

Supreme Court of India

Dayanand Anglo ... vs State Of Maharashtra & Anr on 22 March, 2013

Author: M Eqbal

Bench: Surinder Singh Nijjar, M.Y. Eqbal

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2678 OF 2013
(Arising out of SLP (C) No.22430 of 2010)

Dayanand Anglo Vedic (DAV) College Trust
and Management Society

..Appellant(s)

Versus

State of Maharashtra & Anr.
.Respondent(s)

J U D G M E N T

M.Y. EQBAL, J.

Leave granted.

2. The appellant Dayanand Anglo Vedic (DAV) College Trust and Management Society has challenged the order dated 24.2.2010 passed by a Division Bench of the Bombay High Court in Writ Petition No.1053 of 2010. By the said order, the Division Bench dismissed the writ petition and refused to interfere with the order dated 26.10.2009 passed by respondent No.2 (The Principal Secretary and Competent Authority, Minority Development Department, Government of Maharashtra) withdrawing the linguistic minority status of the appellant institution which was earlier granted by order dated 11.7.2008.

3. The withdrawal of the recommendation for the appellant- Society as linguistic minority institution was on the ground that the earlier order granting recommendation was under the mistake that the trustees of the appellant were residing in the State of Maharashtra.

4. The brief facts leading to this appeal are thus: The appellant-Society was formed in the year 1885; and it was originally got registered under the Societies Registration Act, 1860 at Lahore & subsequently in the year 1948 in the State of Punjab. Since then, the appellant is said to have established a large number of schools and colleges all over India and is running such institutions all over the country. The aims and objects of the appellant-Society as stated are to establish educational institutions to encourage the study of Hindi, classical Sanskrit and Vedas and also to provide instructions in English and other languages, Arts, science including Medicine, Engineering etc. The appellants further case is that the Society started educational institutions at Solapur in the State of

Maharashtra in 1940 and is having other schools and colleges at different places in the State of Maharashtra. The persons speaking Hindi language and the followers of Arya Samaj in the State of Maharashtra constituted less than 50% of its total population. Therefore, being formed by the persons belonging to Arya Samaj and speaking Hindi language, the appellant-Society claimed to be a linguistic minority within the meaning and purview of Article 30 of the Constitution of India. On these facts, the appellant-Society stated that it was earlier granted linguistic minority status in the State of Maharashtra by the Higher and Technical Educational Department of the respondents for the academic years 2004-05 and 2005-

06. The said recognition was granted after full appreciation of the documents and hearing of the appellant. For the year 2006-07 also, the appellant-Society was declared a linguistic minority after appreciation of documents. However, in the year 2008, the Government of Maharashtra issued a new Resolution dated 04.07.2008 laying down the procedure for granting status of religious/linguistic minority to educational institutions run by the minorities in the State of Maharashtra. On the basis of said Resolution, the respondents issued a Certificate on 11.7.2008 recognizing the appellant-Society at Solapur as a linguistic minority institution for the academic year 2008-09 also.

5. The problem started after the appellant-Society made an application on 15.7.2008 requesting respondent No. 1 to issue certificate of recognition in the name of appellant New Delhi instead of Solapur. Instead of correcting the alleged mistake in the Certificate, respondent No.2 passed an order dated 2.8.2008 cancelling the Certificate dated 11.7.2008 issued to the appellant. The respondents by the aforesaid order cancelled the recognition of the appellant as a minority linguistic educational institution for the years 2004-05 and 2006-07 also. The main ground for cancellation of recognition of the linguistic minority status of the appellant was that though the appellant-Trust was registered under the Bombay Public Trust Act by the Charity Commissioner, Mumbai, a majority of the trustees were not residents of the State of Maharashtra and, therefore they cannot be called a linguistic minority.

6. Challenging the aforesaid order of the respondents cancelling the recognition, the appellant-Society moved the Bombay High Court by filing Writ Petition No.284 of 2009, which was finally disposed of with a direction to the respondents to pass a fresh order after giving opportunity of hearing and considering all the documents of the appellant. In compliance of that order, the appellant filed a fresh application on 20.08.2009 together with all the necessary documents requesting respondent No. 2 to restore the linguistic minority status of the appellant. The said respondent, after hearing the appellant-Society, finally rejected the application in terms of order dated 26.10.2009 refusing to restore the earlier recognition of linguistic minority status granted to the appellant. The appellant- Society then challenged the order dated 26.10.2009 by filing a writ petition being Writ Petition No.1053 of 2010 before the Bombay High Court. The said writ petition was finally heard and dismissed by the Division Bench of the Bombay High Court by impugned order dated 24.2.2010. For better appreciation, the aforesaid order dated 24.2.2010 is reproduced hereinbelow:-

The Petitioner-institution was given initially recommendation as minority institution. But because that recommendation was given under a mistake that the trustees of the Petitioner reside in the State of Maharashtra. The trustees of the Petitioner are claiming to be belonging to linguistic minority because they are Hindi speaking people. But all the trustees of the Petitioner are residing in the area where majority language is Hindi. The authorities, therefore, have said that the Petitioner-trust cannot claim to be an institution belonging to linguistic minority in the State of Maharashtra. The learned counsel appearing for the Petitioner submitted that as a certificate was granted on 11.6.2008 (sic. 11.7.2008) it could not have been withdrawn by the impugned order.

The submission is not well founded. Because it is the case of the Government that certificate was issued under a mistake. In our opinion, therefore, the State Government had a right to correct that mistake. What is further pertinent to note is that the Petitioner itself returned the certificate which had been granted to the Petitioner.

Taking overall view of the matter, therefore, as admittedly the trustees of the petitioner do not reside in the State of Maharashtra, where Hindi speaking people are a linguistic minority, the petitioner trust cannot claim to be a minority institution. Petition is, therefore, rejected.

7. By filing the instant appeal by special leave, the appellant-Society has challenged the aforesaid order passed by the Division Bench refusing to interfere with the order dated 26.10.2009 passed by the respondents, thereby withdrawing the linguistic minority status of the appellant, which was earlier recognized by respondent No.2 by order dated 11.7.2008.

8. Assailing the impugned orders, Mr. Ranjit Kumar, learned senior counsel appearing for the appellant-Society firstly submitted that the High Court failed to appreciate that the order impugned dated 26.10.2009 passed by the respondents adopted a mechanical procedure and in an arbitrary manner withdrew the recognition. According to the learned senior counsel, the order of withdrawal of recognition passed by the respondents is absolutely unconstitutional and illegal, inasmuch as the appellant is an institution established in the State of Maharashtra by the citizens speaking Hindi language and as such it is a linguistic minority institution in the State of Maharashtra. He submitted that the appellant is a linguistic minority in the State of Maharashtra as Marathi is the language spoken by majority of the people; and the place of residence of the trustees of appellant-Society is irrelevant and immaterial qua the establishment and administration of the educational institution by the appellant- Society in the State of Maharashtra. Learned counsel submitted that the order of withdrawal is erroneous and contrary to the provisions of Government Resolution dated 4.7.2008 which prescribes the procedure for granting a minority status and recognition certificate. He submitted that the Resolution nowhere prescribes that any institution or trust claiming the linguistic minority status should have such trustees who are residents of the said State. Learned senior counsel, however, submitted that the pre-condition for grant of minority status to an educational institution should be only that the institution is of the persons whose mother-tongue is

any Indian language other than Marathi; and further, minimum 2/3rd trustees of the Managing Committee of the Society/institution should be from the concerned minority community. According to the learned counsel, the appellant-Society fulfilled all the conditions specified in the Government Resolution dated 4.7.2008 and as such the appellant is eligible and qualified for grant of recognition as linguistic minority. Learned senior counsel put heavy reliance on the decisions of this Court in D.A.V. College Etc. Etc. vs. State of Punjab & Ors. (1971) 2 SCC 269, T.M.A. Pai Foundation & Ors. vs. State of Karnataka & Ors. (2002) 8 SCC 481 and Kanya Junior High School, Bal Vidya Mandir, Etah, U.P. vs. U.P. Basic Shiksha Parishad, Allahabad, U.P. & Ors. (2006) 11 SCC 92.

9. Finally, learned counsel submitted that the object of running the institution is important and not the persons running the institution. Article 30 of the Constitution protects the right of the minority to establish and administer the minority/linguistic institution in order to preserve the culture and language of the minorities.

10. The stand of the respondents as stated in the counter affidavit is that the appellant-Trust does not fulfill the required criteria for granting linguistic minority status in the State of Maharashtra. The respondents case is that the appellants institution was established in the State of Maharashtra by citizens residing outside the State of Maharashtra and speaking Hindi language and as such they are not a linguistic minority in the State of Maharashtra. The respondents case is that in order to claim the protection by virtue of being a minority community as guaranteed by the Constitution, the obvious requirement should be that one must be a minority. It is stated that there is no bar or restriction for running educational institution in the State by the trusts which are registered outside the State of Maharashtra, but these institutions are not treated as minorities and they will definitely be subject to the Rules and Regulations of the State which are applicable to non- minority institutions.

11. Lastly, it is stated by the respondents that the constitutional protection under Article 30 of the Constitution of India is available only to those who are actually and physically in minority in the State. The appellant is an institution established in the State of Maharashtra by citizens residing outside the State of Maharashtra and speaking Hindi language and as such they are not linguistic minority in the State of Maharashtra. Hence, the status earlier granted by the respondents to the appellant-Society has been rightly withdrawn, especially when the appellant wanted such recognition in the name of the Trust registered in New Delhi consisting of the trustees residing in Delhi.

12. As noticed above, Mr. Ranjit Kumar has put heavy reliance on T.M.A. Pai Foundation case (supra) in support of his contentions. In that case, the 11-Judge Bench of this Court has settled many issues related to Articles 29 and 30 of the Constitution of India. Their Lordships held that Article 30(1) makes it clear that religious and linguistic minorities have been put on par, insofar as that Article is concerned. Therefore, whatever be the unit whether a State or the whole of India for determining a linguistic minority, it would be the same in relation to a religious minority. India is divided into different linguistic States. The States have been carved out on the basis of the language of the majority of persons of that region. For example, Andhra Pradesh was established on the basis of the language of that region viz. Telugu. Linguistic minority can, therefore, logically only be in

relation to a particular State. If the determination of linguistic minority for the purpose of Article 30 is to be in relation to the whole of India, then within the State of Andhra Pradesh, Telugu speaking people will have to be regarded as a linguistic minority. This will clearly be contrary to the concept of linguistic States. Their Lordships further held that Article 30 gives the right to a linguistic or religious minority of a State to establish and administer educational institutions of their choice. It was observed that as a result of the insertion of Entry 25 in List III, Parliament can now legislate in relation to education, which was only a State subject previously. The jurisdiction of Parliament is to make laws for the whole or a part of India. It is well recognized that geographical classification is not violative of Article 14. It would, therefore, be possible that, with respect to a particular State or group of States, Parliament may legislate in relation to education. However, Article 30 gives the right to a linguistic or religious minority of a State to establish and administer educational institutions of their choice. The minority for the purpose of Article 30 cannot have different meanings depending upon as to who is legislating. Language being the basis for the establishment of different States, for the purpose of Article 30 a linguistic minority will have to be determined in relation to the State in which the educational institution is sought to be established. The position with regard to the religious minority is similar, since both religious and linguistic minorities have been put on par in Article

30.

13. In the instant appeal, the sole question that arises for consideration is as to whether a member of a linguistic non-minority in one State can establish a Trust or Society in another State and claim minority status in that State. In T.M.A. Pai Foundation case, 11 questions were framed for being answered. One of those questions being Question No.7 was the same as that in the instant case, namely, whether the member of a linguistic non-minority in one State can establish a trust or society in another State and claim minority status in that State. Their Lordships held that this question need not be answered by that Bench and it would be dealt with by a regular Bench.

14. In the case of P.A. Inamdar and Ors. vs. State of Maharashtra & Ors. (2005) 6 SCC 537, a 7-Judge Bench of this Court has elaborately discussed T.M.A. Pai Foundation case and has clarified the issues further. For better appreciation, some of the relevant paragraphs are quoted hereinunder:

91. The right to establish an educational institution, for charity or for profit, being an occupation, is protected by Article 19(1)(g). Notwithstanding the fact that the right of a minority to establish and administer an educational institution would be protected by Article 19(1)(g) yet the founding fathers of the Constitution felt the need of enacting Article 30. The reasons are too obvious to require elaboration. Article 30(1) is intended to instil confidence in minorities against any executive or legislative encroachment on their right to establish and administer educational institution of their choice. Article 30(1) though styled as a right, is more in the nature of protection for minorities. But for Article 30, an educational institution, even though based on religion or language, could have been controlled or regulated by law enacted under clause (6) of Article 19, and so, Article 30 was enacted as a guarantee to the minorities that so far as the religious or linguistic minorities are concerned,

educational institutions of their choice will enjoy protection from such legislation. However, such institutions cannot be discriminated against by the State solely on account of their being minority institutions. The minorities being numerically less qua non- minorities, may not be able to protect their religion or language and such cultural values and their educational institutions will be protected under Article 30, at the stage of law-making. However, merely because Article 30(1) has been enacted, minority educational institutions do not become immune from the operation of regulatory measures because the right to administer does not include the right to maladminister. To what extent the State regulation can go, is the issue. The real purpose sought to be achieved by Article 30 is to give minorities some additional protection. Once aided, the autonomy conferred by the protection of Article 30(1) on the minority educational institution is diluted as provisions of Article 29(2) will be attracted. Certain conditions in the nature of regulations can legitimately accompany the State aid. 95. The term minority is not defined in the Constitution. Chief Justice Kirpal, speaking for the majority in *Pai Foundation* took a clue from the provisions of the States Reorganisation Act and held that in view of India having been divided into different linguistic States, carved out on the basis of the language of the majority of persons of that region, it is the State, and not the whole of India, that shall have to be taken as the unit for determining a linguistic minority vis-à-vis Article 30. Inasmuch as Article 30(1) places on par religions and languages, he held that the minority status, whether by reference to language or by reference to religion, shall have to be determined by treating the State as a unit. The principle would remain the same whether it is a Central legislation or a State legislation dealing with a linguistic or religious minority. Khare, J. (as His Lordship then was), Quadri, J. and Variava and Bhan, JJ. in their separate concurring opinions agreed with Kirpal, C.J. According to Khare, J., take the population of any State as a unit, find out its demography and calculate if the persons speaking a particular language or following a particular religion are less than 50% of the population, then give them the status of linguistic or religious minority. The population of the entire country is irrelevant for the purpose of determining such status. Quadri, J. opined that the word minority literally means a non-dominant group. Ruma Pal, J. defined the word minority to mean numerically less. However, she refused to take the State as a unit for the purpose of determining minority status as, in her opinion, the question of minority status must be determined with reference to the country as a whole. She assigned reasons for the purpose. Needless to say, her opinion is a lone voice. Thus, with the dictum of *Pai Foundation* it cannot be doubted that a minority, whether linguistic or religious, is determinable only by reference to the demography of a State and not by taking into consideration the population of the country as a whole.

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

cross-border or inter-State educational facilities and yet retain the character of minority educational institution?

15. Their Lordships further observed referring the decision of this Court in Kerala Educational Bill, 1957, In re., 1959 SCR 995, as under:

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

98. The learned Judges in Kerala Education Bill were posed with the issue projected by Article 29(2). What will happen if the institution was receiving aid out of State funds? The apparent conflict was resolved by the Judges employing a beautiful expression. They said, Articles 29(2) and 30(1), read together, clearly contemplate a minority institution with a sprinkling of outsiders admitted in it. By admitting a member of non-minority into the minority institution, it does not shed its character and cease to be a minority institution. The learned Judges went on to observe that such sprinkling would enable the distinct language, script and culture of a minority being propagated amongst non-members of a particular minority community and that would indeed better serve the object of conserving the language, religion and culture of that minority. Paras 101 and 102 are also worth to be quoted here which are as under:

In this background arises the complex question of trans- border operation of Article 30(1). Pai Foundation has clearly ruled in favour of the State (or a province) being the unit for the purpose of deciding minority. By this declaration of law, certain consequences follow. First, every community in India becomes a minority because in one or the other State of the country it will be in minority - linguistic or religious. What would happen if a minority belonging to a particular State establishes an educational institution in that State and administers it but for the benefit of members belonging to that minority domiciled in the neighbouring State where the community is in majority? Would it not be a fraud on the Constitution? In St. Stephens, (1992) 1 SCC 558, Their Lordships had ruled that Article 30(1) is a protective measure only for the benefit of religious and linguistic minorities and no ill-fit or camouflaged

institution should get away with the constitutional protection (SCC p.587 para 28). The question need not detain us for long as it stands answered in no uncertain terms in *Pai Foundation*. Emphasising the need for preserving its minority character so as to enjoy the privilege of protection under Article 30(1), it is necessary that the objective of establishing the institution was not defeated.

If so, such an institution is under an obligation to admit the bulk of the students fitting into the description of the minority community. Therefore, the students of that group residing in the State in which the institution is located have to be necessarily admitted in a large measure because they constitute the linguistic minority group as far as that State is concerned. In other words, the predominance of linguistic minority students hailing from the State in which the minority educational institution is established should be present. The management bodies of such institution cannot resort to the device of admitting the linguistic students of the adjoining State in which they are in a majority, under the façade of the protection given under Article 30(1). (SCC p.585, para 153.) The same principle applies to religious minority. If any other view was to be taken, the very objective of conferring the preferential right of admission by harmoniously constructing Articles 30(1) and 29(2), may be distorted.

It necessarily follows from the law laid down in *Pai Foundation* that to establish a minority institution the institution must primarily cater to the requirements of that minority of that State else its character of minority institution is lost. However, to borrow the words of Chief Justice S.R. Das in *Kerala Education Bill* a sprinkling of that minority from the other State on the same footing as a sprinkling of non-minority students, would be permissible and would not deprive the institution of its essential character of being a minority institution determined by reference to that State as a unit.

16. Mr. Ranjit Kumar, learned counsel submitted that in *P.A. Inamdar* case (supra), the question that arose for consideration before the 7-Judge Bench has been left untouched observing that the said questions have been dealt with by the regular Bench.

17. The main grievance of the appellant-Society is that the impugned order of withdrawal of recognition made by the State authorities is erroneous and contrary to the provisions of Government Resolution dated 4.7.2008 which prescribes the procedure for granting minority status. The appellant-Society alleged to have fulfilled all the conditions specified in the said Resolution dated 4.7.2008 and thereby made itself eligible and qualified for grant of recognition as linguistic minority. As noticed above, the resolution dated 4.7.2008 issued by the Minority Development Department of the State of Maharashtra lays down the conditions and procedure for the grant of certificate of minority linguistic character of the institution. The relevant portion of the Resolution reads as under:

RESOLUTION: The issue of making existing procedure easy for granting the recognition as cadre as religious/linguistic minority societies which are being

conducted by the minorities was under the consideration of the State Government for some time. Accordingly, after consulting with the experts in this field interested persons and taking into consideration directions given by the Honble Supreme Court in this connection from time to time after superseding the Central Administration Department, Resolution No.MS-2006/634/CR-63/2006/35, dt. 11.6.2007, the Government of Maharashtra is prescribing terms and conditions and procedure for providing recognition of religious/societies conducted/managed by the State as detailed hereunder:-

1) The Competent Authority for providing recognition of minority cadre:

For providing recognition of religious linguistic minority cadre to the educational societies managed by minorities of the State, State Government has declared by the Principal Secretary/Secretary Minority Development Department, Government of Maharashtra as Competent Authority as per Government Notification No. MES-2008/CR-149/08/E-1: dt. 4.7.2008.

2) Touchstones for the eligibility of the recognition for religious linguistic minority:

1) Those educational societies to whom recognition has been granted prior to 11.6.2007 as per specific order or letter or in accordance with General Administration Department, Government Resolution No.MES-2006/634/CR- 63/2006/35 dated 11.6.2007 as minority educational institutions/societies; such educational societies/institutions are not required to submit application again for the recognition of the minority cadre. However, conditions prescribed at para-5 hereunder will be applicable to all such societies.

2) It is necessary that applicant minority institution/society should have been registered under Societies Registration Act, 1860 or Bombay Public Trusts Act, 1950 or other concerned statute. The concerned minority society of the institution should have mentioned in its bye-laws of rules of which the religious/linguistic minority communities that society belong, it has been established to protect that the interest that minority community.

3) Institution/society of all religions which have been notified by the Central Government/Maharashtra Government will be eligible to submit the application for obtaining the recognition for their educational institutions as religious minority educational institution.

4) Educational institution of such persons whose mother tongue is other Indian language than Marathi will be eligible to submit the application for the recognition of minority educational society of education.

5) It is necessary that minimum 2/3rd trustees of the Management Committee of the Applicant Society/institution should be from concerned minority community.
(emphasis given)

18. From a perusal of the relevant provisions of the Resolution quoted hereinabove, it is manifest that one of the conditions, inter alia, is that the educational institutions of such persons whose mother tongue is other Indian language than Marathi will be eligible to submit their application for recognition and that minimum 2/3rd trustees of the Management Committee of the Society or institution should be from concerned minority community. In other words, as per the Resolution, 2/3rd of the trustees of the Management Committee of the Society should be from minority community.

19. On a perusal of the documents contained in the paperbook, the following facts emerged:

(i) By communication dated 28.06.2006 issued by the Urban Secretary, Higher and Technical Education Department, Government of Maharashtra, the Director, Higher Education, Maharashtra State, Pune, was informed that on the basis of the representation submitted by Dayanand Institutions at Solapur for providing minority cadre (Hindi linguistic), the Government has granted minority cadre (Hindi linguistic) to the higher colleges (degree colleges) managed by the Dayanand Institutions, Solapur for two educational years i.e. 2006-07 and 2007-2008.

(ii). In the application dated 6.7.2007 submitted by the appellant for obtaining sanction of religious/ linguistic minority, although in column No.1 of the form of application, name of the Society has been shown as Dayanand Anglo Vedic (DAV) College Trust and Management Society, New Delhi, but other required information has been given in the manner hereinunder:-

|Whether minimum 2/3rd |All Trustees/Members of | |persons or |the Board of Directors of|
|trustees/members of Board |the Society who are | |of Directors who are |looking after the | |looking
after the business|business of the society | |of the society are from |are from Arya Community |
|minority/linguistic group,|and their mother tongue | |if yes, their numbers. |is Hindi |

20. It is, therefore, clear that the appellant has not correctly furnished the required information, inasmuch as it was not said that the Trustees/Members of the Board of Directors, who are looking after the business of the Society, are non-minority. Obviously, the reason is that the persons or trustees, who are managing the business of the Society are non-minority i.e. residing in New Delhi and not in the State of Maharashtra.

21. The Certificate of Recognition was granted for the year from 2004-2008 in the name of appellants institution i.e. Educational Trust and Management Society, Solapur. For better appreciation, the last Certificate granted on 11.7.2008 for the academic year 2008-09 is reproduced hereinbelow:-

GOVERNMENT OF MAHARASHTRA Competent Authority and Principal Secretary
Minority Development Department, Mantralaya, Mumbai-400032.

No.MES-2007/264/CR-145/2007/35/D-1 Date:11.7.2008 CERTIFICATE FOR THE RECOGNITION OF MINORITY CADRE Educational Trust and Management Society, Solapur had submitted the Application on 9.7.2007 for obtaining certificate for the reorganization of their society in the cadre as Linguistic Minority Educational Institute. During the hearing which was conducted of the said Institute before me on 11.7.2008, on the basis of submissions made by the Officials of the Institute, I have satisfied that, the said Institute is being established and conducted through persons from Linguistic (Hindi) Minority or Group of persons, declared by State Government as per touchstone prescribed under Minority Development Department, Government Resolution No.MES- 2008/CR133/2008/D-1 dated 4.7.2008. as a result it is being declared that the said Institute is Linguistic (Hindi) Minority Educational Institute.

This certificate will be valid only for the State of Maharashtra. The Linguistic Minority Cadre which has been granted to the said society will be applicable to all educational benches conducted by the Institution.

The Linguistic Minority Cadre which has been granted to the above mentioned Educational Institution will be legally valid from the academic year 2008-2009. it will be binding to comply with the touchstones and conditions constantly and specifically which have been prescribed as per Government Resolution No. MES-2008/CR-133/2008/D-1 dated 4.7.2008.

Sd/-

(TF.Thekkekara) Competent Authority Principal Secretary Minority Development
Department Mantralaya,, Mumbai- 400032.

22. It was for the first time that the appellant by letter/representation dated 15.7.2008 addressed to the Competent Authority, Minority Development Department, Mumbai, stated that the recognition certificate for linguistic minority has been issued in the name of Dayanand Anglo Vedic (DAV) College Trust and Management Society, Solapur. Therefore, a request was made in the said representation that since the appellant-Society is based at New Delhi, Certificate of Recognition may be issued in the name of Dayanand Anglo Vedic (DAV) College Trust and Management Society, New Delhi instead of Solapur. The said representation was rejected by the respondents mainly on the ground that only those Hindi speaking persons who are residing in Maharashtra, will be treated as minority in Maharashtra. Admittedly, in the instant case, the appellant- Trust/Society is registered at New Delhi and majority of the trustees reside at New Delhi and, therefore, these persons cannot be treated as minority in the State of Maharashtra and they cannot claim the protection of linguistic minority in the State of Maharashtra. The aforesaid order was impugned in the writ petition which ultimately resulted in a direction to the respondents to pass a fresh order after giving opportunity of hearing to the appellant.

23. In compliance of the said direction, the respondents passed the impugned order dated 26.10.2009. The Authority, while rejecting the application for the grant of minority status, recorded the following reasons:

A) On scrutiny of papers, it was seen that although the covering application cited the name of the institution as Dayanand Institutions Solapur, the trust deed was registered in the name of Dayanand Anglo Vedic College Trust and Management Society and the majority of the trustees resided at New Delhi.

B) The certificate of registration submitted by the Dayanand Institutions Solapur in the name of `Dayanand Anglo Vedic College Trust and Management Society issued by the Charity Commissioner Mumbai and their application dated 6.7.07 on the letterhead styled Dayanand Institutions Solapur led the Competent Authority to believe that the trustees were located in Maharashtra, when in fact they were not residents of Maharashtra. It was on the basis of these documents that the certificate of recognition as a minority institution had been issued on the 11th July, 2008. the application of the so-called `Dayanand Institutions Solapur by its letter dated 15.07.08 for a certificate of recognition of linguistic minority status to the Dayanand Anglo Vedic College Trust and Management Society, New Delhi was rejected in the light of the above facts.

C) It was noticed from the documents submitted by the organization, that although the trust had produced a deed of registration in the name and style `Dayanand Anglo Vedic College Trust and Management Society, registered at Mumbai by the Charity Commissioner, Greater Mumbai, the organization was also registered under the name and style `Dayanand Anglo Vedic College Trust and Management Society under the Societies Registration Act, 1860 at Lahore on 30.6.1948. it is seen from the copy of the Schedule 1 of the list of trustees, issued by the Charity Commissioner Mumbai on 7.3.08, that of the 34 trustees of the `Dayanand Anglo Vedic College Trust and Management Society recorded with the Charity Commissioner Greater Mumbai, 25 of the trustees reside in New Delhi, 4 in Haryana, 4 in Punjab and one at Ranchi. It is not denied by the applicant trust that in the case of both trusts viz. registered in 2003 under the Mumbai Public Trust Act, 1950 and under the Societies Registration Act 1860 at Lahore in 30.6.1948, the majority of the trustees reside in New Delhi and that the majority of them reside outside Maharashtra.

D) There is no separate trust or society registered in the name of the `Dayanand Institutions Solapur. This entity appears to exist only on the letterhead by which an application seeking minority status was submitted to the Government on 6th July, 2007.

E) The representative of the Dayanand Anglo Vedic College Trust And Management Society also stated that the Dayanand Institutions Solapur were working in Maharashtra for the poor students in Maharashtra in the best traditions of an

academic institution wedded to the cause of excellence in education. They also stated that they could not recruit teachers with an excellent academic qualification in order to make the institution an excellent institution, as they were hampered by the requirement of the reservation of ST and other reservations. There were no qualified excellent teachers available with an ST background. Hence they desired to avoid this requirement of reservations in recruitment of teachers by having a minority status.

F) In regard to the other contentions of the trust, it is clear that this application for a minority status is being made by the `Dayanand Anglo Vedic College Trust and Management Society of Arya Samaj members only to avoid the implementation of the reservations in favour of Scheduled Castes and Scheduled Tribes and other backward communities, while recruiting teachers and staff in the school. This is against the constitutional provisions for the welfare and development of SCs and STs and cannot be accepted.

24. As noticed above, the aforesaid order of the respondents dated 26.10.2009 was challenged before the Bombay High Court in W.P. No.1053 of 2010. Dismissing the said writ petition, the High Court noticed the fact that though the appellant claimed linguistic minority status, but all the trustees of the appellant-Society are residing in the area where majority language is Hindi. The High Court took the view that the State Government had a right to correct the mistake if any certificate granting minority linguistic status is granted contrary to law. The High Court was further of the view that as admittedly the trustees of the appellant do not reside in the State of Maharashtra, where Hindi speaking people are linguistic minority, the appellant-Trust/Society cannot claim to be a minority institution.

25. We have no doubt that the view taken by the High Court is justified. The rights conferred by Article 30 of the Constitution to the minority are in two parts. The first part is the right to establish the institution of minority's choice and the second part relates to the right to administration of such institution. The word establishment herein means bringing into being of an institution and it must be by minority community. The administration means management of the affairs of the institution. Reference may be made to be the decision of this Court in the case of State of Kerala Etc. vs. Mother Provincial Etc. AIR 1970 SC 2079.

26. Similarly, in the case of S.P. Mittal Etc. vs. Union of India and Others, AIR 1983 SC 1, this Court held that in order to claim the benefit of Article 30, the community must firstly show and prove that it is a religious or linguistic minority; and secondly, that the institution has been established by such linguistic minority.

27. In the case of A.P. Christians Medical Educational Society vs. Government of Andhra Pradesh & Anr. AIR 1986 SC 1490 (para 8), this Court elaborately discussed the rights guaranteed under Article 30 and held as under:-

It was seriously contended before us that any minority, even a single individual belonging to a minority, could found a minority institution and had the right so to do

under the Constitution and neither the Government nor the University could deny the society's right to establish a minority institution, at the very threshold as it were, howsoever they may impose regulatory measures in the interests of uniformity, efficiency and excellence of education. The fallacy of the argument in so far as the instant case is concerned lies in thinking that neither the Government nor the University has the right to go behind the claim that the institution is a minority institution and to investigate and satisfy itself whether the claim is well founded or ill-founded. The Government, the University and ultimately the court have the undoubted right to pierce the 'minority veil with due apologies to the Corporate Lawyers and discover whether there is lurking behind it no minority at all and in any case, no minority institution. The object of Art. 30(1) is not to allow bogies to be raised by pretenders but to give the minorities 'a sense of security and a feeling of confidence not merely by guaranteeing the right to profess, practise and propagate religion to religious minorities and the right to conserve their language, script and culture to linguistic minorities, but also to enable all minorities, religious or linguistic, to establish and administer educational institutions of their choice. These institutions must be educational institutions of the minorities in truth and reality and not mere masked phantoms. They may be institutions intended to give the children of the minorities the best general and professional education, to make them complete men and women of the country and to enable them to go out into the world fully prepared and equipped. They may be institutions where special provision is made to the advantage and for the advancement of the minority children. They may be institutions where the parents of the children of the minority community may expect that education in accordance with the basic tenets of their religion would be imparted by or under the guidance of teachers, learned and steeped in the faith. They may be institutions where the parents expect their children to grow in a pervasive atmosphere which is in harmony with their religion or conducive to the pursuit of it. What is important and what is imperative is that there must exist some real positive index to enable the institution to be identified as an educational institution of the minorities. We have already said that in the present case apart from the half a dozen words 'as a Christian minorities institution occurring in one of the objects recited in the memorandum of association, there is nothing whatever, in the memorandum or the articles of association or in the actions of the society to indicate that the institution was intended to be a minority educational institution. As already found by us these half a dozen words were introduced merely to found a claim on Art. 30(1). They were a smoke-screen.

28. In the case of *S. Azeez Basha & Anr. Etc. vs. The Union of India Etc.* AIR 1968 SC 662 (para 19), this Court considered the constitutional provisions and held as under:

Under Article 30(1), "all minorities whether based on religion or language shall have the right to establish and administer educational institutions of their choice". We shall proceed on the assumption in the present petitions that Muslims are a minority based on religion. What then is the scope of Article 30(1) and what exactly is the right

conferred therein on the religious minorities? It is to our mind quite clear that Article 30(1) postulates that the religious community will have the right to establish and administer educational institutions of their choice meaning thereby that where a religious minority establishes an educational institution, it will have the right to administer that. An argument has been raised to the effect that even though the religious minority may not have established the educational institution, it will have the right to administer it, if by some process it had been administering the same before the Constitution came into force. We are not prepared to accept this argument. The Article in our opinion clearly shows that the minority will have the right to administer educational institutions of their choice provided they have established them, but not otherwise. The Article cannot be read to mean that even if the educational institution has been established by somebody else, any religious minority would have the right to administer it because, for some reason or other, it might have been administering it before the Constitution came into force. The words "establish and administer" in the Article must be read conjunctively and so read it gives the right to the minority to administer an educational institution provided it has been established by it. In this connection our attention was drawn to In re: The Kerala Education Bill, 1957, 1959 SCR 995: (AIR 1950 SC 956) where, it is argued, this Court had held that the minority can administer an educational institution even though it might not have established it. In that case an argument was raised that under Article 30(1) protection was given only to educational institutions established after the Constitution came into force. That argument was turned down by this Court for the obvious reason that if that interpretation was given to Article 30(1) it would be robbed of much of its content. But that case in our opinion did not lay down that the words "establish and administer" in Article 30(1) should be read disjunctively, so that though a minority might not have established an educational institution it had the right to administer it. It is true that at p. 1062 of SCR; (at p. 992 of AIR) the Court spoke of Article 30(1) giving two rights to a minority i.e. (i) to establish and (ii) to administer. But that was said only in the context of meeting the argument that educational institutions established by minorities before the Constitution came into force did not have the protection of Article 30(1). We are of opinion that nothing in that case justifies the contention raised on behalf of the petitioners that the minorities would have the right to administer an educational institution even though the institution may not have been established by them. The two words in Article 30(1) must be read together and so read the Article gives the right to the minority to administer institutions established by it. If the educational institution has not been established by a minority it cannot claim the right to administer it under Article 30(1). We have therefore to consider whether the Aligarh University was established by the Muslim minority; and if it was so established, the minority would certainly have the right to administer it.

(emphasis supplied)

29. In view of the opinion expressed by this Court in a catena of decisions, there cannot be any controversy that minorities in India have a right to establish and administer educational institutions of their choice and the State Government or the Universities cannot interfere with the day-to-day management of such institutions by the members of minority community. At the same time, this Court pointed out that though Article 30 itself does not lay down any limitation upon the right of a minority to administer its educational institution but this right is not absolute. This is subject to reasonable regulations for the benefit of the institution. The State Government and Universities can issue directions from time to time for the maintenance of the standard and excellence of such institution which is necessary in the national interest.

30. So far as the Government Resolution dated 4.7.2008 is concerned, it prescribes a procedure for granting minority status. The Resolution, inter alia, permits the persons of the State of Maharashtra whose mother tongue is other Indian language than Marathi will be eligible to submit an application for recognition of their linguistic minority educational institution. The only rider put is that the minimum 2/3rd trustees of the Management Committee of the Society/Institution should be from the concerned minority community.

31. After giving our anxious consideration in the matter and in the light of the law settled by this Court, we have no hesitation in holding that in order to claim minority/linguistic status for an institution in any State, the authorities must be satisfied firstly that the institution has been established by the persons who are minority in such State; and, secondly, the right of administration of the said minority linguistic institution is also vested in those persons who are minority in such State. The right conferred by Article 30 of the Constitution cannot be interpreted as if irrespective of the persons who established the institution in the State for the benefit of persons who are minority, any person, be it non-minority in other place, can administer and run such institution. In our considered opinion, therefore, the order passed by the respondent-Authority and the impugned order passed by the Division Bench need no interference by this Court. We, therefore, do not find any merit in this appeal which is accordingly dismissed.

..J.

(SURINDER SINGH NIJJAR) J.

(M.Y. EQBAL) New Delhi March 22, 2013.
