

Sisters Of St. Joseph Of Cluny vs The State Of Bengal State Of West Bengal . on 18 April, 2018

Equivalent citations: AIR 2018 SUPREME COURT 2183, 2018 (6) SCC 772, AIR 2019 SC (CIV) 182, (2018) 5 MAD LJ 596, (2018) 5 MAD LW 464, (2018) 6 SCALE 63, (2018) 2 SCT 640, (2018) 2 KER LT 521, (2018) 2 CAL LJ 85, (2018) 5 ANDHLD 108, (2018) 2 CAL HN 183, (2018) 2 ESC 235, 2018 (7) ADJ 32 NOC, AIRONLINE 2018 SC 31

Author: R.F. Nariman

Bench: R.F. Nariman, Adarsh Kumar Goel

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3945 OF 2018
(ARISING OUT OF SLP (C) NO.35786 OF 2016)

SISTERS OF ST. JOSEPH OF CLUNY ...APPELLANT

VERSUS

THE STATE OF WEST BENGAL & ORS. ...RESPONDENTS

CIVIL APPEAL NO. 3946 OF 2018
(ARISING OUT OF SLP (C) NO.34894 OF 2016)

NATIONAL COMMISSION FOR MINORITY
EDUCATIONAL INSTITUTIONS ...APPELLANT

VERSUS

BAISAKHI BANERJEE & ORS. ...RESPONDENTS

CIVIL APPEAL NO. 3947 OF 2018
(ARISING OUT OF SLP (C) NO.34900 OF 2016)

NATIONAL COMMISSION FOR MINORITY
EDUCATIONAL INSTITUTIONS ...APPELLANT

Signature Not Verified

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VERSUS

MAHABIR SINGH

Date: 2018.04.18

16:03:07 IST

Reason:

MILLI AL-AMEEN COLLEGE & ORS.

...RESPONDENTS

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CIVIL APPEAL NO. 3948 OF 2018
(ARISING OUT OF SLP (C) NO.35026 OF 2016)

NATIONAL COMMISSION FOR MINORITY
EDUCATIONAL INSTITUTIONS ...APPELLANT

VERSUS

PRAVEEN KAUR MAROLIA & ORS. ...RESPONDENTS

CIVIL APPEAL NO. 3949 OF 2018
(ARISING OUT OF SLP (C) NO.34933 OF 2016)

NATIONAL COMMISSION FOR MINORITY
EDUCATIONAL INSTITUTIONS ...APPELLANT

VERSUS

DR. ZARINA KHATOON & ORS. ...RESPONDENTS

CIVIL APPEAL NO. 3950 OF 2018
(ARISING OUT OF SLP (C) NO.1836 OF 2017)

NATIONAL COMMISSION FOR MINORITY
EDUCATIONAL INSTITUTIONS ...APPELLANT

VERSUS

STATE OF WEST BENGAL & ORS. ...RESPONDENTS

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JUDGMENT

R.F. Nariman, J.

1. Leave granted.

2. In order to decide the present batch of appeals, for the sake of convenience, the facts from the civil appeal arising out of Special Leave Petition (Civil) No.35786 of 2016 have been taken. The Sisters of St. Joseph of Cluny is a society registered under the West Bengal Societies Registration Act, 1961, being founded on 26.3.1973. Clause 3(b) of the Memorandum of Association of the petitioner-society states:

“To acquire, take over, rent, provide, establish, aid, maintain, administer and/or run colleges, schools, institutions, hostels, houses, associations, libraries, reading rooms, or any other activity with education for its purpose for all persons, primarily for Catholics but also for all other persons, irrespective of religion, race, caste, community or social status.”

3. The society, in a letter dated 16.12.1997 addressed to the Inspector of Colleges, North Bengal University, made it clear that it did not seek minority status or special concessions – it wished to establish a college on secular lines. On 10.1.1998, the Inspector of Colleges, North Bengal University, submitted his inspection report, in which he mentioned that originally the society did desire to have minority status for the proposed college. However, they subsequently changed their mind. As a result, the Deputy Secretary, Higher Education Department, Government of West Bengal, by its letter dated 21.7.1998, approved the proposal for the establishment of Cluny Women’s College, on the footing that it would be a non-minority secular institution. On this basis, the first governing body of the college was constituted in accordance with Statute 1 of the Statutes relating to the Governing Bodies of Colleges of North Bengal University. On 13.9.2004, the University granted permanent affiliation to Cluny Women’s College from the academic year 2003-2004.

4. Following yet another change of heart, the society issued a letter to the Chairman, National Commission for Minority Educational Institutions (hereinafter referred to as the NCMEI), dated 27.6.2007, seeking the issuance of a status certificate of a minority educational institution for Cluny Women’s College. The NCMEI passed an ex-parte order declaring the said women’s college as a minority educational institution on 23.10.2007. Pursuant to this order, on 25.10.2007, the NCMEI issued a minority status certificate. On 5.9.2008, the Registrar, University of North Bengal, filed an application for cancellation of the said certificate. This was dismissed by the NCMEI on 5.11.2009.

5. These events led to the society filing a writ petition, being W. P. No. 4406 of 2010, praying:

“A. A declaration that statute 1 of the statutes relating to governing bodies of colleges of University of North Bengal is ultra vires and unconstitutional;

B. A writ of mandamus or any other writ, direction or order restraining the 3rd respondent from exercising the functions of the governing body of Cluny Women’s College and to restrain them from interfering with the functions of the governing body of Cluny Women’s College constituted by the petitioner society.”

6. Likewise, the Governing Body, Cluny Women’s College (respondent No.3 herein), which was the governing body set up under the statute of the University, also filed a writ petition, being W. P. No.

5002(W) of 2010, in which it prayed for:

“(a) A writ of and/or in the nature of mandamus do issue directing the respondent authorities to forthwith cancel and/or rescind and/or withdraw the purported declaration being F. No. 506 of 2007 dated 25th October, 2007 issued by the respondent no.3.

(b) A writ of and/or in the nature of mandamus do issue directing the respondents, particularly the respondent nos. 4, 5 and 6, to forbear from acting and/or further acting and/or taking any steps and/or claiming any right on the basis of the purported declaration being F. No. 506 of 2007 dated 25 th October, 2007 issued by the respondent no.3 in any manner whatsoever.

(c) A declaration do issue declaring that the respondent no.2 does not have any jurisdiction to declare an existing educational institution to be a minority educational institution.

(d) A writ of and/or in the nature of mandamus do issue directing the respondents to forthwith cancel and/or rescind and/or withdraw the purported letter dated 20th February, 2010 issued by the respondent no.9.

(e) A writ of and/or in the nature of mandamus do issue directing the respondents, particularly the respondent no.9, to allow the petitioner to operate the bank account being S.B. Account No. 3936 0201 000 3495 maintained with Union Bank of India, Kalimpong Branch, District-Darjeeling as per the Resolution of the petitioner adopted on 29 th January, 2010.

(f) A writ of and/or in the nature of certiorari do issue commanding the respondents to transmit the entire records of the case to this Hon’ble Court forming the basis of the purported declaration being F. No. 506 of 2007 dated 25th October, 2007 issued by the respondent no.3 and the purported letter dated 20 th February, 2010 issued by the respondent no.9 and on being so certified quash the same so that conscionable justice may be rendered.”

7. A learned single Judge disposed of both the writ petitions holding that the NCMEI had no original jurisdiction to declare the minority status of Cluny Women’s College, as a result of which the order dated 23.10.2007 and the consequent certificate issued thereupon were declared as invalid. An appeal to the Division Bench met with the same result.

8. Shri Sanjay R. Hegde, learned senior counsel appearing on behalf of the NCMEI, has argued before us that on a true construction of Sections 10(1) and Section 11(f) of the National Commission for Minority Education Institutions Act, 2004 (hereinafter referred to as the 2004 Act), an institution which seeks a declaration as a minority educational institution has the option to apply either to the competent authority established under the 2004 Act, or apply directly to the NCMEI.

According to the learned senior counsel, the power to decide an original application, which is contained in Section 11(f), is separate and distinct from the power contained in Section 12A and 12B, which is an appellate power of the NCMEI. According to the learned senior counsel, the 2004 Act must thus be construed to be an Act which confers concurrent power on three sets of authorities, namely, the competent authority set up by the statute, authorities set up by the Central or the State Government for this purpose, as well as the NCMEI. According to him, therefore, the judgment was wrong in law and should be set aside.

9. Shri Chander Uday Singh, learned senior counsel appearing on behalf of the petitioner-society, was at pains to point out that even under the impugned judgment, it was clear that there was no competent authority set up under the statute for the society to apply to, to establish a new college at the time such application was made by the society. Consequently, according to the learned senior counsel, it is clear that it was only the NCMEI which the society could have approached. Further, according to the learned senior counsel, the institution, being a minority institution which had already been established prior to the coming into force of the 2004 Act, could only go under Section 11(f) to have its status declared as a minority educational institution. Section 10(1), according to the learned senior counsel, is only for the limited purpose of establishing a new minority institution for which alone one would have to go to the competent authority set up under the 2004 Act. According to the learned senior counsel, the impugned judgment, therefore, deserves to be set aside.

10. Shri Rajeev Dhavan, learned senior counsel appearing on behalf of respondent No.3, referred us to the National Commission for Minorities Act, 1992 and also referred to various provisions of the 2004 Act in some detail. He pointed out, however, that the 2004 Act was amended in 2006 and then in 2010, leading to the position that Section 10 would only deal with the grant of a certificate to a person who desires to establish a minority educational institution for the first time. Otherwise, the functions of the NCMEI under Section 11(f) would be wide enough to include the power to declare the status of minority educational institutions, which were established before the commencement of the 2004 Act. According to the learned senior counsel, it was clear that Cluny Women's College had been set up as a secular college and it was only in 2007 that a volte-face was taken by the society to get it declared as a minority educational institution. As none of the orders passed by the NCMEI have looked in detail into the aspect of whether such a college can be declared to be a minority educational institution, after it has opted to be a secular institution, this is a case which should be remanded to the NCMEI to decide.

11. We have heard learned counsel appearing for all the parties.

12. The 2004 Act was set up with the initial idea of providing direct affiliation for minority educational institutions to central universities. It was subsequently amended twice in order to further broad base and expand the functions as well as the quasi-judicial powers of the NCMEI. The sections relevant for our discussion are set out hereinbelow:

“2. Definitions.— In this Act, unless the context otherwise requires,— (aa)
“appropriate Government” means,—

(i) in relation to an educational institution recognized for conducting its programmes of studies under any Act of Parliament, the Central Government; and

(ii) in relation to any other educational institution recognized for conducting its programmes of studies under any State Act, a State Government in whose jurisdiction such institution is established xxx xxx xxx

(c) “Commission” means the National Commission for Minority Educational Institutions constituted under section 3;

(ca) “Competent authority” means the authority appointed by the appropriate Government to grant no objection certificate for the establishment of any educational institution of their choice by the minorities;

Section 10 has been amended in three stages since the enactment of the 2004 Act as follows:

“Stage I (as enacted in 2004)

10. Right of a Minority Educational Institution to seek affiliation to a Scheduled University:

(1) Notwithstanding anything contained in any other law for the time being in force, a Minority Educational Institution may seek recognition as an affiliated college of a Scheduled University of its choice.

(2) The Scheduled University shall consult the Government of the State in which the minority educational institution seeking affiliation under sub-section (1) is situated and views of such Government shall be taken into consideration before granting affiliation.

Stage II (as amended in 2006)

10. Right to establish a Minority Educational Institution:

(1) Any person who desires to establish a Minority Educational Institution may apply to the Competent authority for the grant of no objection certificate for the said purpose.

(2) The Competent authority shall,-

(a) on perusal of documents, affidavits or other evidence, if any; and

(b) after giving an opportunity of being heard to the applicant, decide every application filed under sub-section (1) as expeditiously as possible and grant or reject

the application, as the case may be:

Provided that where an application is rejected, the Competent authority shall communicate the same to the applicant.

(3) Where within a period of ninety days from the receipt of the application under sub-section (1) for the grant of no objection certificate-

(a) the Competent authority does not grant such certificate; or

(b) where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate, it shall be deemed that the Competent authority has granted a no objection certificate to the applicant. (4) The applicant shall, on the grant of a no-objection certificate or where the Competent authority has deemed to have granted the no objection certificate, be entitled to commence and proceed with the establishment of a Minority Educational Institution in accordance with the rules and regulations, as the case may be, laid down by or under any law for the time being in force. Explanation.- For the purpose of this section,-

(a) “applicant” means of person who makes an application under sub-section (1) for establishment of a Minority Educational Institution;

(b) “no objection certificate” means a certificate stating therein, that the Competent authority has no objection for the establishment of a Minority Educational Institution.

Stage III (as amended in 2010)

10. Right to establish a Minority Educational Institution.— (1) Subject to the provisions contained in any other law for the time being in force, any person, who desires to establish a Minority Educational Institution may apply to the competent authority for the grant of no objection certificate for the said purpose.

(2) The Competent authority shall,—

(a) on perusal of documents, affidavits or other evidence, if any; and

(b) after giving an opportunity of being heard to the applicant, decide every application filed under sub-section (1) as expeditiously as possible and grant or reject the application, as the case may be:

Provided that where an application is rejected, the Competent authority shall communicate the same to the applicant.

(3) Where within a period of ninety days from the receipt of the application under sub-section (1) for the grant of no objection certificate,—

(a) the Competent authority does not grant such certificate; or

(b) where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate, it shall be deemed that the Competent authority has granted a no objection certificate to the applicant. (4) The applicant shall, on the grant of a no objection certificate or where the Competent authority has deemed to have granted the no objection certificate, be entitled to commence and proceed with the establishment of a Minority Educational Institution in accordance with the rules and regulations, as the case may be, laid down by or under any law for the time being in force. Explanation.—For the purposes of this section,—

(a) “applicant” means any person who makes an application under subsection (1) for establishment of a Minority Educational Institution;

(b) “no objection certificate” means a certificate stating therein, that the Competent authority has no objection for the establishment of a Minority Educational Institution.” Section 11 has been amended since the enactment of the 2004 Act as follows:

“Section 11 (as enacted in 2004)

11. Functions of Commission.—Notwithstanding anything contained in any other law for the time being in force, the Commission shall-

(a) advise the Central Government or any State Government on any question relating to the education of minorities that may be referred to it;

(b) look into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating affiliation to a Scheduled University and report its findings to the Central Government for its implementation; and

(c) to do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission.

Section 11 (as amended in 2006)

11. Functions of Commission.— Notwithstanding anything contained in any other law for the time being in force, the Commission shall—

- (a) advise the Central Government or any State Government on any question relating to the education of minorities that may be referred to it;
- (b) enquire, suo motu, or on a petition presented to it by any Minority Educational Institution, or any person on its behalf into complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating to affiliation to a University and report its finding to the appropriate Government for its implementation;
- (c) intervene in any proceeding involving any deprivation or violation of the educational rights of the minorities before a court with the leave of such court;
- (d) review the safeguards provided by or under the Constitution, or any law for the time being in force, for the protection of educational rights of the minorities and recommend measures for their effective implementation;
- (e) specify measures to promote and preserve the minority status and character of institutions of their choice established by minorities;
- (f) decide all questions relating to the status of any institution as a Minority Educational Institution and declare its status as such;
- (g) make recommendations to the appropriate Government for the effective, implementation of programmes and schemes relating to the Minority Educational Institutions; and
- (h) do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission.” Section 12, 12A, 12B, 12C, 12F and Section 22 are as follows:

“12. Powers of Commission.— (1) If any dispute arises between a minority educational institution and a University relating to its affiliation to such University, the decision of the Commission thereon shall be final.

(2) The Commission shall, for the purposes of discharging its functions under this Act, have all the powers of a civil court trying a suit and in particular, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, (1 of 1872) requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents; and

(f) any other matter which may be prescribed.

3) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).].

12A. Appeal against orders of the Competent authority.— (1) Any person aggrieved by the order of refusal to grant no objection certificate under sub-section (2) of section 10 by the Competent authority for establishing a Minority Educational Institution, may prefer an appeal against such order to the Commission.

(2) An appeal under sub-section (I) shall be filed within thirty days from the date of the order referred to in sub-section (I) communicated to the applicant:

Provided that the Commission may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period.

(3) An appeal to the Commission shall be made in such form as may be prescribed and shall be accompanied by a copy of the order against which the appeal has been filed.

(4) The Commission, after hearing the parties, shall pass an order as soon as may be practicable, and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice. (5) An order made by the Commission under sub-section (4) shall be executable by the Commission as a decree of a civil court and the provisions of the Code of Civil Procedure, 1908 (5 of 1908), so far as may be, shall apply as they apply in respect of a decree of a civil court.

12B. Power of Commission to decide on the minority status of an educational institution.— (1) Without prejudice to the provisions contained in the National Commission for Minorities Act, 1992 (19 of 1992), where an authority established by the Central Government or any State Government, as the case may be, for grant of minority status to any educational institution rejects the application for the grant of such status, the aggrieved person may appeal against such order of the authority to the Commission.

(2) An appeal under sub-section (1) shall be preferred within thirty days from the date of the order communicated to the applicant: Provided that the Commission may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period.

(3) An appeal to the Commission shall be made in such form as may be prescribed and shall be accompanied by a copy of the order against which the appeal has been filed.

(4) On receipt of the appeal under sub-section (3), the Commission may, after giving the parties to the appeal an opportunity of being heard, decide on the minority status of the educational institution and shall proceed to give such direction as it may deem fit and, all such directions shall be binding on the parties.

Explanation.— For the purposes of this section and section 12C, “authority ” means any authority or officer or commission which is established under any law for the time being in force or under any order of the appropriate Government, for the purpose of granting a certificate of minority status to an educational institution.

12C. Power to cancel.— The Commission may, after giving a reasonable opportunity of being heard to a Minority Educational Institution to which minority status has been granted by an authority or Commission, as the case may be, cancel such status under the following circumstances, namely:-

(a) if the constitution, aims and objects of the educational institution, which has enabled it to obtain minority status has subsequently been amended in such a way that it no longer reflects the purpose or character of a Minority Educational Institution;

(b) if, on verification of the records during the inspection or investigation, it is found that the Minority Educational Institution has failed to admit students belonging to the minority community in the institution as per rules and prescribed percentage governing admissions during any academic year.

xxx xxx xxx 12F. Bar of jurisdiction.— No court (except the Supreme Court and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) shall entertain any suit, application or other proceedings in respect of any order made under this Chapter.

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22. Act to have overriding effect.— The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

13. The National Commission for Minority Educational Institutions Act, as it originally stood in 2004, by Section 10 only concerned itself with the recognition of minority educational institutions to

an affiliated college of a scheduled university of its choice. At this stage, the functions of the NCMEI were limited to only three things, namely, an advisory function under sub clause (a); looking into specific complaints relating to deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any disputes relating to affiliation to scheduled universities under sub-clause (b); and a residuary clause to do all such other acts as may be necessary to the attainment of the objects of the NCMEI under sub-clause (c). A sea change came about by the Amendment Act of 2006. By this amendment, a person who desires to establish a minority educational institution is to apply to the competent authority for a no objection certificate for the said purpose under Section 10. Concomitantly, under Section 11, the functions and powers of the NCMEI were expanded beyond the original sub-clauses (a) to (c) referred to hereinabove, to include, under sub-clause (f), decisions as to all questions relating to the status of any institution as a minority educational institution and declaration of its status as such. The same Amendment Act of 2006 also conferred powers of appeal against orders of the competent authority to the NCMEI under Section 12A as well as over authorities that were established by the Central or State Government, who rejected applications for the grant of minority status to an educational institution, under Section 12B. A power of cancellation was also vested in the NCMEI to cancel a certificate granted either by an authority or the NCMEI under certain circumstances.

14. The Amendment Act of 2010 added the expression “subject to the provisions contained in any other law for the time being in force...” to Section 10(1) of the 2004 Act.

15. At first blush, it does appear that there is a clash between the provisions of Section 10(1) and Section 11(f) of the 2004 Act. Harmoniously construed, however, it would be clear that the NCMEI’s powers under Section 11(f) are to be exercised, notwithstanding anything contained in any other law for the time being in force. On the other hand, the competent authority who grants a no objection certificate under Section 10 can only do so subject to the provisions contained in any other law for the time being in force.

16. Secondly, Section 11(f) is a very wide provision which empowers the NCMEI to decide all questions relating to the status of an institution as a minority educational institution and to declare its status as such. The expression “all questions” as well as the expression “relating to”, which are words of wide import, clothe the NCMEI with the power to decide any question that may arise, which may relate directly or indirectly, with respect to the status of an institution as a minority education institution. Looked at by itself, Section 11(f) would include the declaration of the status of an institution as a minority educational institution at all stages. Article 30 of the Constitution of India grants a fundamental right to all minorities, whether based on religion or language, to establish and administer educational institutions of their choice. The power under Section 11(f), read by itself, would clothe the NCMEI with the power to decide any question that may arise with regard to the right to establish and/or administer educational institutions by a minority. The power does not stop there. It also includes the power to declare such institution as a minority educational institution, which is established and administered as such, so that it can avail of the fundamental right guaranteed under Article 30 of the Constitution.

17. However, Section 10(1), which was introduced at the same time as Section 11(f) by the Amendment Act of 2006, carves out one facet of the aforesaid power contained in Section 11(f), namely the grant of a no objection certificate to a minority educational institution at its inception. Thus, any person who desires to establish a minority educational institution after the Amendment Act of 2006 came into force, must apply only to the competent authority for the grant of a no objection certificate for the said purpose. It is a little difficult to subscribe to Shri Hegde's argument that the said powers are concurrent. Harmoniously read, all applications for the establishment of a minority educational institution after the Amendment Act of 2006 must go only to the competent authority set up under the statute. On the other hand, for the declaration of its status as a minority educational institution at any stage post establishment, the NCMEI would have the power to decide the question and declare such institution's minority status.

18. We find that various High Courts have taken conflicting views on the reach of these provisions. The Calcutta, Bombay and Punjab High Courts have taken the view that an appellate power cannot be confused with an original power and that, therefore, Section 11(f) cannot be pressed into service at all when it comes to declare of the status of a minority institution. This view, apart from stultifying Section 11(f), also ignores Section 12(2) of the Act, which confers certain powers of a Civil Court, which powers refer only to a Court of first instance. On the other hand, the Allahabad High Court has taken the view that Section 10 and 11(f) operate in different fields: Section 10 being the power to grant a no objection certificate to establish an institution and Section 11(f) relating to the determination of all questions relating to the status of an institution.

19. This Court has touched upon the subject without directly answering the question posed before us. Thus, in *Governing Body OF P.A.E.M. College v. State of Jharkhand*, decided on 6.12.2012, this Court, after referring to Section 11(f) and 12B of the 2004 Act, held:

“From the above provisions, it is clear that the Commission has the power to decide all questions relating to the status of any institution as minority educational institution and declare its status as such. More over under Section 12B, where an authority established by the Central Government or any State Government has rejected the application for grant of minority status to any educational institution, the aggrieved person may appeal against such order of the authority to the Commission. The provisions contained in Section 11(f) of 2004 Act and Section 12B of the Amendment Act are, thus, wholesome provisions for deciding all questions relating to the status of any institution as minority educational institution and for declaration of such status.”

20. In *Corporate Educational Agency v. James Mathew*, (2017) 15 SCC 595 (at 600-601), a Division Bench of this Court dealt with a judgment of the High Court, which in turn dealt with the appointment of teachers in minority educational institutions.

This Court, after noticing that the appellant was already an existing minority educational institution, went on to hold:

“9. Chapter III deals with rights of minority educational institutions. Under Section 10, whosoever desires to establish a minority educational institution, has to apply to the competent authority for a “no-objection certificate”. The “competent authority” is defined under Section 2(ca) of the Act to mean, the authority appointed by the appropriate Government to grant “no-objection certificate” for the establishment of any educational institution of their choice by the minorities. xxx xxx xxx

11. Therefore, after the introduction of the National Commission for Minority Educational Institutions Act, 2004, it is also within the jurisdiction and mandate of the National Commission to issue the certificate regarding the status of a minority educational institution. Once the Commission thus issues a certificate, it is a declaration of an existing status.”

21. This judgment unequivocally holds that, insofar as existing minority institutions are concerned, Section 11(f) clearly confers jurisdiction on the NCMEI to issue a certificate regarding the status of the minority educational institution. We respectfully concur with the aforesaid view.

22. Shri Dhavan, however, exhorted us to send back the matter to the NCMEI for a hearing de novo on merits. We may mention that the fact that the college was begun as a secular institution and wished to change into a minority educational institution midstream, which was not permissible according to Shri Dhavan, is not a plea taken up before the learned single Judge. This plea, however, was raised before the Division Bench and answered by both Judges stating that the fundamental right under Article 30 cannot be waived. While agreeing with this view, it is necessary to point out, on the facts of the case, that the University of North Bengal has accepted the NCMEI’s order dated 5.11.2009, in which the NCMEI went into the aforesaid question. It would not, therefore, be in the fitness of things to send back this matter to be decided afresh at the behest of a governing body which can no longer claim to govern the college set up by the society. It needs only be pointed out that, by a letter dated 4.5.2009, the Principal of Cluny Women’s College requested the Vice-Chancellor of the University to extend the term of the governing body set up under the statutes of the University only until the constitution of a new governing body. As the new governing body has been constituted on the footing that Cluny Women’s College is a minority educational institution, we are of the view that the parallel governing body, which claims to continue as such, has no legs to stand after the formation of a new governing body.

This being the case, we are not inclined to send the matter back to the NCMEI for a de novo hearing on merits at the behest of Shri Dhavan’s client.

23. The appeal is, accordingly, allowed and the judgment of the Calcutta High Court is set aside. The order dated 23.10.2007 and the certificate dated 25.10.2007 are declared to be valid in law.

24. In view of the above, the present batch of appeals is disposed of in accordance with this judgment.

.....J. (Adarsh Kumar Goel)J. (R.F. Nariman) New Delhi;

April 18, 2018.