Before Augustine George Masih & Sandeep Moudgil, JJ.

THE DIRECTOR SCHOOL EDUCATION, DEPARTMENT OF EDUCATION, CHANDIGARH ADMINISTRATION, CHANDIGARH —*Appellant*

versus

NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTION, NEW DELHI AND OTHERS—*Respondents*

LPA No.349 of 2021

July 08, 2022

Letters Patent—Clause X—Constitution Of India,1950—Arts.30 (1), 226—The National Commission For Minority Educational Institutions Act, 2004—S.2 (g)—Department of Education challenged order of National Commission for Minority Educational Institution declaring St. Kabir Public School a minority educational institution—Commission accepted complaint by School against show cause notice issued by Chandigarh Administration and issued direction to the Education Department restraining it from imposing reservation for economically weaker section of society on the school—Single Bench upheld the orders of the Commission. During pendency of application for declaration as minority institution—Founder Members belonged to minority community (Sikhs). Original memorandum of association—Proclaimed it to be secular entity—Never established nor intended to be minority institute for benefit of any minority community nor claimed to have been established by minority (Sikhs). Requirement of statute and Constitutional mandate—Not fulfilled—Appeal allowed.

Held, that writ Petition had been filed by the Director School Education, Department of Education, Chandigarh challenging the order dated 10.09.2014 (Annexure P-13) passed by National Commission for Minority Educational Institution (hereinafter referred to as 'NCMEI')-respondent No.1, holding and declaring St. Kabir Public School-respondent No.3 (hereinafter referred to as respondent No.3-School) as a minority educational institution under Section 2 (g) of The National Commission for Minority Educational Institutions Act, 2004 (hereinafter referred to as '2004 Act') and the order dated 14.03.2017 (Annexure P-18) passed by the said respondent No.1-NCMEI vide

which complaint preferred by respondent No.3-School against the show cause notice issued by the Chandigarh Administration has been accepted and direction issued restraining the appellant from imposing any reservation for economically weaker section of society on the school, which stands dismissed vide order dated 20.03.2020 passed by the learned Single Judge upholding the impugned orders which are under challenge in this intra-Court appeal.

(Para 1)

Further held, that according to Article 30 (1) of the Constitution as also Section 2 (g) of the 2004 Act, the term 'established and administered'; by the minority or minorities make it amply clear that they have to be read in conjunction as has been laid down by the Hon'ble Supreme Court in S. Azeez Basha's case (supra). The first essential ingredient, therefore, is establishment of an institution by the minority, which should have been claimed as such for taking benefit of the provisions referred to above in the Constitution and the statute. This being the position, especially detailed above on factual aspects that it is for the first time that the establishment of the institute by the establishing members belonging to the Sikh religion came to be asserted before NCMEI-respondent No.1 and that too by way of affidavit dated 11.04.2013 of the President of the society, makes it amply clear that the said fact had never been mentioned in the memorandum of association even at the stage of amendment to the said memorandum as it originally stood.

(Para 44)

Anil Mehta, Senior Standing Counsel for U.T. Chandigarh with Sumeet Jain, Additional Standing Counsel, *for the appellant.*

Rajiv Atma Ram, Senior Advocate, with Arjun Pratap Atma Ram, Advocate and Bhagoti Singh, Advocate, for respondents No.2 to 4.

AUGUSTINE GEORGE MASIH, J.

(1) Writ Petition had been filed by the Director School Education, Department of Education, Chandigarh challenging the order dated 10.09.2014 (Annexure P-13) passed by National Commission for Minority Educational Institution (hereinafter referred to as 'NCMEI')-respondent No.1, holding and declaring St. Kabir Public School-respondent No.3 (hereinafter referred to as respondent No.3-School) as a minority educational institution under Section 2(g) of The National Commission for Minority Educational Institutions Act, 2004

(hereinafter referred to as '2004 Act') and the order dated 14.03.2017 (Annexure P-18) passed by the said respondent No.1-NCMEI vide which complaint preferred by respondent No.3-School against the show cause notice issued by the Chandigarh Administration has been accepted and direction issued restraining the appellant from imposing any reservation for economically weaker section of society on the school, which stands dismissed vide order dated 20.03.2020 passed by the learned Single Judge upholding the impugned orders which are under challenge in this intra-Court appeal.

(2) It is the contention of learned counsel for the appellant that the NCMEI-respondent No.1 has no jurisdiction to entertain an application for declaration of an institution/school as a minority institution under Section 11 of the 2004 Act, rather under Section 10 of the said Act, a petition is maintainable at the first instance before the competent authority, which in the case of Union Territory of Chandigarh is the Director School Education, Chandigarh. Direct approach on the part of respondent No.3-School is unsustainable and the order dated 10.09.2014 (Annexure P-13) passed by NCMEI being without jurisdiction cannot sustain. It is contended that the declaration which has been issued by respondent No.1-NCMEI qua respondent No.3-School being in violation of the statutory provisions does not confer any right on the school and, therefore, the consequential order dated 14.03.2017 (Annexure P-18) based upon the declaration dated 10.09.2014 (Annexure P-13) cannot be sustained. This, the counsel contends, is for the reason that the show cause notice issued by the Chandigarh Administration was issued as per the terms and conditions of allotment letter dated 13.10.1988 and additionally under and as per the provisions of The Capital of Punjab (Development and Regulation) Act, 1952 (hereinafter referred to as '1952 Act') and the rules framed thereunder. Since as per the terms and conditions of allotment, it was specified that the admission of the institution shall be subject to direction/instructions which the Director Public Instructions (Schools/Colleges), Chandigarh, may issue from time to time, respondent No.3-School was bound to comply with the same, which mandated 15% seats to be kept for the weaker section of the society which is also provided and is as per The Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as 'Education Act, 2009'). Respondent No.1 has proceeded on the assumption as if the 2004 Act has overriding effect in the light of the provision of

Section 22 of the said Act over the 1952 Act which is incorrect as both these Acts cover a totally different field and has no connection whatsoever with an institution being a minority institution or not. Counsel contends that respondent No.3-School has approached respondent No.1-NCMEI with the sole purpose to circumvent the provisions of Education Act, 2009 which mandated and required 15% seats to be kept for the economically weaker sections of the society by securing the status of a minority educational institution for the school even though it has not been established as and for such a purpose. Counsel for the appellant has submitted that on facts it is apparent that at the time of incorporation of the society or on establishment of respondent No.3-School by a society, it was registered as a secular body. There was no mention of any minority character of the said society nor was it mentioned that it is being established by religious or linguistic minority. It is at a subsequent date that such incorporation has been made in the memorandum of association and that too for the purpose of bringing it within the ambit of minority institution so as to be covered under the 2004 Act. His submission is that initially the society was formed and established on 15.09.1976 as a secular society. An application was submitted for allotment of plot on the basis of the registered society as the Kabir Education Society. The said application was accepted and plot in Sector 26, Chandigarh, was allotted to respondent No.3-society on 13.10.1988. The school became functional from the session 1991. First amendment to the memorandum of association, especially the objects of the society was carried out on 24.12.1994, wherein it was said to be an organization of minority, where the Punjabi language, Punjabi culture, history of Gurus and Prophets were to be taught, however, admission to the school would be open to all irrespective of caste, creed, community and religion. On 31.01.1996, the Chandigarh Administration notified a scheme known as 'The Allotment of Land to Educational Institutions (School) etc. on Lease-hold Basis in Chandigarh Scheme, 1996 (hereinafter referred to as the '1996 Scheme'), according to which the educational institutions were required to reserve 15% of the total seats for the EWS category. This scheme was made applicable to all institutions by virtue of their allotment letter. The Education Act, 2009 came into force which was challenged before various High Courts. The matter went up to the Supreme Court, where the Hon'ble Supreme Court in ***Society for Un-aided Private Schools of Rajasthan*** *versus* ***Union of India and***

another[1] while upholding the Education Act, 2009 Act gave a direction that the Act will not be applicable to the extent that the unaided minority schools as covered under Article 30 (1) of the Constitution were to be kept out of the purview of the Act. This judgment was pronounced on 12.04.2012 and it is thereafter to come out of the rigors of Education Act 2009 that respondent No.3-School submitted an application under Section 11 of the 2004 Act before the NCMEI for the grant of minority status. During the pendency of the said application, memorandum of association relating to the objects of the society was amended on 31.01.2013, where the Kabir Educational Society was stated to be, especially and basically an organization of Sikh minority community in Chandigarh, where the sublime philosophy of Sri Guru Granth Sahib Ji, teachings of Sikh Gurus, Sikh Culture and Sikh history are being taught. It was further incorporated that the society shall primarily safeguard the interest of the boys and girls of Sikh minority community. Additional affidavit by way of replication in pursuance to the reply of the Chandigarh Administration was filed by the Principal of the School, wherein for the first time, it was mentioned that the members of the governing body of the society were Sikhs and were following the said religion. This affidavit is dated 11.04.2013. It was also admitted that it was being amended with an intention to bring it within the ambit of minority institute. On this basis, it has been asserted that the declaration which has been granted by NCMEI-respondent No.1 is unsustainable in the light of the settled principle of law as laid down by the Hon'ble Supreme Court while interpreting Articles 29 and 30 of the Constitution of India in various judgments that the minority educational institute should be established by minority and should be with an intention to preserve, propagate and conserve religion, language, script, culture to the religious and linguistic minorities. An institution, which has not been established with an intention to be so as a minority institution and for the purposes as laid down under Article 30 (1) of the Constitution, cannot at a later stage be declared as a minority institution. Counsel has contended, on the basis of the above facts, that respondent No.3-School was never established as a minority institution nor was the requirement of the establishing members being belonging to the minority community (Sikh) been asserted or established and further it was not set up for the purpose as provided under Article 30 (1) of the Constitution of India and thus, respondent

[1] 2012 (6) SCC 1

No.3-School cannot be a minority institution. Prayer has thus been made for setting aside the impugned order dated 10.09.2014 passed by NCMEI. On this basis, it has further been stated that the subsequent order dated 14.03.2017 also cannot sustain as it is flowing from the earlier order dated 10.09.2014 vide which respondent No.3-School was declared as a minority institution.

(3) Counsel for the appellant has also challenged the impugned orders by asserting that the judgments of the Hon'ble Supreme Court, which clearly lays down the parameters for an institution to be declared as a minority institution, have been referred to but not understood and applied in the right perspective leading to an erroneous conclusion resulting in conferring the status of a minority institution upon respondent No.3-School when there is no such right entitling such a declaration to be issued. Prayer has thus been made for setting aside the impugned judgment passed by the learned Single Judge as also the impugned orders.

(4) Learned counsel for the appellant has contended that the learned Single Judge has proceeded on the wrong assumption that the Limitation Act *per se* is applicable to the provisions of the Article 226 of the Constitution, which confers the power of writ jurisdiction upon the High Court. His submission is that merely because there is some delay in approaching the High Court by way of a writ petition challenging the order dated 10.09.2014 in the year 2018 after a period of three years, the same cannot in itself be a ground to dismiss the writ petition when the power and jurisdiction of an authority (NCMEI-respondent No.1) to entertain and issue declaration has been challenged, meaning thereby that challenged orders are *ultra vires* the statute and beyond the adjudicating scope of the authority and thus, *non est* in law. In any case, the subsequent order which has also been challenged is dated 14.03.2017 and the writ was filed in February, 2018.

(5) Reliance has been placed upon the judgment of the Supreme Court in ***Smt. Sudama Devi*** *versus* ***Commissioner and others***[2]. Reference has also been made to the judgment of the Supreme Court in ***State of U.P. and others*** *versus* ***Raj Bahadur Singh and another***[3]. Reliance has also been placed upon the judgment of the Supreme Court in ***Ramachandra Shankar Deodhar and others*** *versus* ***State of***

[2] (1983) 2 SCC 1
[3] (1998) 8 SCC 685

Maharashtra and others[4], where the Hon'ble Supreme Court has held that it must be remembered that the rule which says that the Court may not inquire into belated and stale claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain a petition. Each case must depend upon its own facts. On this basis, counsel for the appellant has submitted that the judgment passed by the learned Single Judge cannot be justified on rejecting the challenge to the impugned orders, especially when the delay has been explained which has been referred to in the judgment itself by the learned Single Judge. In any case, he asserts that the learned Single Judge has on his own proceeded to decide the case on merits keeping in view the important issue involved in the case. Prayer has thus been made for setting aside the said finding as recorded by the learned Single Judge on the ground of delay and laches.

(6) On the other hand, learned Senior Counsel for the respondents No.2 to 4 (contesting), referring and emphasizing upon the pleadings, has asserted that although the initial memorandum of association did not refer to the aspect of it being a minority institution or for the protection and preservation of the culture and heritage of Sikhism including the propagation thereof but subsequently with the amendment of 24.12.1994 and 31.01.2013, it was clearly spelt out that it was established as a minority educational institution for the purpose and intent as provided for and protected under Articles 29 and 30 of the Constitution of India. Supporting the judgment of the learned Single Judge, learned Senior Counsel has asserted that as per the provisions of the 2004 Act, under Section 10 of the said Act, an application is to be submitted to the competent authority, where a new institution has to be established and that too as a minority institution. The said section would not be applicable to the already established institutions. For the institutions which were in existence at the time of coming into force of the 2004 Act as amended in the year 2006, an application would lie to the NCMEI for a declaration to be issued to the institution to be a minority institution. It is under these circumstances that respondent No.3-School has proceeded to file an application for declaration under Section 11 before respondent No.3 with regard to it being a minority institution. It is asserted that the Chandigarh Administration has not

[4] (1974) 1 SCC 317

denied the fact that the founding members of respondent No.3 society were Sikhs by religion and had been following Sikhism as there is no rebuttal to the assertion made either before the NCMEI or in the writ petition which has been preferred by the appellant. He submits that the institution having been established by a minority, would be a minority institution, especially when it is being administered by the minority and that too for preserving, propagating and enhancing the Sikh religion and Punjabi language. With the amendment of 31.01.2013, the interest of the Sikh minority community students, both boys and girls, was intended to be safeguarded and accordingly prayer has been made for dismissing the appeal on merits.

(7) Qua the aspects of delay and laches of the writ petition and the findings by the learned Single Judge, reference has been made by the learned Senior Counsel for the respondents to the explanation which has been submitted by the appellant in its writ petition which clearly shows the inaction on the part of the appellant, rather it is more of a lethargy and uncertainty with regard to the action to be taken. With the team of legal officers assisting the appellant, the explanation and the plea as has been submitted by the appellant has rightly not been accepted by the learned Single Judge while dismissing the writ petition on the ground of delay and latches, which is justified, as more than three years had elapsed since the passing of the impugned order dated 10.09.2014 when challenged. Prayer has thus been made for accepting the conclusion drawn by the learned Single Judge on the aspect of delay in approaching the Writ Court. Prayer has been made for dismissal of the appeal.

(8) We have considered the submissions made by the counsel for the parties and with their assistance, have gone through the pleadings, records of the case as also the judgment of the learned Single Judge.

(9) The facts in sequence to understand the factual matrix are that the Kabir Education Society was incorporated and a memorandum of association was signed on 15.09.1976, which was registered. The memorandum of association reads as follows:-

“MEMORANDUM OF ASSOCIATION OF

‘KABIR EDUCATIONAL SOCIETY’

1. Name: The name of the Society shall be “The Kabir Educational Society”. The principal registered office: office of the Society shall be at No.1, Sector 8A, Chandigarh. Area

of Operation: Chandigarh and India.

2. Objects of the Society: The objects for which the Society is established are:

(i) The advancement of knowledge and education in all its forms.

(ii) That management of public schools especially in Chandigarh and generally in the whole of India for imparting such education as aids.

(a) The mental, physical, moral, cultural and general development of children.

(b) The fostering in children the higher values of life, such as good character, purity of thought, word and deed, discipline, spirit-de-corps, comradeship, spirit of service and sense of duty,

(c) The training and grooming of the taught for the service of the Nation, the Country and humanity at large.

(d) The promotion of arts service and technology for its application to the progress, peace and prosperity of the country.

(iii)The taking of measures of providing scholar to the deserving children.

(iv)To hire, purchase, acquire, hold and dispose of property and to do generally all such things which may be necessary for the accomplishment of the aforesaid objects.

(v) The Society will be a no profit earning Organization. Its income and property shall strictly and be used towards the promotion of the aforesaid objects of the Society. No member shall be to receive any share from the profits.

3. Without prejudice to the generality of the forthcoming objects and for the purposes of carrying out the same, the society shall have the power to acquire, receive, hold property any kind, to manage, dispose of, or deal with the property of any kind belonging to the Society, to enter into contracts for and in connection any person in such manners as may be deemed fit for the benefit of the Society.

4. Governing Council:

The names and addresses and occupations of the members of the Governing Council of the society to whom the management and its affairs are entitle by the rules and regulations are as follows:-

1. The President : Mr. J.P. Singh, 1/8-A, Chandigarh
2. Secretary : Mrs. Santosh J.P. Jingh
3. Member : Mrs. Surinder Chopra.
   1270,8-C, Chandigarh.

5. That Shri J.P.Singh is an eminent educationist by profession and has much experience in the promotion of Public Schools. In fact, he is the originator of the idea of the formation of this society. In view of this, he shall be the President of the Society during his life time and his advice in regard to the management of the affairs of the Society and School shall invariably be follow.

After Shri J.P. Singh Mrs. Santosh J.P. Singh who too is connected with the field of education shall be the Chairman of the Society in her lifetime.

We the undersigned have resolved to form a Society in pursuance of the above Memorandum of Association to be registered under the Societies Registration Act, 1860.

1.	Mr. J.P. Singh	House No.741, 8B, Chd.	Educationist
2.	Mrs. Santosh J.P. Singh	House No.741, 8B, Chd.	Educationist
3.	Mrs. Suinder Chopra	H.No. 1270, 8C, Chd.	Housewife
4.	Mr. Joginder SinghChopra	H.No. 1270, 8C, Chd.	Controller of Purchaser & Stores Bhillai, (M.P)
5.	Knawar Jasbir Singh	H.No.1, 8-A, Chd.	Business

6.	Mrs. Parduman Kaur	H.No.1, 8-A, Chd.	Housewife
7.	Amarjit Singh Kapur	H.No.1, 8-A,Chd.	Service Personnel Officer, Bhillai, (M.P)

Chandigarh Dated 15.09.1976
ASSH: Estate Officer
U.T. Chandigarh

(10) In pursuance to this memorandum of association, an application was moved by the respondent-society for allotment of a site for school to the Chandigarh Administration which was accepted and on 13.10.1988 (Annexure P-1), Estate Officer, Union Territory Chandigarh, allotted a plot on leasehold basis for 99 years for construction of a school subject to certain conditions laid down therein. In the terms and conditions of the allotment letter, in addition to provisions of Capital of Punjab (Development and Regulation) Act, 1952 and the rules made thereunder. The Chandigarh Lease- Hold of Sites and Building Rules were made binding on the lessee was another condition which would be relevant for the present case, which reads as follows:-

> "The admission to the institution shall be subject to directions/instructions which the Director Public Instructions (Schools/Colleges), Chandigarh may issue from time to time."

(11) Respondent No.3-School accepted these terms and conditions *in to1* and started functioning from the building so constructed from the academic session 1991. It would not be out of way to mention here that the respondent-society was incorporated as a secular entity which is apparent from the objects of the society as enumerated in the memorandum of association reproduced above. A glaring aspect which needs to be further elaborated herein is, that it was neither established as a minority institution relatable to any religion or language nor was it intended for the purposes as have been so provided under Article 30 of the Constitution of India, which deals with right of establishment and administering of an institution by the minority. It has

not even been mentioned that the said society has been established by the minority.

(12) On 24.12.1994, the memorandum of association was amended for the first time and an introductory paragraph was inserted in the objects of the society which reads as follows:-

> "2. Objects of the Society:-
>
> The objects for which the Society is established are: Kabir Educational Society being essentially an organization of Minority holding St. Kabir Public School, Chandigarh as its functional wing where the Punjabi Language, Punjabi Culture, History of Prophets and Gurus are being taught on top priority and is based on Articles 29 and 30 of the Constitution of India (Cultural and Educational Rights of Minorities). But, admission into the school will be open to all irrespective of caste, creed, community and religion. All religions will be fully respected. This concept of the Society is based on the social and secular philosophy of the great mystic St. Kabir."

Rest of the objects of the society remained the same.

(13) On 31.01.1996 (Annexure P-3), Chandigarh Administration notified scheme known as 'The Allotment of Land to Educational Institutions (Schools) etc. on Lease-hold Basis in Chandigarh Scheme of 1996'. Condition No.18 (ii) required the educational societies/institutions (schools)/trusts to reserve 15% or more seats as may be determined by the Chandigarh Administration from time to time, in the schools for students belonging to economically weaker sections of the society. The said condition reads as follows:-

> "18. The Educational Societies/Institutions (Schools)/ Trusts shall be required:
>
> b. XXXX XXXX XXX
>
> c. To reserve 15% or more seats as may be determined by the Chandigarh Administration from time to time, in the schools for students belonging to economically weaker sections of the Society and the fee charged from those students shall be nominal preferably the same as is charged from the students of the Government Institutions"

(14) National Commission for Minority Education Act, 2004

(2004 Act) came into force on 06.04.2005, which deal with the aspects relatable to the minority institutions and the recognition/declaration as such of the minority institutions.

(15) On 29.07.2005 (Annexure P-4) in exercise of the powers conferred under Section 3 and Section 22 of the Capital of Punjab (Development and Regulation) Act, 1952 (1952 Act) and all other powers enabling him in this behalf, the Administrator, Union Territory of Chandigarh, made certain amendment to the Allotment of Land to Educational Institutions (schools) etc. on Leasehold Basis in Chandigarh Scheme 1996. Clause 8 of this amendment related to para 18 of the original scheme reads as follows:-

> "(i) Reserve 15% or more seats as may be determined by the Chandigarh Administration from time to time, in the schools for students belonging to economically weaker sections of the Society and the fee charged from those students be nominal preferably the same as is charged from the students of a Government Institutions. Provided that if for certain reasons schools are unable to fill up these 15% seats reserved for economically weaker sections in any academic year, the same shall be brought to the notice of the Chandigarh Administration and the concurrence of the competent authority shall be obtained with reasons to be recorded in writing for reducing/condoning this reservation for that particular academic year"

(16) On 19.02.2016 (Annexure P-6), Chandigarh Administration, Education Department, in partial modification of its earlier Office Order dated 12.09.2006 (Annexure P-5), appointed competent authority for grant of 'No Objection Certificate' in respect of institutions which imparted education for establishment of minority educational institutions in U.T. Chandigarh under Sections 10 and 12 (B) of the NCMEI Act, 2004, according to which the Director Higher Education, Chandigarh Administration was appointed as the competent authority in respect of institutions which impart education above 10+2 level and Director School Education, Chandigarh Administration, in respect of institutions which impart education up to 10+2 level. For the purpose of the present case, Director School Education, Chandigarh Administration would be the competent authority as per the 2004 Act as respondent No.3-School is imparting education up to 10+2 level.

(17) Education Act, 2009 was enacted by the Parliament with an aim to strengthen the elementary education system and to achieve the same, special emphasis was laid upon the weaker sections of the society as also the disadvantaged. To ensure that the provisions are given effect to, certain powers were conferred upon the Central and the State Government to take action against the schools including the supervisory powers. This Act was challenged by the schools /institutions/trust in different High Courts.

(18) When the matter was pending before the Courts, respondent No.3- School applied for and was granted affiliation by the Central Board of Secondary Education on 22.02.2011 (Annexure P-7). Clause 19 of the said affiliation letter specified a condition that the admission to the school shall be open to all without any discrimination on the ground of religion, caste or race or place of birth or any of them. It would not be out of way to mention here that the application which was submitted by respondent No.3-School did not mention that the school is a Sikh minority institution nor was it mentioned that any special lectures or specific syllabus has been incorporated for propagating and preserving the Sikh culture and interest of the Sikh community. The school accepted the terms and conditions of affiliation thereby committed to adhere to the same.

(19) Challenge to the Education Act, 2009, ultimately landed up in the Hon'ble Supreme Court, where ***Society for Unaided Private Schools of Rajasthan*** *versus* ***Union of India and another***[5] came to be decided on 12.04.2012. The Education Act, 2009 was held to be constitutionally valid with a rider that the unaided minority schools which come within the purview of Article 30 (1) of the Constitution of India would not be governed by the said Act, meaning thereby that they would be out of the purview of the said Act.

(20) It is after the judgment in ***Society for Unaided Private Schools of Rajasthan's*** *case (supra)* having been pronounced by the Hon'ble Supreme Court and with an intention to come out of the applicability of the Education Act, 2009, an application was filed by respondent No.3-School before NCMEI- respondent No.1 for grant of minority status and for declaration to the said effect on 07.05.2012 (Annexure P-8). Along with the said application, an affidavit was also filed of the even date by the President of the St. Kabir Education Society and the Principal of the School. In this affidavit, for the first

[5] (2012) 6 SCC 1

time, it was stated that the society comprises of members of the Sikh community and is managed by them. The school is being run by the society for the benefit of the members of the Sikh minority community. It needs to be mentioned here that even in these affidavits, it is nowhere stated that the society was established by the minority for the benefit of the Sikh minority community with an intention to propagate Sikhism and Punjabi language.

(21) During the pendency of the application before NCMEI-respondent No.1, amendment to the memorandum of association was carried out by the respondent-society relating to the preamble and objects of the society on 31.01.2013 by deleting the earlier amendment which was carried out in the objects of the society on 24.12.1994, which amendments read as follows:-

> "**Preamble and Objects of the Society"**
>
> 2.(a) Kabir Educational Society being essentially and basically an organization of Sikh minority community in Chandigarh and St. Kabir Public School, (An Unaided School), Chandigarh is its functional wing, where the sublime philosophy of Sri Guru Granth Sahib Ji, teachings of Sikh Gurus, Sikh Culture and Sikh History are taught, is based on Article 29 & 30 of the Constitution of India, (Cultural educational Rights of Minorities).
>
> (b) But, the admission into the School shall not be refused to the members of the other communities.
>
> (c) The Society shall primarily safeguard the interests of the Boys and Girls of Sikh Minority Community."

(22) A perusal of the above would show that for the first time the society mentioned in its objects that it would primarily safeguard the interests of the boys and girls of the Sikh minority community. On 25.03.2013 (Annexure P-11), Union Territory of Chandigarh filed its reply before the NCMEI and in response thereto, additional affidavit along with replication dated 11.04.2013 (Annexure P-12) was filed before NCMEI. In this affidavit, it was admitted that the memorandum of association has been amended to make it consistent with the inherent tenets of the society and in the rejoinder, it was admitted that the memorandum of association has been so amended which would result in getting the benefit of declaration as a minority institution. It is in

pursuance thereto on the basis of these pleadings that the impugned order dated 10.09.2014 (Annexure P-13) was passed by NCMEI allowing the application of respondent No.3-School and declaring it as a minority institution.

(23) When the process with regard to the steps to be taken in pursuance to the order of NCMEI-respondent No.1 was being worked out, a show cause notice dated 26.08.2015 (Annexure P-15) was served upon respondent No.3- School by the appellant under Rule XX of the Chandigarh Leasehold of Sites and Building Rules, 1973 (hereinafter referred to as '1973 Rules'), for non- compliance, rather violation of the condition of allotment under the Scheme of 1996, whereby 15% seats were to be reserved and filled up from the economically weaker sections of the society in the academic year as per the instructions dated 19.09.2014 of the Director Public Instructions (Schools). According to the stand of the appellant, the representative of respondent No.3-School appeared before the Estate Officer, U.T. Chandigarh on 15.10.2015 (Annexure P-16) and made a statement that the school is being run by minority institution and they are exempted from the EWS quota, however, they are ready to comply with the instructions of the DPI as per the condition of the allotment letter, which aspect is disputed by respondent No.3-School before this Court, rather the stand of the school is that they approached the NCMEI against the said show cause notice dated 26.08.2015 by way of an application which was entertained by respondent No.1 and notice issued to the appellant on 15.03.2016. Reply was filed by U.T. Chandigarh before NCMEI-respondent No.1 on 07.12.2016 highlighting the aspect that the requirement which has been imposed upon respondent No.3-School is as per the provisions of Education Act, 2009 as also the terms and conditions of allotment letter dated 13.10.1988. Respondent No.1-NCMEI proceeded to set aside the show cause notice vide impugned order dated 14.03.2017 (Annexure P-18), which has been challenged by the appellant by way of CWP No.4211 of 2018 filed on 16.02.2018 which has been dismissed by the learned Single Judge vide judgment dated 20.03.2020 leading to the filing of the present appeal.

(24) The first and foremost question which requires to be dealt with at the very outset is the plea with regard to the delay in challenging the order dated 10.09.2014 (Annexure P-13) by way of a writ petition which was preferred in February 2018 which has been emphasized upon by learned senior counsel for the respondent with great vehemence. Referring to the facts and the pleadings, learned

senior counsel for the respondent has submitted that there is a delay of 3 years and 5 months approximately in challenge to the impugned order which is the basis for passing of the subsequent order dated 14.03.2017 (Annexure P-18). He contends that as long as the order dated 10.09.2014 holds the field, which has the effect of declaring respondent No.3-School a minority institution, the challenge to the subsequent order dated 14.03.2017 cannot sustain as in case respondent No.3-School is a minority institution, then the provisions of the Education Act, 2009 would not be applicable and, therefore, there cannot be any mandate binding the school to reservation of seats for the economically backward class category. He places reliance upon the judgment of the Hon'ble Supreme Court in ***P.A. Inamdar and others*** *versus* ***State of Maharashtra and others***[6] apart from others, where it has been held so. Reliance has also been placed upon the judgments of the Hon'ble Supreme Court in ***State of M.P.*** *versus* ***Bhailal Bhai***[7] and ***Office of the Chief Post Master General and others*** *versus* ***Living Media India Limited and another***[8] and some other cases on the question of non-entertainment of the case on delay.

(25) On the other hand, learned senior standing counsel for the appellant has contended that there is no limitation as such prescribed for entertaining a writ petition under Article 226 of the Constitution of India. He, however, has on the basis of the pleadings in the writ petition, explained the delay in filing the writ petition and efforts and steps taken to give effect thereto. In support of this contention, he has placed reliance on the judgment of the Hon'ble Supreme Court in ***Smt. Sudama Devi*** *versus* ***Commissioner and others***[9] to contend that there is no period of limitation prescribed by any law for filing a writ petition under Article 226 of the Constitution. The facts and circumstances of each case would determine whether the appellant is guilty of laches or not. The fact with regard to dismissing the petition on the question of delay would not merely depend upon the period which is taken for approaching the Court but the reasons and the aspect with regard to the challenge to the impugned order leaving it to the Court to exercise such powers as conferred which is a discretionary and considered choice of

[6] (2005) 6 SCC 537
[7] 1964 AIR (SC) 1006
[8] (2012) 2 SCT 269
[9] (1983) 2 SCC 1

the High Court. Reliance has also been placed upon ***Ramachandra Shankar Deodhar and others*** *versus* ***State of Maharashtra***[10]. What has been emphasized upon by the learned counsel for the appellant is that where the jurisdiction itself of an authority which has passed the impugned order is being challenged, it would be open to the Court to entertain such a writ petition when it is alleged that such entertainment of the application/petition is beyond the statutory powers of the said authority.

It has further been emphasized upon by the learned counsel for the appellant that the learned Single Judge although has concluded that the matter of delay and laches should be held in favour of respondents No.2 to 4 but keeping in view the nature of the controversy and the public interest involved, the Court had proceeded to decide the writ petition on merits as well recognizing and exercising the High Court's discretionary power. He, therefore, contends that the writ petition has not been dismissed on delay and laches, rather the Court proceeded to decide the same on merits and, therefore, the plea and submission on delay and laches of the learned senior counsel for the respondent cannot be accepted.

(26) On consideration of the submissions of the counsel for the parties and on going through the pleadings, the explanation which has been put forth by the appellant with regard to the delay in approaching the Court appears to be quite reasonable if not fully satisfactory but it needs to be emphasized herein that merely on the question of delay, a Writ Court would not be bound or mandated to dismiss the petition as there is no limitation as such prescribed for entertaining a writ nor has any rules or statutory provisions available for non- entertainment of the writ petition after a particular period of limitation been brought to our notice. In other words, there is no period of limitation prescribed for approaching the Court by way of a writ petition under Article 226 of the Constitution of India. However, it may be pointed out here that the delay even if substantial, if explained with justifiable reasons and where the Writ Court *prima facie* finds that non-entertainment of the writ petition would lead to an illegality or it would confer an undue benefit on a party, the High Court would not shy away from exercising its extraordinary jurisdiction to entertain such a writ petition. Present is one of such cases, where even the learned Single Judge has found it to be one which requires to be entertained on merits as public interest was

[10] (1974) 1 SCC 317

involved.

(27) In the case in hand, the competence and the jurisdiction of NCMEI-respondent No.1 is being challenged to entertain an application preferred under Section 11 of the 2004 Act by asserting that an institution which for the first time has claimed itself to be a minority educational institution despite it having been established as a secular institution, as it is submitted by the appellant, an application under Section 10 was required to be filed before the competent authority, which in this case would be the Director School Education, Chandigarh Administration as per the notification issued on 19.02.2016 (Annexure P-6), whereas the application under Section 11 has been entertained by NCMEI, wherein for the first time as per the admitted position, respondent No.3-School has acknowledged that the memorandum of association has been amended during the pendency of the application under Section 11 of the 2004 Act to bring it within the ambit of a minority institution so that it can be so declared by NCMEI. This being the position in the pleadings, we are of the considered view that the writ petition was required to be and rightly so entertained by the learned Single Judge on merits and the same was not required to be dismissed on delay alone. It may be added here that not only the order dated 10.09.2014 (Annexure P-13) was challenged but the subsequent order dated 14.03.2017 (Annexure P-18) passed by the NCMEI setting aside the show cause notice dated 26.08.2015 had been challenged on 16.02.2018, which was well within the period of one year. The writ petition, therefore, in any case could not have been dismissed on the question of delay alone. The submission of the senior counsel for the respondents is thus rejected on the question of dismissal of the writ petition on delay and laches.

(28) The question which needs to be dealt with and would have direct bearing upon the outcome of the present appeal is whether respondent No.3- School had been established and administered as a minority educational institution, by the minority, for the benefit of the minority community (Sikhs); attached to it would the consequences of the answer to this question on the orders passed by respondent No.1-NCMEI.

(29) There is yet another situation and consequential contingency which requires to be further dealt with i.e. in case a conclusion is reached that respondent No.3-School is a minority institution where

respondent No.1- NCMEI had the jurisdiction and authority to entertain an application under Section 11 where for the first time, respondent No.3-School has claimed itself to have been established and administered as a minority institution and has respondent No.1-NCMEI passed the order in consonance with the provisions as mandated under the 2004 Act.

(30) For proceeding to decide the question as to whether respondent No.3-School is a minority institute or not, it would be essential to first see and lay down the characteristics and essentials laid down by the Constitution under Article 30(1), for which reference thereto is essential, the same reads as follows:-

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

(31) Various judgments on which reliance has been placed by the counsel for the parties before us have been also referred to before the learned Single Judge and in the judgment under challenge, relevant portions thereof have been in extenso reproduced dealing with and laying down the requirements as also the essentials for seeking and being entitled to protection of this Article for and as a minority.

In ***Re The Kerala Education Bill, 1957***[11], a Constitution Bench of seven Judges concluded that the minority is to be determined with reference to the population of a particular State. It has further been concluded that the educational institution should have been established by the minorities and administered of their choice. This Article gives right not only to the religious minority but also to the linguistic minorities, meaning thereby that the religious and linguistic minorities would have a right to establish educational institutions of their choice and there cannot be any limitation placed on the subjects to be taught in such educational institutions.

In ***State of Kerala etc.*** *versus* ***Very Rev. Mother Provincial etc.***[12], a six Judges Bench has clearly held that the first right which flows from

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[11] AIR 1958 SC 956
[12] 1970 (2) SCC 417

Article 30(1) of the Constitution is the initial right to establish institution of the minorities' choice i.e. to bring an institution into being by a minority community with an added rider that the same must be founded as an institution for the benefit of minority community. The second right would be of administration of such institution which means management of the affairs of the institution and it would be open to the founders or the nominees to mould the institution as they think fit. It would thus, mean that the minority should not only establish an educational institution but the same should also be for the benefit of minority community.

In ***St. Stephen's College etc.*** *versus* ***The University of Delhi etc.***[13], it has been held that there must be proof of establishment of the institution by a minority which should precede before claiming right to administer the institution.

In ***S. Azeez Basha and another*** *versus* ***Union of India etc.***[14]**,** the Hon'ble Supreme Court while dealing with Article 30(1) of the Constitution held that it postulates that the religious minority community will have a right to establish and administer educational institution of its choice, meaning thereby that where religious minority community establishes an educational institution, it will have a right to administer that. The Court proceeded to reject the argument that an institution which has been established not by the minority but, if by some process, that institution is being administered by a minority, the same would not make it a minority institution under Article 30(1) of the Constitution. It has been emphasized that the minority will have a right to administer an educational institution of their choice provided they have established it, but not otherwise. The words 'establish and administer' in the Article must be read conjunctively and so it gives right to the minority to administer an educational institution provided it has been established by it. If an educational institution has not been established by a minority, it cannot claim the right to administer it under Article 30(1) of the Constitution.

(32) In the case of ***A.P. Christians Medical Educational Society*** *versus* ***Government of Andhra Pradesh and another***[15], the Hon'ble

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[13] (1992) 1 SCC 558
[14] AIR 1968 SC 662
[15] (1986) 2 SCC 667

Supreme Court has proceeded to hold that the Government, University and ultimately the Court had the right to pierce the minority veil and discover whether it is actually a minority institution or not. Article 30 (1) of the Constitution not only guarantee the right to profess, practice and propagate religion to religious minorities and the right to conserve their language, script and culture to the linguistic minorities but also to enable all minorities, religious and linguistic, to administer an educational institution of their choice. These institutions must be educational institution of minorities in truth and reality and not mere masked phantoms**.** What is important and imperative is that there must exist some real positive index to enable the institution to be identified as an educational institution of the minority. Mere referring in the articles of association or memorandum or objects of the society of it being intended to be minority educational institution would not be acceptable.

(33) The legal position that flows from the foregoing judgments is that merely because the admissions are open to all religions or that the education is being imparted as per the requirements of the recognizing board/authority/university would not deprive the institution of its right as a minority institution. However, the requirement of Article 30 (1) will be fulfilled only where an institution is established by the minority, as a minority institution and for the benefit of the minority community. After this primary requirement having been fulfilled, then and only then the administration and management of the institution is to be kept untouched by the operation and protection which flows from Article 30(1) of the Constitution as a minority institution.

(34) With the legal position having been spelt out as above, the time is now ripe to apply the above legal principles to the facts of the present case.

For the purpose of brevity, the contents with regard to the original memorandum of association and amendments thereto from time to time by the respondent-society are not being detailed herein except for mentioning that as per the initial memorandum of association dated 15.09.1976 when the society was established and registered, its aims and objects were purely secular in nature with there being no semblance of any connection with the minority aspect either with regard to the establishment or administration thereof which includes for the benefits of the minority community. Allotment of the plot is on 13.10.1988 after an application was submitted by the respondent-

society. With the building having been constructed, the institution commenced its functioning with effect from academic session 1991-1992.

First amendment to the memorandum of association was carried out on 24.12.1994, where it has been said to be an organization of minority. There is nothing mentioned with regard to the establishing members being of Sikh community nor is there anything provided for with regard to giving any special benefit to the said community, meaning thereby that it was not intended to be for the benefit of the Sikh community.

On 22.02.2011, affiliation letter was issued by the CBSE to the respondent No.3-School, where in the application, so submitted for affiliation, there is no reference with regard to the said school being a minority institution nor is there any mention with regard to reserving any seat(s) for the Sikh community. A condition that the admission to the school shall be open to all without any discrimination on the ground of religion, caste, race etc., as specified in the conditions, was accepted by the respondent-society and the school.

(35) The Right of Children to Free and Compulsory Education Act, 2009, is passed by the Parliament which was challenged before various High Courts resulting in a final upholding of the same by the Hon'ble Supreme Court in ***Society for Unaided Private Schools of Rajasthan's*** *case (supra)* on 12.04.2012 with a rider that the operation and applicability of this Act would not extend to the unaided minority schools covered under the umbrella of Article 30(1) of the Constitution or in other words, these minority schools were kept out of the purview of the Education Act, 2009. It is, thereafter, that for the first time, respondent No.3-School, in order to come out of the rigors and applicability of the Education Act, 2009 moved an application on 07.05.2012 before NCMEI for grant of minority status along with which an affidavit of the President of the society was also filed stating that the said society comprises of members of the Sikh community and is managing the school. The school is being run for the benefit of members of Sikh minority community. It is, for the first time, that such a claim is projected but what is missing herein is the fact that the said institution was established by the minority. What was said was that the members of the society belong to the Sikh community. Nothing is said with regard to the establishment of the society or the institution.

(36) Then comes the next stage where during the pendency of the matter before NCMEI, the memorandum of association is amended and the preamble to the objects of the society are introduced on 31.01.2013. There for the first time, it is mentioned that the society shall primarily safeguard the interest of the boys and girls of the Sikh minority community but here again the important aspect with regard to the establishment of the institution by the minority is missing. This *lacuna* is sought to be ultimately filled by way of an additional affidavit dated 11.04.2013 (Annexure P-12) which is filed along with the replication, wherein for the first time, it has been mentioned that the memorandum of association has been amended and the objections as raised by the respondent therein (now appellant), taken care of.

A point which is required to be emphasized at this stage is that in the rejoinder filed on behalf of the respondent No.3-School on 11.09.2013, it is admitted that the memorandum of association has been amended after the application was filed before the NCMEI in order to make the claim consistent with the requirement of the 2004 Act so as to get the benefit of being declared a minority institution.

(37) The sequence of above events with regard to the amendments so carried out to the memorandum of association from time to time, with the requirement of the 2004 Act, makes it amply clear that the society was neither established by the minority, as a minority educational institution nor was it formed for the benefit of the minority community i.e. Sikhs. The mandate of Article 30(1) of the Constitution having not been fulfilled, it cannot be said to be a minority institution.

(38) If it is not a minority institution, a declaration could not have been issued to that effect by NCMEI under Section 11 of the 2004 Act. Section 11 deals with the function and powers of the Commission, especially clause (f) thereof. According to this, NCMEI could decide all questions relating to the status of any institution as a minority educational institution and declare its status as such.

The governing Section in this regard which would guide NCMEI to issue such a declaration would be Section 2 (g) which defines minority educational institution. The same reads as follows:-

> "Section2. Definitions- In this Act, unless the context otherwise requires,-
>
> XXXX XXXX XXXX

> (g) Minority Educational Institution means a college or an educational institution established and administered by a minority or minorities."

A perusal of the above would show that for a minority educational institution to be declared as such, the first requirement is that it has to be established by a minority or minorities and administered by the minority or minorities and, therefore, the parameters would be the same as have been laid down under Article 30 (1) of the Constitution of India i.e. words 'established and administered' have to be read in conjunction as held by the Hon'ble Supreme Court in the judgments referred to above. Since the respondent has not been able to show that at the time when the society came into existence, it was established as a minority institution nor was it said and claimed that the society/school was established by the minority and for the benefit of the minority (Sikhs) as is apparent from the original memorandum of association as also the subsequent amendments, respondent No.2-Society as also respondent No.3-School cannot be termed as a minority educational institution.

(39) It needs to be pointed out here that the NCMEI has totally ignored and overlooked the aspect with regard to the fulfillment of the mandate of the statute. A declaration is only of an established right which unfortunately could not be substantiated by the respondent-society and respondent No.3-School. What was essential, therefore, was that the mandate of the statute as laid down in Section 2 (g) of the 2004 Act was required to be fulfilled prior to the coming into force of the 2006 Amendment Act to the 2004 Act in case the provisions of Section 11 were to be given effect to, otherwise it would be governed by Section 10 with regard to the right to establish a minority educational institution.

(40) For so concluding, we fall back upon the ratio of the judgment in ***Sisters of St. Joseph of Clunny's*** *case (supra)*, wherein it has been held that all applications for establishment of a fresh minority educational institution after the Amendment Act of 2006 must go only to the competent authority to set up under the statute for which the application would be under Section 10 of the 2004 Act but for declaration of the status as a minority educational institution at any stage post establishment, NCMEI would have the power to decide the question and declare such institution's minority status.

(41) In ***Sisters of St. Joseph of Clunny*** *versus* ***State of West Bengal and others***[16], the Hon'ble Supreme Court while dealing with the provisions of 2004 Act and the powers of the NCMEI did not in any way concluded that an institution which has not been established as a minority institution for the benefit of the said community would be entitled subsequently to be granted the minority status. What has been said by the Hon'ble Supreme Court in the said case is that Section 10 (1) deals with applications for establishment of a minority educational institution after the Amendment to the 2004 by the Amending Act of 2006 has come into force, where after, the applications so moved, must go only to the competent authority set up under the statute while on the other hand, for declaration of its status as a minority educational institution at any stage post establishment. As regards the powers and jurisdiction of NCMEI is concerned, it was said that the same would have the power to decide the question relating to status and declare such institution minority status under Section 11 of the 2004 Act. A further observation has been made that fundamental right cannot be waived.

(42) In this case, respondent-society and the school have during the pendency of the application for declaration as a minority institution for the first time claimed that the founder members of the society belonged to the minority community (Sikhs) and also acknowledged that they had filed the affidavit to bring their case within the mandate of the statute to be as a minority institute. The original memorandum of association clearly stated and proclaimed the society to be a secular entity. It was never established nor intended to be a minority institute for the benefit of any minority community nor was it claimed to have been established by the minority (Sikhs). The requirement of the statute and the Constitutional mandate having been not fulfilled, the exercise of jurisdiction by NCMEI is erroneous, both in law and on facts. The declaration of respondent No.3-School as a minority institution by NCMEI is illegal. The order dated 10.09.2014 (Annexure P-13), therefore, passed by respondent No.1-NCMEI cannot sustain and deserves to be set aside.

(43) Heavy reliance was placed upon the judgment of the Hon'ble Supreme Court in ***Sisters of St. Joseph of Clunny's*** *case (supra)* to contend that even if a society/educational institution has been established as secular, the same can be declared as a minority

[16] 2018 (2) SCT 640

educational institution post establishment as well is misplaced. The said contention has not been dealt with by the Hon'ble Supreme Court in this case and it has left it open as is apparent from the discussion in the judgment. Another aspect which makes a major dent on the claim of respondent No.3-School is that the facts in the case which was being dealt with by the Hon'ble Supreme Court were different from the one which is the subject matter of the present appeal. Before the Supreme Court, in the memorandum of association of the society, it was clearly mentioned that the said society has been formed/established primarily for the Catholics. It was also not disputed that the said society was established by the minorities, while in the present case, it is nowhere in the original memorandum of association which was submitted for making an application for allotment of land or after the establishment of respondent No.3-School by the respondent-society that the educational institution has been established as a minority institute, for the benefit of the Sikh minority or that it was established by minority (Sikhs) nor was it claimed that establishing members of the society belong to the Sikh community.

(44) According to Article 30 (1) of the Constitution as also Section 2(g) of the 2004 Act, the term 'established and administered' by the minority or minorities make it amply clear that they have to be read in conjunction as has been laid down by the Hon'ble Supreme Court in ***S. Azeez Basha's*** *case (supra)*. The first essential ingredient, therefore, is establishment of an institution by the minority, which should have been claimed as such for taking benefit of the provisions referred to above in the Constitution and the statute. This being the position, especially detailed above on factual aspects that it is for the first time that the establishment of the institute by the establishing members belonging to the Sikh religion came to be asserted before NCMEI-respondent No.1 and that too by way of affidavit dated 11.04.2013 of the President of the society, makes it amply clear that the said fact had never been mentioned in the memorandum of association even at the stage of amendment to the said memorandum as it originally stood.

(45) The Hon'ble Supreme Court has emphasized upon this aspect in the case of ***A.P. Christians Medical Educational Society's*** *case (supra)* that what is important and what is imperative is that there must exist some real positive index to enable an institution to be identified as an educational institution of the minorities, which should be apparent from the memorandum or article of association or in the

actions of the society to indicate that the institution was intended to be a minority educational institution. At the stage of establishment of an educational institution, therefore, would be the most relevant time and the existing memorandum of association then would be the determinative factor. In the case of respondent No.2-Society and respondent No.3-School, admittedly, as reproduced above, the society was established purely as a secular society with no semblance or relation to any minority community/linguistic minority much less Sikh minority community. It is at a subsequent stage i.e. on 24.12.1994 with the amendment of the objects of the society for the first time, Punjabi language, Punjabi culture, history of prophets and gurus were introduced apart from mentioning that it was an organization of minority. This amendment has come into effect after allotment of the plot on 13.10.1988 and construction of the school and the educational institution becoming functional from the academic session 1991-92. Therefore, it is not only at the time of establishment of the society but even at the time of inception of the institution i.e. respondent No.3-School, there was no connection whatsoever with the claim of minority in any form either regarding establishment by and or as a minority nor for the benefit of the minority (Sikhs).

(46) In the light of the above, when it has been found and held that neither respondent No.2-Society nor respondent No.3-School is a minority institution, the impugned order dated 10.09.2014 (Annexure P-13) passed by respondent No.1-NCMEI is not in accordance with law and thus, deserves to be set aside.

(47) Now moving to the impugned order dated 14.03.2017 (Annexure P-18) which has been passed by respondent No.1-NCMEI setting aside the show cause notice dated 26.08.2015 (Annexure P-15) which was served on the respondent-school under Rule 20 of the 1973 Rules for violation of condition of allotment under the Scheme of 1996, suffice it to say that the said order is primarily based upon the order dated 10.09.2014 (Annexure P-13) vide which respondent No.3-School has been declared as a minority institution leading to the conclusion that the reservation of 15% seats for the economically weaker sections of the society under the 1996 Scheme would not be applicable, is not sustainable. It is settled principle of law and it is so held that the provisions of the Education Act, 2009 would not be applicable to only the minority institutions and since respondent No.3-School is not a minority institution, as held above, the Education Act, 2009 would be applicable and the 2004 Act would have no applicability resulting in

the show cause notice dated 26.08.2015 having been served upon the respondent-school to be valid requiring response from the respondent-school. We would not further delve on this aspect as there has been no adjudication on merits on the said show cause notice. In any case, impugned order dated 14.03.2017 (Annexure P-18) passed by NCMEI setting aside the show cause notice cannot sustain and deserves to be set aside.

(48) The judgments passed by the Hon'ble Supreme Court in the case of ***T.M.A. Pai Foundation and others*** *versus* ***State of Karnataka and others***[17] and ***P.A. Inamdar and others'*** *case (supra),* on which reliance has been placed by the senior counsel for the respondents, shall have no bearing in the present case keeping in view the facts and circumstances as dealt with above as they are distinguishable especially when we have held that respondent No.3-School is not a minority institution and, therefore, The Education Act, 2009 would apply to the contesting respondents bringing them out of the umbrella and shield of protection which they were claiming under Article 30 of the Constitution.

(49) In the light of the above, the present appeal is allowed. Judgment dated 20.03.2020 passed by the learned Single Judge is hereby set aside.

(50) As a consequence thereof, writ petition preferred by the appellant succeeds. Impugned order dated 10.09.2014 (Annexure P-13) and order dated 14.03.2017 (Annexure P-18) passed by respondent No.1-NCMEI are hereby set aside.

(51) Respondent No.3-School, if it so desires, may reply to the show cause notice dated 26.08.2015 (Annexure P-15) within a period of four weeks from today. Thereafter the appellant(s) shall proceed in accordance with law.

(52) In the light of the decision of the appeal, pending applications stand disposed of as in fructuous.

Shubreet Kaur

[17] (2002) 8 SCC 481