> **"46.** In the said case, the Court held that right of the minorities to some extent was restricted in the sense that general control still could be exercised by the authorities concerned, but in accordance with law. That is how Clause 11 of the Bill, which has been very heavily relied upon by the respondents before us, completely puts an embargo on the appointment of teachers of their choice and the teachers could only be appointed out of the panel selected by the Public Service Commission. This clause was held not to be in violation of the Constitution, but Clauses 14 and 15, which related to taking over of the management of an aided school for the conditions stipulated therein, were held to be unconstitutional and bad. This was in view of the law stated under the Bill and its scheme that weighed with the Court to record the findings aforenoticed.
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> **47.** Still another seven-Judge Bench of this Court, in *Ahmedabad St. Xavier's College Society*[5] was primarily concerned with the scope of Articles 29 and 30 of the Constitution, relating to the rights of minorities to impart general education and applicability of the concept of affiliation to such institutions. Of course, the Court held that there was no fundamental right of a minority institution to get affiliation from a university. When a minority institution applies to a university to be affiliated, it expresses its choice to participate in the system of general education and courses of instructions prescribed by that university, and it agrees to follow the uniform courses of study. Therefore, measures which will regulate the courses of study, the qualifications and appointment of teachers, the conditions of employment of teachers, the health, hygiene of students and the other facilities are germane to affiliation of minority institutions.

36.1 In the context of the decision in ***TMA Pai Foundation***[8], it was observed:

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"55. The respondents have placed reliance upon the law stated by the Bench that any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by majority or the minority. Such a limitation must be read into Article 30. The rule under Article 30(1) cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf. It is, of course, true that government regulations cannot destroy the minority character of the institution or make a right to establish and administer a mere illusion; but the right under Article 30 is not so absolute as to be above the law.

56. The appellant also seeks to derive benefit from the view that the courts have also held that the right to administer is not absolute and is subject to reasonable regulations for the benefit of the institutions as the vehicle of education consistent with the national interest. Such general laws of the land would also be applicable to the minority institutions as well. There is no reason why regulations or conditions concerning generally the welfare of the students and teachers should not be made applicable in order to provide a proper academic atmosphere. As such, the provisions do not, in any way, interfere with the right of administration or management under Article 30(1). Any law, rule or regulation, that would put the educational institutions run by the minorities at a disadvantage, when compared to the institutions run by the others, will have to be struck down. At the same time, there may not be any reverse discrimination.

91. In *T.M.A. Pai case*[8] the right to establish an institution is provided. The Court held that the right to establish an institution is provided in Article 19(1)(*g*) of the Constitution. Such right, however, is subject to reasonable restriction, which may be brought about in terms of clause (6) thereof. Further, that minority, whether based on religion or language, however, has a fundamental right to establish and administer educational institution of its own choice under Article 30(1).

> **92.** The right under clause (1) of Article 30 is not absolute but subject to reasonable restrictions which, inter alia, may be framed having regard to the public interest and national interest of the country. Regulation can also be framed to prevent maladministration as well as for laying down standards of education, teaching, maintenance of discipline, public order, health, morality, etc. It is also well settled that a minority institution does not cease to be so, the moment grant-in-aid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and, at the same time, would be required to admit a reasonable extent of non-minority students, to the extent, that the right in Article 30(1) is not substantially impaired and further, the citizen's right under Article 29(2) is not infringed."

36.2 While considering the amplitude of the Rule in question, it was observed:

> **"101.** To appoint a teacher is part of the regular administration and management of the school. Of course, what should be the qualification or eligibility criteria for a teacher to be appointed can be defined and, in fact, has been defined by the Government of NCT of Delhi and within those specified parameters, the right of a linguistic minority institution to appoint a teacher cannot be interfered with. The paramount feature of the above laws was to bring efficiency and excellence in the field of school education and, therefore, it is expected of the minority institutions to select the best teacher to the faculty. To provide and enforce any regulation, which will practically defeat this purpose would have to be avoided. A linguistic minority is entitled to conserve its language and culture by a constitutional mandate. Thus, it must select people who satisfy the prescribed criteria,

> qualification and eligibility and at the same time ensure better cultural and linguistic compatibility to the minority institution.
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> **112.** Every linguistic minority may have its own social, economic and cultural limitations. It has a constitutional right to conserve such culture and language. Thus, it would have a right to choose teachers, who possess the eligibility and qualifications, as provided, without really being impressed by the fact of their religion and community. Its own limitations may not permit, for cultural, economic or other good reasons, to induct teachers from a particular class or community. The direction, as contemplated under Rule 64(1)(*b*), could be enforced against the general or majority category of the government-aided schools but, it may not be appropriate to enforce such condition against linguistic minority schools. This may amount to interference with their right of choice and, at the same time, may dilute their character of linguistic minority. It would be impermissible in law to bring such actions under the cover of equality which in fact, would diminish the very essence of their character or status. Linguistic and cultural compatibility can be legitimately claimed as one of the desirable features of a linguistic minority in relation to selection of eligible and qualified teachers."

36.3 It was also observed that despite Rule 64(1)(b), a circular was issued on 21.03.1986 exempting Minority Institutions from complying with the requirements of said Rule; and that the subsequent insistence through circular of September 1989 did not disclose any reason for such departure and it was, therefore, observed:

> **"117.** Thus, the framework of reservation policy should be such, as to fit in within the constitutional scheme of our democracy. As and when the

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> Government changes its policy decision, it is expected to give valid reasons and act in the larger interest of the entire community rather than a section thereof. In its wisdom and apparently in accordance with law the Government had taken a policy decision and issued the Circular dated 21-3-1986 exempting the minority institutions from complying with the requirements of Rule 64(1)(*b*) of the DSE Rules. Despite this and the judgment of the High Court there was a change of mind by the State that resulted in issuance of the subsequent Circular of September 1989. From the record before us, no reasons have been recorded in support of the decision superseding the Circular dated 21-3-1986."

36.4 In the aforesaid circumstances, the appeal was allowed and it was held that Rule 64(1)(b) and the circular of 1989 would not be enforceable against Linguistic Minority Schools in the NCT of Delhi.

37. In ***Chandana Das (Malakar) vs. State of West Bengal and others***[31] the question that arose was set out in para 6 as under:-

> **6.** … …whether the Institution's right to select and appoint teachers is in any way affected by the provisions of the Rules of Management of Recognised Non-Government Institutions (Aided and Unaided), 1969 framed under the provisions of the West Bengal Board of Secondary Education Act, 1963?"

In terms of Rule 28 teachers on permanent or temporary basis, against permanent or temporary vacancies, could be appointed only on the recommendation of the *West Bengal Regional School Service*

31 (2015) 12 SCC 140

Commission[32]. However, according to Rule 33, on the application by any institution to which the provisions of Articles 26 and 30 of the Constitution apply, rules could be framed by the State Government. According to the State, the concerned institution had never claimed minority status and was never recognised as minority institution. Reliance was also placed on Rule 8(3) of the Rules for Management of Recognised Non-Government Institutions (Aided and Unaided), 1969 whereunder permission for special constitution was granted to the institution and, therefore, it was submitted that having accepted the special constitution, it could not turn around and contend that it was a minority institution as per special rules framed in terms of Rule 33.

37.1 There was disagreement between the Judges constituting the Bench. According to Thakur, J, as the learned Chief Justice then was, since the institution was set up by Punjabi speaking Sikh community, a linguistic minority in the State, the mechanism provided for making appointments under Rule 28 had no application to minority educational institutions for whom there could be special dispensation under Rule 33. During the course of his Judgment, Thakur, J. observed:-

> **"21.** It is unnecessary to multiply decisions on the subject for the legal position is well settled. Linguistic

32 Constituted in forms of 1997 Act – as dealt with in para 6 hereinabove.

> institution and religious are entitled to establish and administer their institutions. Such right of administration includes the right of appointing teachers of its choice but does not denude the State of its power to frame regulations that may prescribe the conditions of eligibility for appointment of such teachers. The regulations can also prescribe measures to ensure that the institution is run efficiently for the right to administer does not include the right to maladministration. While grant-in-aid is not included in the guarantee contained in the Constitution to linguistic and religious minorities for establishing and running their educational institutions, such grant cannot be denied to such institutions only because the institutions are established by linguistic or religious minority. Grant of aid cannot, however, be made subservient to conditions which deprive the institution of their substantive right of administering such institutions. Suffice it to say that once Respondent 4 Institution is held to be a minority institution entitled to the protection of Articles 26 and 30 of the Constitution of India the right to appoint teachers of its choice who satisfy the conditions of eligibility prescribed for such appointments under the relevant rules is implicit in their rights to administer such institutions. Such rights cannot then be diluted by the State or its functionaries insisting that the appointment should be made only with the approval of the Director or by following the mechanism generally prescribed for institutions that do not enjoy the minority status."
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> (Emphasis supplied)

37.2 Banumathi, J., however, found that the concerned institution had never claimed to be a minority institution and had, in fact, accepted the special constitution in terms of Rule 8 (3). It was, therefore, observed:-

> **"52.** The fourth respondent school has accepted the special constitution and it has not chosen to challenge the same. As rightly held by the High Court, when the fourth respondent school has accepted the special

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> constitution and has not claimed to be a minority institution, the appellants who are merely employees of such an institution, cannot contend that the institution was a minority institution entitled to appoint its own teachers."

37.3 Because of the disagreement, the matter was directed to be placed before a Bench of three Judges of this Court, which has since then rendered its decision on 25.09.2019[33]. It was noted that Rule 32 specifically declared that nothing in the concerned Rules would apply to an educational institution established and administered by a minority referred to in clause (c) of Section 2 of the West Bengal Minorities' Commission Act, 1996, which had, in turn, defined expression "*minority*" to mean a community based on religion such as Muslim, Christian, Sikh, Buddhist, or Zorastrian (Parsee). As regards the first question, it was, therefore, observed in paragraphs 17 to 20 that the Institution was a minority educational institution. It was also considered whether declaration as to status of the minority institution by the competent authority was necessary before the institution could claim the status of being a minority institution. Both the issues which had led to disagreement between two Judges were thus, squarely answered and the decision of Thakur, J. was accepted to be the correct view on both counts.

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33 Reported in **2019 SCC OnLine SC 1253** [Chandana Das (Malakar) vs. State of West Bengal and others]

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37.4 During the course of its discussion, this Court also considered the decision in ***Ahmedabad St. Xavier's College***[5] case and observed:-

> "**30.** A reading of the aforesaid judgment would leave no manner of doubt that if Respondent No. 4 is a minority institution, Rule 28 of the Rules for Management of Recognized Non-Government Institutions (Aided and Unaided) 1969, cannot possibly apply as there would be a serious infraction of the right of Respondent No. 4 to administer the institution with teachers of its choice."

DISCUSSION AND CONCLUSION

38. In the backdrop of the decisions of this Court referred to hereinabove, we must now consider whether the relevant provisions of the Commission Act transgress upon the rights of a minority institution or said provisions can be termed as "tenable as ensuring the excellence of the institution without injuring the essence of the right"[34] of a minority institution. Right from ***Re: The Kerala Education Bill***[9] Case the issue that has engaged the attention of this Court is about the content of rights of minority educational institution and the extent and width of applicability of regulations and what can be said to be permissible regulations. If the cases in the first segment i.e. upto the decision in ***TMA Pai Foundation***[8] are considered, the following principles emerge:-

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34 Expression used by Krishna Iyer J. in the Gandhi Faiz – e-am College case[13]

A) In ***Re: The Kerala Education Bill***[9] Case, Clause 11(2) in terms of which the State Public Services Commission was empowered to select candidates for appointment as teachers in Government and aided schools, was found to be a permissible regulation. It was observed that such provision, *inter alia*, was applicable to all educational institutions and was designed to give protection and security to the teachers engaged in rendering service to the nation.

B) The decision in ***Sidhajbhai Sabhai***[10]**,** however, observed, "*Unlike Art. 19, the fundamental freedom under clause (1) of Art. 30, is absolute in terms; it is not made subject to any reasonable restrictions of the nature the fundamental freedoms enunciated in Art. 19 may be subjected to*." It went on to add "*Regulation made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed*." It read the decision in ***Re: The Kerala Education Bill***[9] case as "*not an authority for the proposition submitted by the Additional Solicitor General that all regulative measures which are not destructive or annihilative of the character of the institution established by the minority, provided the regulations are in the national or public interest, are valid*." It however laid down a test - "*Such regulation must satisfy a dual test - the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the*

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institution an effective vehicle of education for the minority community or other persons who resort to it."

C) (i) In ***Ahmedabad St. Xavier's College***[5] case, while considering the importance of teachers in an educational institution, Ray C.J. in his leading judgment observed, "*The minority institutions have the right to administer institutions. This right implies the obligation and duty of the minority institutions to render the very best to the students. In the right of administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service*." It was further stated that "*regulations which will serve the interests of the teachers are of paramount importance in good administration*."

(ii) According to Khanna, J., "*The regulations have necessarily to be made in the interest of the institution as a minority educational institution. They have to be so designed as to make it an effective vehicle for imparting education*."; and "*Regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed*." A word of caution was also expressed while observing, "*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*

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to follow the general pattern. While the management must be left to them, they may be compelled to keep in step with others."

Khanna, J. then laid down "*Balance has, therefore, 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. Regulations which embrace and reconcile the two objectives can be considered to be reasonable*.";

(iii) Mathew, J. however stated, "*The question whether a regulation is in the general interest of the public has no relevance, if it does not advance the excellence of the institution as a vehicle for general secular education as, exhypothesi, the only permissible regulations are those which secure the effectiveness of the purpose of the facility, namely, the excellence of the educational institutions in respect of their educational standards. This is the reason why this Court has time and again said that the question whether a particular regulation is calculated to advance the general public interest is of no consequence if it is not conducive to the interests of the minority community and those persons who resort to it*."

D) In ***Gandhi Faiz-e-am College***[13], Krishna Iyer, J. found "*In our case autonomy is virtually left intact and refurbishing, not restructuring, is prescribed. The core of the right is not gouged out at all and the regulation*

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is at once reasonable and calculated to promote excellence of the institution — a text book instance of constitutional conditions." The regulation was, however, not found to be permissible by Mathew, J.

E) In ***Frank Anthony Public School***[17] case, it was emphasized, "*The excellence of the instruction provided by an institution would depend directly on the excellence of the teaching staff, and in turn, that would depend on the quality and the contentment of the teachers*."

39. We now turn to ***TMA Pai Foundation***[8] case and consider the principles that it laid down and whether there was reiteration of the principles laid down in the decisions of this Court in the earlier segment or whether there was any change or shift in the emphasis.

A) In para 50, five incidents were stated to comprise the "*right to establish and administer*" and three of them were stated to be :-

(a) right to admit students;
(b) right to appoint staff – teaching and non-teaching; and
(c) right to take disciplinary action against the staff.

The discussion in the leading judgment was under various headings and the important one being "5. *To what extent can the rights of aided private minority institutions to administer be regulated?*"

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B) The earlier decisions of the Court were considered and while considering the judgment of this Court in ***Sidhajbhai Sabhai***[10] case it was observed:-

> *"If this is so, it is difficult to appreciate how the Government can be prevented from framing regulations that are in the national interest, as it seems to be indicated in the passage quoted hereinabove. Any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by the majority or the minority. Such a limitation must necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf. It is, of course, true that government regulations cannot destroy the minority character of the institution or make the right to establish and administer a mere illusion; but the right under Article 30 is not so absolute as to be above the law."*

C) Thus, the principle laid down in ***Sidhajbhai Sabhai***[10] that the right under Article 30(1) cannot be whittled down by so-called regulative measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole was not accepted in ***TMA Pai Foundation***[8]. The emphasis was clear that any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by the majority or the minority and put the matter beyond any doubt. A caveat was however entered and it was stated that the

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Government regulations cannot destroy the minority character of the institution.

D) The leading judgment then observed that the correct approach would be - what was laid down by Khanna, J. in ***Ahmedabad St. Xavier's College***[5] case:-

> "*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. Regulations that embraced and reconciled the two objectives could be considered to be reasonable. This, in our view, is the correct approach to the problem.*"

E) The majority judgment then summed up the matter and stated:-

> "*It is difficult to comprehend that the framers of the Constitution would have given such an absolute right to the religious or linguistic minorities, which would enable them to establish and administer educational institutions in a manner so as to be in conflict with the other Parts of the Constitution. ……..*
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> 137. …… *The right under Article 30(1) has, therefore, not been held to be absolute or above other provisions of the law, and we reiterate the same. By the same analogy, there is no reason why regulations or conditions concerning, generally, the welfare of students and teachers should not be made applicable in order to provide a proper academic atmosphere, as such provisions do not in any way interfere with the right of administration or management under Article 30(1).*"

It was further laid down :-

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> "*In other words, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. ….. Laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions*."

40. The decision in ***TMA Pai Foundation***[8]**,** rendered by Eleven Judges of this Court, thus put the matter beyond any doubt and clarified that the right under Article 30(1) is not absolute or above the law and that conditions concerning the welfare of the students and teachers must apply in order to provide proper academic atmosphere, so long as the conditions did not interfere with the right of the administration or management. What was accepted as correct approach was the test laid down by Khanna, J. in ***Ahmedabad St. Xavier's College***[5] case that a balance be kept between two objectives - one to ensure the standard of excellence of the institution and the other preserving the right of the minorities to establish and administer their educational institutions. The essence of Article 30(1) was also stated – "*to ensure equal treatment between the majority and the minority institutions*" and that rules and regulations would apply equally to the majority institutions as well as to the minority institutions.

41. The decisions of this Court rendered after ***TMA Pai Foundation***[8] case, may now be considered.

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A) In ***Brahmo Samaj Education Society***[24]**,** the argument that the appointment of teachers through College Service Commission would maintain equal standard of education for all throughout the State was not accepted and it was observed that the equal standards would be maintained by insistence on qualifying tests or examinations. This Court, however, did not consider whether the Rules in question were valid or not and left it to the authorities to bring the rules and regulations in conformity with the principles laid down in ***TMA Pai Foundation***[8]. It may be stated here that a review petition has since then been allowed and the matter now stands referred to a Constitution Bench.[35]

B) The decision of this Court in ***P.A. Inamdar***[25] was not directly concerned with the rights of the minority educational institutions receiving aid. It, however, dealt with the matter regarding admission of students in unaided professional educational institutions and observed that the admission of students in minority unaided professional educational institutions must also be governed on the basis of merit. It thus did not accept the right to admit students to be an unqualified right inhering in a minority professional educational institution. The discussion in that case shows that the admissions based on merit in professional educational

35 As observed in para 41 of Chandana Das – (2019) SCC Online SC 1253

institutions were found to be in the national interest and strengthening the national welfare.

(C) ***Malankara Syrian Catholic College***[6] was concerned with selection and appointment of a Principal in an unaided minority educational institution. It was stated in para 19 that the right conferred on minorities under Article 30 was only to ensure equality with majority and was not intended to place the minorities in a more advantageous position vis-à-vis the majority and that there was no reverse discrimination in favour of minorities and that the general laws of the land relating to national interest, would equally apply to minority institutions. It was also observed that the Principal or Headmaster of any educational institution would be responsible for functional efficiency of the institution and also for the quality of education and discipline in the educational institutions as well as maintaining the philosophy and objects of the institution. On that premise, the right to choose a Principal was accepted to be part of the right of a minority educational institution. It also relied upon the decision in ***N. Ammad***[23] case which in turn had relied upon the Full Bench decision of the Kerala High Court. It was, therefore, stated that the power to choose a Headmaster was always recognised as an important facet of the right to the administer the educational institutions.

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(D) ***Sindhi Education Society***[7] was concerned with the issue whether instructions could be issued to fill up the posts of teachers in an unaided minority institution in accordance with the principles and policy of reservation. The concerned rules empowered the authority to issue such instructions. However, a Circular was issued on 21.03.1986 exempting minority institutions from complying with the said Rule. The subsequent insistence through Circular of September, 1989, which did not disclose any reason for departure was not held to be enforceable. The discussion in the case undoubtedly deals with the issue whether the minority educational institutions have a right to choose persons to be appointed as teachers and could there be any regulations and could that right be in any way affected by regulations. However, in the context of a Linguistic Minority Schools it was observed that such institutions must have a right to select the best teachers who not only satisfy the prescribed criteria, qualification and eligibility but also ensure better cultural and linguistic compatibility. Since, the candidates nominated in terms of powers conferred by Rule 64(1)(b) and the instructions issued in Circular of September, 1989 would not satisfy such requirements and ensure compatibility, the appeal was allowed.

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(E) In ***Chandana Das***[31]**,** the principal issue was whether the concerned institution was a minority institution or not. On that issue, there was a disagreement between two Judges of this Court and the matter was referred to a Bench of three Judges which accepted the view of Thakur, J. and held that the institution was a minority educational institution[33]. The issue arose in the context whether recommendations of the West Bengal School Service Commission as regards appointments of teachers against permanent or temporary vacancies could be validly issued in so far as a minority educational institution was concerned. It may be stated that in terms of Section 15 of 1997 Act, nothing in that Act would apply to "*a School established and administered by a minority whether based on religion or language*" and as such the recommendations of the West Bengal School Service Commission could never apply to a minority institutions. Once the view taken by Thakur, J. was accepted and it was held that the institution was a minority institution, by virtue of said Section 15, the West Bengal School Commission could not be competent to issue any direction.

45. Thus, going by the decision of eleven Judges of this Court *in* ***TMA Pai Foundation***[8], so long as the principles laid down therein (as culled out in para 40 hereinabove) are satisfied, it is permissible if any regulations seek to ensure the standard of excellence of the institutions while

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preserving the right of the minorities to establish and administer their educational institutions.

Out of five incidents which constitute "the right to establish and administer" an educational institution as noted in para 50 of the leading judgment in ***TMA Pai Foundation***[8], the right to admit students has not been considered to be an absolute and an unqualified right. The decision in ***P.A. Inamdar***[25] shows that in professional educational institutions or those imparting higher education, merit based selection has been taken to be in the interest of the nation and subserving and strengthening the national welfare. Selection of meritorious students has been accepted to be in the national interest. A minority institution cannot in the name of right under Article 30(1) of the Constitution, disregard merit or merit-based selection of students as regards professional and higher education. The right to take disciplinary action against the staff has also not been accepted to be an unqualified right. ***TMA Pai Foundation***[8] itself lays down that even in an unaided minority educational institution, a mechanism must be evolved and appropriate Tribunal must be constituted to consider the grievances and till then the Tribunals could be presided over by a judicial officer of the rank of a District Judge. To that extent, there was a definite departure from the law laid down in ***Ahmedabad St. Xavier's College***[5] case which

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had struck down Sections 51-A and 52-A of the Gujrat University Act, 1949.

46. When it comes to the right to appoint teachers, in terms of law laid down in ***TMA Pai Foundation***[8] a regulation framed in the national interest must necessarily apply to all institutions regardless whether they are run by majority or minority as the essence of Article 30(1) is to ensure equal treatment between the majority and minority institutions. An objection can certainly be raised if an unfavourable treatment is meted out to an educational institution established and administered by minority. But if ensuring of excellence in educational institutions is the underlying principle behind a regulatory regime and the mechanism of selection of teachers is so designed to achieve excellence in institutions, the matter may stand on a completely different footing.

47. The test accepted in ***TMA Pai Foundation***[8]**,** and the balance between two objectives can well be considered in the context of two categories of institutions; *one* imparting education which is directly aimed at or dealing with preservation and protection of the heritage, culture, script and special characteristics of a religious or a linguistic minority; while the *second* category of institutions could be those which are

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imparting what is commonly known as secular education. When it comes to the institutions in the former category, the teachers who believe in the religious ideology or in the special characteristics of the concerned minority would alone be able to imbibe in the students admitted in such educational institutions, what the minorities would like to preserve, profess and propagate. But, if the subjects in the curriculum are purely secular in character, that, is to say, subjects like Arithmetic, Algebra, Physics, Chemistry or Geography, the intent must be to impart education availing the best possible teachers. In the *first* category, maximum latitude may be given to the managements of the concerned minority institutions as they would normally be considered to be the best judges of what would help them in protecting and preserving the heritage, culture, script or such special features or characteristics of the concerned minorities. However, when it comes to the *second* category of institutions, the governing criteria must be to see to it that the most conducive atmosphere is put in place where the institution achieves excellence and imparts best possible education.

48. As laid down in the leading judgment in ***Ahmedabad St. Xavier's College***[5] case, regulations which will serve the interest of the students so also regulations which will serve the interest of the teachers are of

paramount importance in good administration; that regulations in the interest of efficiency of teachers are necessary for preserving harmony amongst the institutions; and that the appointment of teachers is an important part in educational institutions. It is quite natural that qualitatively better teachers will ensure imparting of education of the highest standard and will help in achieving excellence. As accepted in ***Frank Anthony Public School***[17] case, the excellence of the instruction provided by an institution would depend directly on the excellence of the teaching staff and would in turn depend *inter alia* on the quality of teachers.

49. Thus, if the intent is to achieve excellence in education, would it be enough if the concerned educational institutions were to employ teachers with minimum requisite qualifications in the name of exercise of Right under Article 30 of the Constitution, while better qualified teachers are available to impart education in the second category of institutions as stated hereinabove. For example, if the qualifying percentile index for a teacher to be appointed in an educational institution, considering his educational qualifications, experience and research, is required to be 50, and if teachers possessing qualifications far greater and higher than this basic index are available, will it be proper exercise for a minority

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educational institution to select teachers with lower index disregarding those who are better qualified? Will that subserve pursuit of excellence in education? One can understand if under the regulatory regime candidates who are otherwise less qualified are being nominated in the minority educational institution and the minority educational institution is forced to accept such less meritorious candidates in preference to better qualified candidates. In such cases, the minority educational institution can certainly be within its rights to agitate the issue and claim a right to choose better teachers. But if the candidates who are selected and nominated under the regulatory regime to impart education which is purely secular in character, are better qualified, would the minority institution be within its rights to reject such nomination only in the name of exercise of a right of choice? The choice so exercised would not be in pursuit of excellence. Can such choice then be accepted?

If the right is taken to be absolute and unqualified, then certainly such choice must be recognised and accepted. But, if the right has not been accepted to be absolute and unqualified and the national interest must always permeate and apply, the excellence and merit must be the governing criteria. Any departure from the concept of merit and excellence would not make a minority educational institution an effective vehicle to achieve

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what has been contemplated in various decisions of this Court. Further, if merit is not the sole and governing criteria, the minority institutions may lag behind the non-minority institutions rather than keep in step with them.

Going back to the example given above, as against index of 50 i.e. the minimum qualifying index, if a candidate nominated under the regulatory regime is at an index of 85, selection by a minority educational institution of a candidate at an index 55 may certainly be above the minimum qualifying mark, but in preference to the one at the index of 85 who is otherwise available, the appointment of a person at the index level of 55, will never give the requisite impetus to achieve excellence. A meritorious candidate at the index level of 85 in the above example, if given the requisite posting will not only help in upholding the principle of merit but will in turn generate an atmosphere of qualitative progress and sense of achievement commensurate with societal objectives and ideology and such posting will, therefore, be in true national interest.

50. At the cost of repetition, it needs to be clarified that if the minority institution has a better candidate available than the one nominated under a regulatory regime, the institution would certainly be within its rights to reject the nomination made by the authorities but if the person nominated for imparting education is otherwise better qualified and suitable, any

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rejection of such nomination by the minority institution would never help such institution in achieving excellence and as such, any such rejection would not be within the true scope of the Right protected under Article 30(1) of the Constitution.

51. With these basic principles in mind, we may now consider the statutory provisions under which the teachers could be nominated under the Commission Act and see whether the concerned regulations help in achieving excellence or whether those provisions are violative of the Rights of the minority institutions.

52. In terms of Section 4 of the Commission Act, the Commission is to consist of a Chairman and four Members. The Chairman of the Commission has to be an eminent educationist having profound knowledge in Islamic Culture and must be well versed in education with teaching experience *inter alia* as a teacher of a University or as a Principal of a college, for a period of not less than twelve years. It is true that the latter part of Section 4(ii) speaks of an officer of the State Government not below the rank of Joint Secretary who could also be appointed as the Chairman of the Commission. But in our view, considering the nature of duties that the Chairman is to discharge, even an officer of the State Government has to be a person with profound knowledge in Islamic

Culture. Apart from the Chairman, there are four Members who are to be appointed in terms of Section 4(iii) of the Commission Act. Out of these four Members, one has to be an eminent educationist having profound knowledge in Islamic Theology and Culture, while the other two Members must have teaching experience *inter alia* as a teacher of a University, or a Principal of a College for a period of not less than ten years. The fourth member could be a non-educationist, but he must have held the position of eminence in public life or in Legal or Administrative Service. Predominant composition of the Commission is thus of educationists and two of them have to be persons with profound knowledge in Islamic Culture and Islamic Theology. The provisions of the Commission Act are thus specially designed for Madrasahs and Madrasah Education System in the State. Rule 8 of the 2010 Rules stipulates fair and transparent process of merit based selection and the statutory mechanism would ensure that only those teachers would be selected who would be best suited to impart education in Madrasah Education System. The State Legislature has taken care to see that the composition of the Commission would ensure compatability of the teachers who would be selected to impart education in Madrasah Education System, which is also emphasized in the Statement of Objects and Reasons.

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53. It is true that the recommendations or nominations of teachers made by the Commission are otherwise binding on the Managing Committees of concerned Madrasahs, but, in terms of second proviso to Section 10 of the Commission Act, if there be any error, it is open to the Managing Committee of the concerned Madrasah to bring it to the notice of the Commission for removal of such error. The concept of 'error' as contemplated must also include cases where the concerned Madrasah could appoint a better qualified teacher than the one nominated by the Commission. If any such error is pointed out, the Commission will certainly have to rectify and remove the error. The further protection is afforded by Section 12 of the Commission Act, under which the concerned Madrasah could be within its rights to refuse to issue appointment letter to the candidate recommended by the Commission if any better qualified candidate is otherwise available with the managing committee of the concerned Madrasah. Such refusal may also come within the expression 'any reasonable ground' as contemplated in Section 12(i) of the Act.

The legislature has thus taken due care that the interest of a minority institution will always be taken care of by ensuring that i) in normal circumstances, the best qualified and suitable candidates will be nominated by the Commission; ii) and in case there be any error on part of the Commission, the concerned Managing Committee could not only point out

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the error which would then be rectified by the Commission but the Managing Committee may also be within its rights in terms of Section 12 (i) to refuse the nomination on a reasonable ground.

54. The regime put in place by the State legislature thus ensures that the Commission comprising of experts in the field would screen the talent all across the State; will adopt a fair selection procedure and select the best available talent purely on merit basis; and even while nominating, the interest of the minority institution will also be given due weightage and taken care of. The statutory provisions thus seek to achieve 'excellence' in education and also seek to promote the interest of the minority institutions. The provisions satisfy the test as culled out in the decision of this Court in ***TMA Pai Foundation***[8] case.

55. In our considered view going by the principles laid down in the decision in ***TMA Pai Foundation case***[8]**,** the concerned provisions cannot, therefore, be said to be transgressing the rights of the minority institutions. The selection of the teachers and their nomination by the Commission constituted under the provisions of the Commission Act would satisfy the national interest as well as the interest of the minority educational

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institutions and said provisions are not violative of the rights of the minority educational institutions.

56. The aforesaid conclusions have been arrived at by us in keeping with the principles laid down by this Court in ***TMA Pai Foundation***[8] case.

We are aware that in ***Brahmo Samaj Education Society***[24]***, Sindhi Education Society***[7] and ***Chandana Das (Malakar)***[33]**,** decided after ***TMA Pai Foundation***[8]*,* this Court had also dealt with the question whether the concerned authorities could validly nominate teachers to be appointed in minority educational institutions. ***Brahmo Samaj Education Society***[24] did not specifically deal with the question whether rules were valid or not and left it to the authorities to bring the rules and regulations in conformity with the principles in ***TMA Pai Foundation***[8] case. ***Sindhi Education Society***[7] dealt with the issue in the context of reservation. It also found that the teachers nominated by the concerned authorities would not be compatible to teach in educational institutions run by linguistic minorities. In ***Chandana Das (Malakar)***[33] the basic issue was whether the concerned institution was a minority institution or not. ***Sindhi Education Society***[7] and ***Chandana Das (Malakar)***[33] dealt with statutory regimes which did not have any special features or matters concerning compatibility of teachers

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which could be required going by the special characteristics of the minority educational institutions. However, the additional feature in the present matter shows that the composition of the Commission with special emphasis on persons having profound knowledge in Islamic Culture and Theology, would ensure that the special needs and requirements of minority educational institutions will always be taken care of and thus the present case stands on a different footing.

We, therefore, have no hesitation in going by the test culled out in the ***TMA Pai Foundation***[8] and hold that the provisions of the Commission Act are not violative of the rights of the minority educational institutions on any count.

57. In the premises, while allowing these appeals, we set aside the view taken by the Single Judge and the Division Bench of the High Court and dismiss Writ Petition No.20650(W) of 2013 and other connected matters. We also hold Sections 8, 10, 11 and 12 of the Commission Act to be valid and constitutional.

58. In the end, we declare all nominations made by the Commission in pursuance of the provisions of the Commission Act to be valid and

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operative. However, if after the disposal of the matters by the High Court any appointments are made by the concerned Madarshas, such appointments of teachers shall be deemed to be valid for all purposes. But the Commission shall hereafter be competent to select and nominate teachers to various Madarshas in accordance with the provisions of the Commission Act and the Rules framed thereunder.

59. With the aforesaid observations these appeals are allowed. No separate orders are required to be passed in respect of Writ Petitions and contempt petitions which stand disposed of in terms of declaration as above. No orders as to costs.

……..J.
[Arun Mishra]

……..J.
[Uday Umesh Lalit]

New Delhi;
January 6, 2020.

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