steps.

The respected person present in the meeting:-

Shri Kumud Ranjan Bhattachajee

Shri Tarapad Bhattacharjee

Shri Umesh Ch. Bhattacharjee

Shri Abinash Ch. Bhattacharjee

Shri Ran Kumar Dutta

Rabindra Nath Bhattacharjee

Shri Tamunash Som

Shri Binod Bihari Sen

Shri Ashwini Kumar Gupta

Shri Parsha Nath Choudhury

Ramesh Ch. Chakraborty

Shri Satish Ch. Bhattacharjee

Dr. Binod Bihari Chakraborty

Shri Satish Ch. Bhattacharjee

Shri Jitendra Kr. Chandra

Shri Aushotosh Gupta

Ajit Kr. Gupta

Radhilka Ranjan Chakraborty

Anil Kr. Chakraborty

Rabindra Nath Bisharadh

Prabhat Ch. Purkayastha

Lakshmi Narayan Karmaji

Beni Badhab Mitra

Satindra Lal Purkayashta

The name of the Kumud Ranjan Bhattacharjee was proposed to preside over the meeting and it was accepted by all the members.

The Hon''ble secretary has thanked all the members of the meeting present here.

At first he has discussed the agenda of the meeting. He said that prior to this there was no such meeting held for the welfare of the Rilbong Society. (Illegible)

In the said meeting the different dignitaries present also share their opinions and extended their support and consent for the proposals. It is also unanimously agreed by Bengali inhabitants of Rilbong, Kench's Trace and nearby areas to the proposal of constituting Rilbong Kench's Trace Welfare Association for the development of the people of the locality. The general meeting of the said Association will be held within the next month.

2. Second important agenda of the meeting.

To popularize Bengali Language, Culture and Education

Hon'ble Chairman raised the issue and said that although Rilbong primary school has been doing its duty and responsibility of upbringing the Bengali speaking boys and girls by imparting primary education, but it is also important to think on our part to impart higher education to the children. And therefore it has now become very important and also our responsibility to establish an institution for higher education in Rilbong area so that the Bengali speaking children would get an opportunity of higher education and inspiration to safeguard and preserve the Bengali language and culture.

After prolonged discussion in this regard we have unanimously come to the conclusion that for the welfare of the Bengali speaking Students of Rilbong, one higher educational institution has to be established and that school will encourage Bengali language and literacy. The whole responsibility of the school was handed over to Mr. Parsha Nath Chowdhury. The responsibility of the welfare Association was handed over to Shri Ajit Kumar Gupta, Shri Anil Kumar Chakraborty and Shri Radhika Ranjan Chakraborty.

3. It was decided in the meeting that the residents of Rilbong and Kench's trace will help to work out the above proposals.

The Secretary of the Meeting has given vote of thank to all the people present in the meeting.

Sd/- Kumud Ranjan Bhattacharjee

4. In pursuance of the said resolution dated 17.07.1949, the minority educational institution on the basis of linguistic minority called "Rilbong P.N. Chaudhuri, Higher Secondary School (for short "RPNCHS School") was established at Rilbong, Shillong, Khasi Hills District, Meghalaya. The RPNCHS School was brought under the deficit grant-in-aid system during 1989-90 vide order bearing No. IS/Accts/A/G-2/87-88/14394 dated 19.08.1989 with 3 (three) sanctioned posts and presently there are 16 (sixteen) sanctioned posts in the RPNCHS School. On 26.03.2008, the RPNCHS School issued an advertisement for appointment to the post of Graduate teacher (Arts) in the local daily Meghalaya Guardian dated 26.03.2008. The said advertisement reads as "applications are

invited for the post of Graduate teacher (Arts). Candidates must be BA, B.Ed. with Bengali or Hindi as vernacular subject. Applications with necessary testimonials along with IPO for Rs. 20/- should be submitted latest by 29.03.2008. Written test will be held on 31.03.2008 at 10:00 AM at the school premises - Honorary Sectary, Rilbong P.N. Chaudhuri Secondary School, Rilbong, Shillong-793004". In response to the said advertisement, many eligible candidates applied for the said advertised post. The written test as well as the oral test of the eligible candidates were conducted and the petitioner was one of the two empanelled candidates for appointment to the post of Assistant teacher. The petitioner was placed at Srl. No. 2 in the select list. The candidate No. 1 namely, Smti. Anindita Chowdhury, as Graduate teacher was appointed. For the vacancy in the post of Graduate teacher, which would be arisen on the retirement of Shri. Santosh Kumar Deb on superannuation on 31.12.2008, the Managing Committee of RPNCHS School unanimously passed a resolution dated 07.12.2008 to appoint the petitioner as Graduate teacher and further decided that all the necessary documents relating to the said appointment should be submitted to the Inspector of School, Shillong i.e. respondent No. 8. Vide letter bearing No. RPNCSS/Aptt.-08/1237 dated 09.12.2008, the Honorary Secretary of the RPNCHS School informed the respondent No. 8 the impending retirement of Shri. Santosh Kumar Deb and also communicated the decision of the Managing Committee of the School to appoint the petitioner to the post of Assistant teacher. The respondent No. 6 requested the school authority to submit the date of birth of the proposed candidate along with the Managing Committee resolution signed by all members of the Managing Committee. In response to the said letter, the Headmistress of the RPNCHS School vide letter dated 24.02.2009 forwarded the information to the respondent No. 8 such as, matriculation certificate wherein, the petitioner's date of birth appeared as 02.07.1977 along with the Managing Committee's resolution dated 07.12.2008 signed by all members of the Managing Committee. Again as requested by the respondent No. 7 i.e. Joint Director of School Education & Literacy, Shillong, the Honorary Secretary, Managing Committee, RPNCHS School under his letter dated 20.08.2010 furnished the list of the applicants, who responded to the newspaper advertisement dated 26.03.2008 and appeared for the interviews along with their qualifications. Ultimately, the Joint Secretary to the Govt. of Meghalaya, Education Department under his letter bearing No. EDN. 117/2009/53 dated Shillong, the 24.03.2011 informed the Director of School Education & Literacy, Meghalaya, Shillong that since RPNCHS School is a deficit school, the reservation policy of the State would be applicable. Moreover, as the vacant post is not a language teacher post but a general subject post in English, the Managing Committee have to re-advertise the post afresh. The said letter dated 24.03.2011 (Annexure-VIII to the writ petition) reads as follows:-

GOVERNMENT OF MEGHALAYA EDUCATION DEPARTMENT

No. EDN. 117/2009/53 dated, Shillong, the 24th March, 2011.

From: Shri. F.M. Sna, Joint Secretary to the Govt. of Meghalaya, Education Department.

To,

The Director of School Education & Literacy, Meghalaya, Shillong.

Sub: Proposal for approval of Appointment of Smit. Sujata Gupta as Assistant Teacher, Rilbong, PNC Secondary School, Shillong.

Sir,

I am directed to refer to your letter No. DSEL/Apptt.-1/2009/PF-II/711, dated 7-2-2011 on the subject above and to say that the matter was referred to Personnel & AR Department who have advised that since Rilbong PNC Secondary School is a Deficit school the Reservation Policy of the State would be applicable. Moreover, as the vacant post is not a language teacher post but a general subject post in English, you are advised to instruct the School Managing Committee to re-advertise the post afresh. This has the approval of the Competent Authority. Please take necessary action accordingly.

Yours faithfully, Sd/- Joint Secretary to the Govt. of Meghalaya, Education Department.

5. The petitioner being aggrieved by the said impugned order dated 24.03.2011 filed the present writ petition assailing the decision of the Govt. of Meghalaya for extending the reservation policy of the State of Meghalaya to the minority educational institution i.e. RNPCHS School and also for quashing the direction to re-advertise the post afresh as the vacant post is not a language teacher post but a general subject post in English and also for a direction to the respondents to grant approval to the appointment of the petitioner to the said post of Graduate teacher/Assistant teacher at RNPCHS School. The main grounds for assailing the impugned letter dated 24.03.2011 as well as the decision of the State Govt. for extending the reservation policy to the educational minority school i.e. RNPCHS School (deficit school) are:-

(a) Action of the respondent authorities in rejecting the approval of the petitioner's appointment and attempting to threaten the minority character of the RPNCH School by enforcing the Reservation Policy of the State is highly arbitrary, unconstitutional and illegal in view of the mandate of the Supreme Court of India which lays down that reservation will not apply to schools of minority character including those which are cultural and linguistic minorities bound to receive protection under Articles 29 and 30 of the Constitution of India.

(b) As per the census study of the year 2001, Bengalees form 8.00% of the total population in the State of Meghalaya and as such gain minority character within the State of Meghalaya entitled to invoke the right guaranteed under Article 30(1) of the Constitution of India without imposition of any conditions from the State. The Bengalee community in Meghalaya have the right to exercise the right

guaranteed by Article 29(1), because, the Bengalee are a minority section of citizens in the State of Meghalaya with a constitutional right to conserve their language, script and culture and also entitled to invoke the right guaranteed under Article 30(1) having a distinct script and set up, establish and administer educational institutions of their choice.

(c) As has been pleaded in the foregoing paragraphs the respondent RPNCHS School was established by the Bengalee community of Shillong and was established by a Bengalee. The Bengalees of Shillong are a linguistic minority for the purpose of Article 30(1) and have their own separate spoken language which finds mention in the entry 2 of the Eighth Schedule to the Constitution of India. That apart, the Bengalees also possess their own distinct script. Moreover, considering that the impugned policy that is sought to be imposed on the respondent RPNCHS School is a State policy and directly affects the petitioner's appointment to the respondent school and as such, the petitioner is entitled to invoke the jurisdiction of this Hon'ble Court to highlight the character of the RPNCHS School in order to enforce her appointment as legal, valid and binding.

(d) The Hon'ble Supreme Court of India has held that the width of Article 30(1) cannot be cut down by introducing in it consideration on which Article 29(1) is based. It was also held that the latter article is a general protection which is given to minorities to conserve their language, script or culture. The former is a special right to minorities to establish educational institutions of their choice. This choice is not limited to institution, seeking to conserve language, script or culture and the choice is not taken away if the minority community having established an educational institution of its choice also admits members of other communities. That is a circumstance irrelevant for the application of Article 30(1) since no such limitation is expressed and none can be implied. The two articles create two separate rights, although it is possible that they may meet in a given case.

(e) The impugned communication bearing No. EDN. 117/2009/53 dated 24.03.2011 issued by the respondent authorities requiring the RPNCHS School to implement and observe the Reservation Policy of the State of Meghalaya and to re-advertise the post is arbitrary, illegal, offensive to the doctrine of equality of opportunity laid down in Clause (1) of Article 16 and tantamount to violation of the petitioner's rights guaranteed under the Constitution of India. The action of respondent authorities is also aimed at disturbing the cultural and linguistic minority character of the respondent school which directly threatens the petitioner's appointment.

(f) The action of the respondent authorities in attempting to implement a reservation policy on the RPNCHS School which is a cultural and linguistic minority cannot be permitted due to the guarantees under Article 30 of the Constitution of India. The action of the respondent authorities is violative of the Constitution of India, affects the petitioner's rights and as such, ought to be set aside and quashed.

(g) That the State cannot on the ground of receipt of grant, prescribe any conditions when an educational institution is entitled to the protection made available under Article 30(1) of the Constitution of India. Such imposition of condition, would take away the right of the minority community to administer their institutions, which itself is the mandate of Article 30(1). The State may impose reasonable conditions for receipt of grant but it cannot impose conditions which are of such a nature, the acceptance of which would virtually deprive the minority community of the right guaranteed by Article 30(1) and annihilate the minority community's right of actual management and administration.

6. The respondents No. 1-8 filed joint affidavit-in-opposition. The justifications of the respondents No. 1-8 for extending the reservation policy to the RNPCHS School are (i) the objectives may be to preserve and protect the Bengali language but the school is not a linguistic minority school as the medium of instruction is English and not Bengali vernacular; (ii) the school follows the prescribed course of Meghalaya Board of School Education and activities to preserve and protect the Bengali language and culture can be only part of the school extracurricular activities and; (iii) RPNCHS School is not an institution run by the minority community as the members include Muslim, Christian, Sikhs and Buddhist. On perusal of the pleadings of the respondents No. 1-8 in their affidavit-in-opposition, this Court is further to decide two more questions viz. (i) whether the medium of instruction of minority educational institution should be in the language of that particular linguistic minority i.e. in the present case Bengali or not? and (ii) whether linguistic minority institution will shed its status and identity as linguistic minority institution only because some of the members of the Managing Committee of the linguistic minority institution belong to other communities?. Under Article 29(1) of the Constitution of India minorities having distinct language, shall have the right to conserve the same and under Article 30(1) of the Constitution of India all the minorities whether based on religion or language, shall have the right to establish and administer the educational institutions of their choice. Article 30(1) of the Constitution of India guaranteed two rights (1) right to establish educational institutions based on religion or language and (2) administer the educational institutions of their choice. Once, the minority educational institutions based on linguistic minority are established, the Managing Committees of the institutions, shall have the choice to administer the minority institutions. Therefore, it is left to the Managing Committees of the minority institutions to administer according to their choice; and their choice of medium of instruction may not be in the language of the linguistic minority. For this point, reasons are being mentioned in the fore-coming paras.

7. The first and foremost question to be decided for claiming the right guaranteed under Article 29(1) of the Constitution of India is whether section of the citizens claiming such right basing on distinct language is a minority as provided under Article 29(1) of the Constitution of India or not?. In the present case, it is an admitted fact of the parties that Bengalees are the minority in the State of Meghalaya and educational institution i.e. RPNCHS School is established

in the State of Meghalaya and therefore, the State of Meghalaya is the concerned State for deciding as to whether Bengalees are the minority or not?. The Apex Court (11 Judges) in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, held that for the purpose of deciding "linguistic minority" as provided under Article 30(1) of the Constitution of India, the concerned State will be taken as unit and it should not be in relation to the entire country. In other words, what constitutes a linguistic or religious minority must be judged in relation to the State. The Constitution Bench of the Apex Court in D.A.V. College, Bhatinda, etc. Vs. The State of Punjab and Others, held that linguistic or religious minority should be judged in relation to the State. Para 5 of the SCC in D.A.V. College, Bhatinda's case (Supra) reads as follows:-

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

8. Paras 77, 78 and 81 of the SCC in T.M.A. Pai Foundation's case (Supra) read as follows:-

77. In the In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, , the question as to whether the minority community was to be determined on the basis of the entire population of India, or on the basis of the population of the State forming a part of the Union was posed at SCR p. 1047. It had been contended by the State of Kerala that for claiming the status of minority, the persons must numerically be a minority in the particular region in which the educational institution was situated, and that the locality or ward or town where the institution was to be situated had to be taken as the unit to determine the minority community. No final opinion on this question was expressed, but it was observed at SCR p. 1050 that as the Kerala Education Bill "extends to the whole of the State of Kerala and consequently the minority must be determined by reference to the entire population of that State.

78. In two cases pertaining to the DAV College, this Court had to consider whether the Hindus were a religious minority in the State of Punjab. In D.A.V. College, Vs. State of Punjab and Others, , the question posed was as to what constituted a religious or linguistic minority, and how it was to be determined. After examining the opinion of this Court in the In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, , the Court held that the Arya Samajis, who were Hindus, were a religious minority in the State of Punjab, even though they may not have been so in relation to the entire country. In another case, D.A.V. College, Bhatinda, etc. Vs. The State of Punjab

and Others, , the observations in the first D.A.V. College, Vs. State of Punjab and Others, were explained, and at SCR p. 681, it was stated that "what constitutes a linguistic or religious minority must be judged in relation to the State inasmuch as the impugned Act is a State Act and not in relation to the whole of India." (SCC p. 264, para 5). The Supreme Court rejected the contention that since Hindus were a majority in India, they could not be a religious minority in the state of Punjab, as it took the state as the unit to determine whether the Hindus were a minority community.

81. As a result of the insertion of Entry 25 into List III, Parliament can now legislate in relation to education, which was only a state subject previously. The jurisdiction of the Parliament is to make laws for the whole or a part of India. It is well recognized that geographical classification is not violative of Article 14. It would, therefore, be possible that, with respect to a particular State or group of States, Parliament may legislate in relation to education. However, Article 30 gives the right to a linguistic or religious minority of a State to establish and administer educational institutions of their choice. The minority for the purpose of Article 30 cannot have different meanings depending upon who is legislating. Language being the basis for the establishment of different states for the purposes of Article 30, a "linguistic minority" will have to be determined in relation to the state in which the educational institution is sought to be established. The position with regard to the religious minority is similar, since both religious and linguistic minorities have been put on a par in Article 30.

9. As decided by the Apex Court in (i) DAV College case (Supra) (Constitution Bench); (ii) Re:- Kerala Education Bill, 1957 reported in In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, and; (iii) T.M.A. Pai Foundation case (Supra) (11 Judges), the State is to be taken as Unit for deciding as to whether or not a particular linguistic minority is a linguistic minority community as provided under Articles 29(1) and 30(1) of the Constitution of India, the State of Meghalaya is to be taken as unit in the present case for deciding as to whether the Bengali community is a linguistic minority community or not? As stated above, the Bengali community is a linguistic minority community in the State of Meghalaya, and therefore, the Bengali community i.e. linguistic minority community has the right guaranteed under Articles 29(1) and 30(1) of the Constitution of India to establish the minority institution i.e. RPNCHS School. The rights of the minority guaranteed under Articles 29(1) and 30(1) of the Constitution are to be read conjunctively. The right claimed by a minority community to administer the educational institutions depends upon the proof of establishment of the institution. The proof of establishment of the institution is thus a condition precedent for claiming the right to administer the institution. The proof for establishment of minority institutions are that the minority educational institutions are established with the desire that their children should be brought up properly and efficiently and eligible for higher university education and for the purpose of conserving the language and culture and also for the purpose of giving thorough good general

education to their children. Para 23 of the AIR in Re:- Kerala Education Bill, 1957 case (Supra) reads as follows:-

23. Having disposed of the minor point referred to above, we now take up the main argument advanced before us as to the content of Art. 30(1). The first point to note is that the Article gives certain rights not only to religious minorities but also to linguistic minorities. In the next place, the right conferred on such minorities is to establish educational institutions of their choice. It does not say that minorities based on religion should establish educational institutions for teaching religion only, or that linguistic minorities should have the right to establish educational institutions for teaching their language only. What the article say and means is that the religious and the linguistic minorities should have the right to establish educational institutions of their choice. There is no limitation placed on the subjects to be taught in such educational institutions. As such minorities will ordinarily desire that their children should be brought up properly and efficiently and be eligible for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering the public services, educational institutions of their choice will necessarily include institutions imparting general secular education also. In other words, the Article leaves it to their choice to establish such educational institutions as will serve both purposes, namely, the purpose of conserving their religion, language or culture, and also the purpose of giving a thorough, good general education to their children. The next thing to note is that the Article, in terms, gives all minorities, whether based on religion or language, two rights, namely, the right to establish and the right to administer educational institutions of their choice. The key to the understanding of the true meaning and implication of the Article under consideration are the words "of their own choice". It is said that the dominant word is "choice" and the content of that Article is as wide as the choice of the particular minority community may make it. The ambit of the rights conferred by Art. 30(1) has, therefore, to be determined on a consideration of the matter from the points of view of the educational institutions themselves. The educational institutions established or administered by the minorities or to be so established or administered by them in exercise of the rights conferred by that Article may be classified into three categories, namely, (1) those which do not seek either aid or recognition from the State, (2) those which want aid, and (3) those which want only recognition but not aid.

10. The Apex Court (7 Judges) in P.A. Inamdar and Others Vs. State of Maharashtra and Others, held that:-

96. Such definition of minority resolves one issue but gives rise to many a questions when it comes to defining "minority educational institution". Whether a minority educational institution, though established by a minority, can cater to the needs of that minority only? Can there be an enquiry to identify the person or persons who have really established the institution? Can a minority institution provide cross-border or inter-State educational facilities and yet retain the

character of minority educational institution?

97. In Kerala Education Bill: Kerala Education Bill, 1957, In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, , the scope and ambit of right conferred by Article 30(1) came up for consideration. Article 30(1) does not require that minorities based on religion should establish educational institutions for teaching religion only or that a linguistic minority should establish educational institution for teaching its language only. The object underlying Article 30(1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services, educational institutions imparting higher instructions including general secular education. Thus, the twin objects sought to be achieved by Article 30(1) in the interest of minorities are: (i) to enable such minority to conserve its religion and language, and (ii) to give a thorough, good general education to the children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the above said two objectives, the institution would remain a minority institution.

11. Keeping in view of the decisions of the Apex Court in Kerala Bill, 1957 case (Supra) and P.A. Inamdar's case (Supra), this Court has given anxious consideration as to whether the RPNCHS School is a linguistic minority institution contemplated under Articles 29(1) and 30(1) of the Constitution by carefully perusing the resolution of the Managing Committee mentioned above for establishment of the RPNCHS School and is of the considered view that RPNCHS School is an institution based on language established by the linguistic minority community.

12. Question:- Should the medium of instruction of RPNCHS School be only Bengali language, if not, RPNCHS School will shed its status and identity as a minority institution? This question is to be answered with reference to the words "of their choice" mentioned in the second right guaranteed under Article 30(1) of the Constitution i.e. right to administer educational institutions of their choice. The question as to whether or not the RPNCHS School will shed its status and identity as a linguistic minority institution as some members of the Managing Committee of RPNCHS School belonging to other communities? is also answered with reference to the said words i.e. "of their choice" mentioned in the second right guaranteed under Article 30(1) of the Constitution. The Apex Court in Kerala Bill, 1957 case (Supra) held that there is no limitation placed on the subjects to be taught in such educational institutions as minorities will ordinarily desire that their children should be brought up properly and efficiently and be eligible for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering the public services, educational institutions of their choice will necessarily include institutions imparting general secular education also. It is also stated that the

dominant word is "choice" and the content of that article is as wide as the choice of the particular minority community may make it.

The Apex Court in Kerala Bill, 1957 case (Supra) further held that by admitting non-members into the minority institution does not shed its character and cease to be a minority institution. The Apex Court in D.A.V. College Bhatinda's case (Supra) held that the right of the minority to establish and administer educational institutions of their choice would include the right to have a choice of medium instruction also which would be the result of reading Article 30(1) with Article 29(1). The Apex Court in State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., held that:-

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

13. The Apex Court (Constitution Bench) in Civil Appeal Nos. 5166-5190 of 2013 between State of Karnataka & Anr. v. Associated Management of (Government Re-cognized-Unaided-English Medium) Primary & Secondary Schools & Ors held that the minorities have a right to establish and administer educational institutions of their choice, they have the choice of medium of instruction in which education will be imparted in the institutions established and administered by them. Para 34, 35 and 36 of the judgment in Civil Appeal Nos. 5166-5190 read as follows:-

34. ... We will have to decide whether imposition of mother tongue in any way affects the fundamental rights under Articles 19, 29 and 30 of the Constitution.

35. Articles 29(1) and 30(1) of the Constitution are quoted hereinbelow:

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.

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.

A reading of clause (1) of Article 29 of the Constitution provides that 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 and clause (1) of Article 30 provides that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

36. In *D.A.V. College, Bhatinda, etc. v. The State of Punjab & Ors.* (supra), the Punjabi University in exercise of its power u/s 4(2) of Punjabi University Act (35 of 1961), made Punjabi the sole medium of instruction and examination in all colleges affiliated under Punjabi University. It was contended inter alia before this Court that prescription of such medium of instruction and examination in a language which is not the mother tongue of the minority which has established the educational institution is violative of the rights conferred under clause (1) of Article 29 and clause (1) of Article 30 of the Constitution and the Constitution Bench of this Court has upheld this contention in the following words:

The right of the minorities to establish and administer educational institutions of their choice would include the right to have a choice of the medium of instruction also which would be the result of reading Article 30(1) with Article 29(1).

Thus, a Constitution Bench of this Court in *D.A.V. College, Bhatinda, etc. v. The State of Punjab & Ors.* (Supra) has already held that minorities have a right to establish and administer educational institutions of "their choice" and therefore they have the choice of medium of instruction in which education will be imparted in the institutions established and administered by them.

14. Question:- Whether the reservation policy of the State of Meghalaya as provided under Articles 15(5), 16(4), 16(4-A) and 16(4-B) of the Constitution of India can be made applicable to the minority educational institution viz Rilbong P.N. Chaudhuri Higher Secondary School, Shillong which was established as a linguistic and cultural minority educational institution?. Article 15(5) will not be extended to the minority educational institution referred to in Clause (1) of Article 30 of the Constitution inasmuch as, the last portion of Article 15(5) of the Constitution reads as "other than minority institutions referred to in Clause(1) of Article 30". Article 16(4-A) and (4-B) of the Constitution are with reference to the services under the State". The Apex Court in *Sindhi Education Society and Another Vs. The Chief Secretary, Govt. of NCT of Delhi and Others*, held that merely receiving the grant-in-aid per se would not make such school or institution "State" within the meaning of Article 12. Therefore, the service under the minority institutions cannot be under the State as provided under Article 16(4-A)(4-B) of the Constitution. Paras 83, 84, 85, 87, 115 & 119 of the SCC in *Sindhi Education Society case* (Supra) read as follows:-

83. Article 15(5) of the Constitution excludes the minority educational institutions from the power of the State to make any provision by law for the advancement of any socially or educationally backward classes of the citizens or for Scheduled Castes and Scheduled Tribes in relation to their admission to

educational institutions including private educational institutions whether aided or unaided. This Article is capable of very wide interpretation and vests the State with power of wide magnitude to achieve the purpose stated in the Article. But, the framers of the Constitution have specifically excluded minority educational institutions from the operation of this clause.

84. Article 16 which ensures equality of opportunity in matters of public employment again has been worded so as to prohibit discrimination and, at the same time, vests the State with power to make provisions, laws and reservations in relation to a particular class or classes of persons. It is of some significance to notice that power of the State to exercise such power is in relation to the "service under the State". This expression has been used in all the clauses of the Article which relate to providing of employment and framing of laws/reservations in those categories. Upon its true construction, this expression itself is capable of a wide construction and must be construed liberally and cannot be restricted to its narrow sense.

85. The expression "service under the State" would obviously include service directly under the State Government or its instrumentalities and/or even the sectors which can be termed as a State within the meaning of Article 12 of the Constitution. Once an organization or society falls outside the ambit of this circumference, in that event, it will be difficult for the Courts to hold that the State has a right to frame such laws or provisions or make reservations in the field of employment for those societies.

87. There is no doubt, that there may be minority institutions which are receiving grant-in-aid from the Government. But, merely receiving grant-in-aid per se would not make such school or institution "State" within the meaning of Article 12 of the Constitution of India. Even this aspect we need not discuss in any great detail as the question stands settled by the judgment of this Court in the case of *Lt. Governor of Delhi and Others Vs. V.K. Sodhi and Others*, wherein this Court has dealt with the question whether State Council of Education, Research and Training is not State or other authority within the meaning of Article 12. The Court returned the finding that though the finances were being provided by the State, the State Government does not have deep and pervasive control over the working of the Council and it was an independent society and thus, is not State. The Court held as under: (SCC pp. 143-46, paras 16-21)

16. The two elements, one, of a function of the State, namely, the coordinating of education and the other, of the Council being dependant on the funding by the State, satisfied two of the tests indicated by the decisions of this Court. But, at the same time, from that alone it could not be assumed that SCERT is State. It has to be noted that though finance is made available by the State, in the matter of administration of that finance, the Council is supreme. The administration is also completely with the Council. There is no governmental interference or control either financially, functionally or administratively, in the working of the Council. These were the aspects taken note of in *Chander Mohan Khanna Vs. The*

National Council of Educational Research and Training and other[OVERRULED], , to come to the conclusion that NCERT is not a State or other authority within the meaning of Article 12 of the Constitution of India. No doubt, in Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], , the Bench noted that the fact that education was a State function could not make any difference. This part of the reasoning in Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], , case has been specifically disapproved by the majority in Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, . The majority noted that the objects of forming Indian Institute of Chemical Biology was with the view of entrusting it with a function that is fundamental to the governance of the country and quoted with approval (Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others,) the following passage in Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others,

6.... The State, as defined in Article 12, is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people.

The majority then stated: Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others,

46. We are in respectful agreement with this statement of the law. The observations to the contrary in Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], relied on by the learned Attorney-General in this context, do not represent the correct legal position.

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17. We also find substantial differences in the two set ups. Sabhajit Tewary Vs. Union of India (UOI) and Others, after referring to the rules of the Council of Scientific and Industrial Research which was registered under the Societies Registration Act, concluded that it was not a State within the meaning of Article 12 of the Constitution. While overruling the said decision, the majority in Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, took the view that the dominant role played by the Government of India in the governing body and the ubiquitous control of the Government in the Council and the complete subjugation of the Governing Body to the will of the Central Government, the inability of the Council to lay down or change the terms and conditions of service of its employees and the inability to alter any bye-law without the approval of the Government of India and the owning by the Central Government of the assets and funds of the Council though normally owned by the society, all indicated that there was effective and pervasive control over the functioning of the Council and since it was also entrusted with a Governmental function, the justifiable conclusion was that it was a State within the meaning of

Article 12 of the Constitution.

18. The majority in *Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others*, also noticed that on a winding up of that Council, the entire assets were to vest in the Central Government and that was also a relevant indication. Their Lordships in the majority also specifically overruled as a legal principle that a Society registered under the Societies Registration Act or a company incorporated under the Companies Act, is by that reason alone excluded from the concept of State under Article 12 of the Constitution.

19. In the case of SCERT, in addition to the operational autonomy of the Executive Committee, it could also amend its bye-laws subject to the provisions of the Delhi (sic) Societies Registration Act though with the previous concurrence of the Government of Delhi and that the proceedings of the Council are to be made available by the Secretary for inspection of the Registrar of Societies as per the provisions of the Societies Registration Act. The records and proceedings of the Council have also to be made available for inspection by the Registrar of Societies. In the case of dissolution of SCERT, the liabilities and assets are to be taken over at book value by the Government of Delhi which had to appoint a liquidator for completing the dissolution of the Body. The creditors' loans and other liabilities of SCERT shall have preference and bear a first charge on the assets of the Council at the time of dissolution. This is not an unconditional vesting of the assets on dissolution with the Government.

20. It is also provided that the provisions of the Societies Registration Act, 1860 had to be complied with in the matter of filing list of office-bearers every year with the Registrar and the carrying out of the amendments in accordance with the procedure laid down in the Act of 1860 and the dissolution being in terms of Sections 13 and 14 of the Societies Registration Act, 1860 and making all the provisions of the Societies Registration Act applicable to the Society. These provisions, in our view, indicate that SCERT is subservient to the provisions of the Societies Registration Act rather than to the State Government and that the intention was to keep SCERT as an independent body and the role of the State Government cannot be compared to that of the Central Government in the case of Council of Scientific and Industrial Research.

21. As we understand it, even going by paragraph 40 of the judgment in *Pradeep Kumar Biswas: Pradeep Kumar Biswas: Pradeep Kumar Biswas case: Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others*, which we have quoted above, we have to consider the cumulative effect of all the facts available in the case. So considered, we are inclined to hold that SCERT is not State or other authority within the meaning of Article 12 of the Constitution of India. As we see it, the High Court has not independently discussed the relevant rules governing the functioning and administration of SCERT. It has proceeded on the basis that in the face of *Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others*, decision, the decision in *Chander Mohan Khanna Vs. The National Council of Educational Research and*

Training and other[OVERRULED], , must be taken to be overruled and no further discussion of the question is necessary. But, in our view, even going by Pradeep Kumar Biswas case: Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, , each case has to be considered with reference to the facts available for determining whether the body concerned is State or other authority within the meaning of Article 12 of the Constitution of India. So considered, we find that the Government does not have deep and pervasive control over the working of SCERT. It does not have financial control in the sense that once the finances are made available to it, the administration of those finances is left to SCERT and there is no further governmental control. In this situation, we accept the submission on behalf of the appellants and hold that SCERT is not State or other authority within the meaning of Article 12 of the Constitution of India. After all, the very formation of an independent society under the Societies Registration Act would also suggest that the intention was not to make the body a mere appendage of the State. We reverse the finding of the High Court on this aspect.

115. To frame policy is the domain of the Government. If, as a matter of policy, the Government has decided to implement the reservation policy for upliftment of the socially or otherwise backward classes, then essentially it must do so within the frame work of the Constitution and the laws. The concept of reservation has been provided, primarily, under Articles 15 & 16 of the Constitution. Therefore, it would be the requirement of law that such policies are framed and enforced within the four corners of law and to achieve the laudable cause of upliftment of a particular section of the society.

119. Besides that, State actions should be *actio quaelibet it sua via* and every discharge of its duties, functions and governance should also be within the constitutional framework. This principle equally applies to the Government while acting in the field of reservation as well. It would not be possible for the Courts to permit the State to impinge upon or violate directly or indirectly the constitutional rights and protections granted to various classes including the minorities. Thus, the State may not be well within its constitutional duty to compel the linguistic minority institution to accept a policy decision, enforcement of which will infringe their fundamental right and/or protection. On the contrary, the minority can validly question such a decision of the State in law. The service in an aided linguistic minority school cannot be construed as "a service under the State" even with the aid of Article 12 of the Constitution. Resultantly, we have no hesitation in coming to the conclusion that Rule 64(1)(b) cannot be enforced against the linguistic minority school. Having answered this question in favour of the appellant and against the State, we do not consider it necessary to go into the constitutional validity or otherwise of Rule 64(1)(b) of the Rules, which question we leave open.

Therefore, this Court is of the considered view that the reservation policy of the Govt. of Meghalaya cannot be extended to the minority educational institution

established by the linguistic minority community.

15. Question:- To what extent the State Govt. can control the administration of the minority educational institution which is an aided school or un-aided school recognized by the Govt.? The right of the State to regulate education, educational standards and allied matters cannot be denied and the minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. The State has the authority to regulate the standards of educational institutions but the State have no right to interfere with the administration of the minority institutions guaranteed by Article 30(1) of the Constitution so long as the minority institutions are maintaining the standards prescribed by the Govt. regulations. The Apex Court in *Very Rev. Mother Provincial, etc. case (Supra)* held that:-

10. There is, however, an exception to this and it is that the standards of education are not a part of management as such. These standards concern the body politic and are dictated by considerations of the, advancement of the country and its people. Therefore, if universities establish the syllabi for examinations they must be followed, subject however to special subjects which the, institutions may seek to teach, and to a certain extent the State may also regulate the conditions of employment of teachers and the health and hygiene of students. Such regulations do not bear directly upon management as such although they may indirectly affect it. Yet the right of the State to regulate education, educational Standards and allied matters cannot be denied. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. While the management must be left to them, they may be compelled to keep in step with others. These propositions have been firmly established in the *The State of Bombay Vs. Bombay Education Society and Others*, , *The State of Madras Vs. Srimathi Champakam Dorairajan*, *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, , *Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another*, , *Katra Educational Society Vs. State of Uttar Pradesh and Others*, , *The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others*, and *Rev. Father W. Proost and Others Vs. The State of Bihar and Others*, In the last case it was said that the right need not be enlarged nor whittled down. The Constitution speaks of administration and that must fairly be left to the minority institutions and no more. Applying these principles we now consider the provisions of the Act.

16. The Gauhati High Court (incidentally this Court, Justice T. Nandakumar Singh) in *Patkai Christian Academy and Another Vs. State of Manipur and Others*, had considered the extend of the power of the State Govt. to impose restriction on the right of the minority to administer educational institution and held that the State Govt. can make regulatory measures to promote efficiency and

excellence of the educational standards and issue guidelines for the purpose of ensuring security of services of teachers and other employees of the institution. The Apex Court (Constitution Bench) in Civil Appeal Nos. 5166-5190 of 2013 held that the educational institutions can be subject to regulations by the State Govt. for inter alia maintenance of proper academic standards. But the regulations made by the authority should not impinge upon the minority character. Para 39 of the judgment in Civil Appeal Nos. 5166-5190 of 2013, reads as follows:-

39. It is, however, well settled that all educational institutions can be subject to regulations by the State for inter alia maintenance of proper academic standards. While discussing the right to establish and administer an educational institution under Article 19(1)(g) of the Constitution, Kirpal C.J., speaking for the majority of Judges in *T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors.* (supra), held:

The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of maladministration by those in charge of management....

Again, in the majority judgment in *T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors.* (supra), Kirpal C.J. while discussing the right of a minority educational institution protected under Article 30(1) of the Constitution;

...It was permissible for the authorities to prescribe regulations, which must be complied with, before a minority institution could seek or retain affiliation and recognition. But it was also stated that the regulations made by the authority should not impinge upon the minority character of the institution. Therefore, a balance has to be kept between the two objectives-that of ensuring the standard of excellence of the institution, and that of preserving the right of the minorities to establish and administer their educational institutions....

Thus, whether it is a private unaided institution enjoying the right under Article 19(1)(g) of the Constitution or whether it is a private institution enjoying the special protection of a minority institution under Article 30(1) of the Constitution, the State has the power to adopt regulatory measures which must satisfy the test of reasonableness. Moreover, the State may exercise this regulatory power either by making a law or by issuing an executive order.

17. For the foregoing reasons, the impugned letter dated 24.03.2011 is hereby set aside. This Court further held that the reservation policy of the State of Meghalaya cannot be extended to the RPNCHS School which is an educational minority school established by the linguistic minority community in exercise of the powers guaranteed under Articles 29(1) and 30(1) of the Constitution and the State respondents are further directed to consider for approval of the said resolution dated 07.12.2008 of the Managing Committee of the RPNCHS School for appointment of the petitioner to the post of Graduate teacher (Arts) within a period of three months from the date of receipt of a certified copy of this

judgment and order.

18. The National Commission for Minority Educational Act, 2004 (for short "the Act of 2004") has come into force w.e.f. 11.11.2004. In order to avoid complicity in all aspects, the RPNCHS School and the State Govt. may take up steps, if necessary, as provided under the said Act of 2004.

19. Writ petition is allowed. Parties are to bear their own costs.