Serial No.01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.55/2016

Date of Order: 23.03.2020

State of Meghalaya Vs. Sujata Gupta & ors

Coram:

Hon'ble Mr. Justice Mohammad Rafiq, Chief Justice
Hon'ble Mr. Justice R.V. More, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K Khan, Senior Govt. Advocate with
Mr. S Sen Gupta, Additional Senior Govt. Advocate

For the Respondent(s) : Dr. N Mozika, Senior Advocate with
Ms. SA Shallam, Advocate for R/1
Mr. K Paul, Advocate for R/2&3

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: Yes/No

Per Mohammad Rafiq, 'CJ'

1. This writ appeal seeks to challenge the judgment dated 24.06.2014 passed by the learned Single Judge whereby, the writ petition filed by respondent No.1 was allowed and the order of the Government of Meghalaya dated 24.03.2011 refusing to approve the appointment of respondent No.1/writ petitioner on the post of Assistant Teacher at Rilbong P.N. Chaudhuri Higher Secondary School (for short RPNCHS School) run by respondents No.2 and 3 and directing the School Management to advertise the post afresh by applying the reservation policy of the State, was quashed and set aside and the School Management was directed to grant appointment to the respondent No.1/writ petitioner.

2. The facts of the case giving rise to this appeal are that respondent-RPNCHS School had advertised the vacant post of Assistant Teacher in the local newspaper Meghalaya Guardian on 26.03.2008 inviting application from eligible candidates. After the written examination followed by oral interview, a panel of two candidates was prepared. While Smti. Anindita Chowdhury was placed at serial No.1 and was duly appointed to the said post, the respondent No.1/writ petitioner was placed at serial No.2 in the select list. Thereafter, the Management Committee vide resolution dated 07.12.2008 unanimously decided to appoint the respondent No.1/writ petitioner to the post of Assistant Teacher which fell vacant on the retirement of one Shri Santosh Kumar Deb and forwarded the proposal to the Inspector of Schools, Shillong vide letter dated 09.12.2008 seeking his approval. After a spate of correspondence, the Inspector of Schools, Shillong vide letter 21.04.2011 informed the respondent-RPNCHS School of the decision of Personnel & AR Department not to grant approval of appointment of the respondent No.1/writ petitioner on the premise that the said School was a deficit school receiving grant-in-aid from the Government and the reservation policy of the State would be applicable. Besides, the vacant post was not a language post but a general subject post in English. The school Management Committee was therefore instructed to advertise the post afresh. Aggrieved thereby the respondent No.1/writ petitioner approached this Court by filing writ petition under Article 226 of the Constitution of India. The learned Single Judge vide the impugned judgment allowed the writ petition in the following terms:-

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

3. The State of Meghalaya through Director of School Education & Literacy, East Khasi Hills District, Shillong has assailed the above judgment of the learned Single Judge in the present appeal.

4. We have heard Mr. K Khan, learned Senior Government Advocate appearing for the appellant-State, Dr. N Mozika, learned Senior Counsel appearing for respondent No.1 and Mr. K Paul, learned counsel appearing for respondents No.2 and 3.

5. Mr. K Khan, learned Senior Government Advocate submitted that the RPNCHS School was a deficit school receiving grant-in-aid from the Government. The post of Assistant Teacher advertised by the School Management was not a language post but a general subject post of English. The Personnel & AR (B) Department therefore rightly instructed the School Management to advertise the post afresh. It is submitted that the RPNCHS School is not a minority educational institution as per the Government of India notification dated 18.01.2005, which includes only Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) as minorities and not Bangalee. This school was never declared as linguistic minority institution. The medium of instruction in the school is English and not vernacular

language (Bengali). The reservation policy of the State of Meghalaya promulgated vide order No.PER.222/71/138 dated 12.01.1972 ordained all Government Aided Schools to follow reservation policy adopted by the State Government. The RPNCHS School is neither a cultural school nor a linguistic minority school. It is imparting education as per the course prescribed by Meghalaya Board of School Education like any other school. Therefore, it is obliged to abide by the reservation policy of the State of Meghalaya. It is also submitted that Articles 29 and 30 of the Constitution are not attracted to the facts situation of the present case.

6. Mr. K Khan, learned Senior Government Advocate further submitted that the learned Single Judge has not given any clear finding as to why reservation policy of the State shall not apply to the school run by the respondent-Management Committee, which was a deficit school and was receiving grant-in-aid from the Government and further that the vacant post was not a language post but was a general post in English. In any case, the RPNCHS School has not been registered as linguistic minority school with any State authority. If at all it wanted to be treated as a minority educational institution, the respondent-Management Committee was free to approach the National Commission for Minority Educational Institutions Act, 2004 (for short the Act of 2004), Section 11(f) thereof confers power upon the National Commission for Minority Educational Institutions (for short the National Commission) to decide all questions relating to the status of any institution as a minority educational institution and declare its status as such. In fact, the learned Single Judge in the concluding para 18 of the

impugned judgment himself observed that since the Act of 2004 has come into force w.e.f. 11.11.2004, in order to avoid any complicacy in all respects, the RPNCHS School and the State Government may take steps, if necessary, as provided under the said Act of 2004.

7. Learned Senior Government Advocate argued that the observation made by the learned Single Judge in paragraph 18 of the impugned judgment nullifies the direction contained in paragraph 17 setting aside the order dated 24.03.2011 and directing to appoint the respondent No.1/writ petitioner to the post of Graduate Teacher (Arts) within a period of three months. The findings recorded by the learned Single Judge in these two paragraphs being contradictory in terms are irreconcilable. It is argued that the expressions "all questions" as well as the expressions "relating to" are words of wide import, which clothe the National Commission with the power to decide any question that may arise, directly or indirectly, with respect to the status of an institution as a minority education institution. Relying on the judgment of the Supreme Court in ***Sisters of St. Joseph of Cluny v. State of West Bengal & ors*** reported in ***(2018) 6 SCC 772***, learned Senior Government Advocate argued that the Supreme Court has clarified therein that not only new institution, but even the pre-existing institution would be entitled to approach the National Commission for getting its status as minority educational institution, declared. The learned Single Judge ought not to have quashed the order dated 24.03.2011 when the parties were at the same time required to approach the National Commission.

8. Dr. N Mozika, learned Senior Counsel appearing on behalf of respondent No.1/writ petitioner argued that the learned Single Judge was fully justified in allowing the writ petition. The learned Single Judge has in the impugned judgment taken note of the general meeting held on 17.07.1949 in Rilbong Kench's Trace by the prominent persons of Bengali Community of Rilbong and its neighbouring areas at Rilbong, on the agenda of taking measures for the development of the Bengali minority of the area and to promote educational, cultural and linguistic advancement of Bengali speaking people of the area. After a prolonged discussion, they unanimously passed a resolution for establishing a linguistic minority educational institution for benefit of the Bengali speaking boys and girls to impart higher education and to also provide to the Bengali speaking children opportunity of higher education and inspiration to safeguard and preserve the Bengali language and culture. The RPNCHS School was brought under the deficit grant-in-aid system much later during 1989-90 vide Order dated 19.08.1989 with three sanctioned posts and presently there are sixteen sanctioned posts. Learned Senior Counsel argued that the Bengalees of Shillong are linguistic minority for the purpose of Article 30(1). They have their own separate spoken language which finds mention in entry 2 of the Eighth Schedule to the Constitution. That apart, the Bengalees also possess their own distinct script. It is also argued that the Supreme Court has held that the width of Article 30(1) cannot be cut down by introducing in it the consideration on which Article 29(1) is based. It is trite that the latter article is a general protection which is given to minorities

to conserve their language, script or culture of their choice. The learned Single Judge after a thorough discussion on analysis of the case law cited before him, especially the judgment of the Supreme Court in ***State of Karnataka & anr v. Associated Management of English Medium Primary & Secondary Schools & ors: (2014) 9 SCC 485*** has rightly allowed the writ petition.

9. Learned Senior Counsel submitted that mere fact that the post which was advertised pertains to the subject of English would not in any manner dilute the status of the school as a linguistic minority institution. In support of this argument, the learned Single Judge has relied on the judgment of the Constitution Bench in the case of ***In Re: The Kerala Education Bill, 1957: AIR 1958 SC 956***, in which their Lordship held that the minorities should have the right to establish educational institutions of their choice as guaranteed under Articles 29(1) and 30(1) of the Constitution. The Supreme Court has recently reiterated this law in ***Chandana Das (Malakar) v. State of West Bengal & ors: 2019 (13) Scale 28*** repelling similar arguments made on behalf of the State of West Bengal.

10. Mr. K Paul, learned counsel appearing on behalf of respondents No.2 and 3 while adopting the arguments of Dr. N Mozika, learned Senior Counsel, additionally submitted that the learned Single Judge was perfectly justified in allowing the writ petition as the reservation policy of the State cannot be applied to the RPNCHS School even if it was a deficit school receiving grant-in-aid from the Government. The School Management was required to seek approval of the appointment from the Inspector of Schools

only because it receiving grant-in-aid from the Government. But this does not in any manner dilute the status of the school as minority educational institution established by linguistic minority i.e., Bengalees. This fact has also not been disputed by the respondent-State in their affidavit-in-opposition filed in the writ petition. Learned counsel argued that the appellant-State did not raise any objection about the maintainability of the writ petition before the learned Single Judge by contending that the remedy of the writ petitioner would lie only before the National Commission. In any case, the observation to that effect in paragraph 18 of the impugned judgment made by the learned Single Judge, were wholly unnecessary for deciding the case. Such observations are nothing but *obiter dictum* and do not mandatorily require either the State Government or the School Management, to approach the National Commission. It has been observed only generally that if felt necessary, they can approach the National Commission under the Act of 2004. Even if any one of them had approached the National Commission, it would have merely declared the pre-existing status of the school as a linguistic minority institution. Learned counsel has cited the judgment of the Supreme Court in ***Manager, Corporate Educational Agency v. James Mathew & ors: (2017) 15 SCC 595*** to argue that the certificate of declaration of minority status is only a declaration of existing status, which was already available even prior to date of declaration.

11. We have given our anxious consideration to the rival submissions and perused the material placed on record.

12. We may at the outset take note of the historic background in which the RPNCHS was established as a linguistic minority school of Bengali speaking people of Shillong. This school has its root in the deliberations made by them on 17.07.1949 at Rilbong in Shillong. The respondent No.1/writ petitioner has produced the translation of the proceedings of the meeting held by prominent people of Bengali community of Rilbong and its neighbouring areas on that day with a view to taking measures for promoting educational, cultural and linguistic advancement of Bengali speaking persons of the area and their development. The minutes translated proceedings of the meeting held on 17.07.1949, are reproduced hereunder:-

> "A general Meeting was held on 17th July 1949 (in Bengali 1 la Sraban 1346) in Rilbong, Kench's Trace in presence of the people of Bengali community of Rilbong and its neighbouring areas at Rilbong Bengali Primary School. The subject of the meeting was:-
>
> 1. To take measures for the development of the Bengali minority of the area.
>
> 2. To promote educational, cultural and linguistic advancement of Bengali speaking people of this area.
>
> 3. Such other steps.
>
> The respected person present in the meeting:-
>
> Shri Kumud Ranjan Bhattachajee
> Shri Tarapad Bhattacharjee
> Shri Umesh Ch. Bhattacharjee
> Shri Abinash Ch. Bhattacharjee
> Shri Ran Kumar Dutta
> Rabindra Nath Bhattacharjee
> Shri Tamunash Som
> Shri Binod Bihari Sen
> Shri Ashwini Kumar Gupta
> Shri Parsha Nath Choudhury
> Ramesh Ch. Chakrabory
> Shri Satish Ch. Bhattacharjee

Dr. Binod Bihari Chakraborty
Shri Satish Ch. Bhattacharjee
Shri Jitendra Kr. Chandra
Shri Aushotosh Gupta
Ajit Kr. Gupta
Radhilka Ranjan Chakraborty
Anil Kr. Chakraborty
Rabindra Nath Bisharadh
Prabhat Ch. Purkayastha
Lakshmi Narayan Karmaji
Beni Badhab Mitra
Satindra Lal Purkayashta

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

The Hon'ble secretary has thanked all the members of the meeting present here. At first he has discussed the agenda of the meeting. He said that prior to this there was no such meeting held for the welfare of the Rilbong Society. (Illegible)

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

2. Second important agenda of the meeting.

To popularize Bengali Language, Culture and Education

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

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

the welfare Association was handed over to Shri Ajit Kumar Gupta, Shri Anil Kumar Chakraborty and Shri Radhika Ranjan Chakraborty.

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

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

Sd/-
Kumud Ranjan Bhattacharjee"

Pursuant to the afore-extracted resolution dated 17.07.1949, the minority educational institution on the basis of linguistic minority called "Rilbong P.N. Chaudhuri, Higher Secondary School" was established at Rilbong, Shillong, East Khasi Hills District, Meghalaya. The said school continued to be run by the Management Committee on its own till it was brought under deficit grant-in-aid system of the State during 1989-90 vide order dated 19.08.1989 with three sanctioned posts. Presently number of sanctioned posts has risen to sixteen.

13. It may be significant to note that it was not the School Management who approached the learned Single Judge but the respondent No.1/writ petitioner (Smti. Sujata Gupta) filed the writ petition. Despite her selection and resolution of the Management Committee, she was not appointed because the order of the Government dated 24.03.2011 issued by the Joint Secretary to the Government of Meghalaya, Education Department addressed to the Director of School Education and Literacy, Shillong conveying that since RPNCHS School is a deficit school, the reservation policy of the State would be applicable to it. Moreover, the order further maintained that the vacant post was not a language post but a general

subject post in English. Therefore, the School Management Committee should re-advertise the post. The learned Single Judge has in the impugned judgment after discussing the leading case law on the subject held that as per mandate of Articles 15(5), 16(4), 16(4-A) and 16(4-B) of the Constitution of India, the minority educational institution cannot be compelled to apply the reservation policy of the State of Meghalaya.

14. Question which the learned Single Judge has examined and answered in the impugned judgment is as to whether the State Government can control the administration of the minority educational institution only because it is receiving grant-in-aid from the Government. The learned Single Judge on this aspect has relied on the judgment of the Supreme Court in the case of ***State of Kerala, etc. v. Very Rev. Mother Provincial, etc.: 1970 (2) SCC 417***, in which it was held that although the State Government has the authority to regulate the standards of educational institutions but it has no right to interfere with the administration of the minority institutions protected by Article 30(1) of the Constitution so long as such institutions are maintaining the standards prescribed by the Government regulations.

15. In our considered opinion, the view taken by the learned Single Judge finds support from the judgment of the Supreme Court in ***Sindhi Education Society & anr v. Chief Secretary, Government of NCT of Delhi & ors: (2010) 8 SCC 49***. In that case, the Supreme Court was called upon to decide whether Rule 64(1)(b) of the Delhi School Education Act, 1973, which "mandates the Management Committee of all aided schools to give

in writing to fill in the posts in the school with the Scheduled Castes and the Scheduled Tribes candidates in accordance with the instructions issued by the Central Government from time to time and also maintain the roster and other connected returns in this behalf." The Supreme Court after revisiting of the previous case law in ***Managing Committee, Khalsa Middle School v Mohinder Kaur (Smt) & anr: 1993 Supp (4) SCC 26; Islamic Academy of Education & anr v. State of Karnataka & ors: (2003) 6 SCC 697 and; Kanya Junior High School, Bal Vidya Mandir, Etah, U.P. v. U.P. Basic Shiksha Parisad, Allahabad, U.P. & ors: (2006) 11 SCC 92*** held that every linguistic minority has a constitutional right to conserve its culture and language and would have a right to choose teachers, who possess the eligibility and qualifications, as provided, without really being impressed by the fact of their religion and community. The Supreme Court further held that Rule 64(1)(b), could be enforced against the general or majority category of the Government aided school but such condition cannot be enforced against linguistic minority schools. This may amount to interference with their right of choice and at the same time, may dilute their character of linguistic minority. It would be instructive to reproduce the relevant Paras of 112 to 114 of the report which reads as under:-

> "112. Every linguistic minority may have its own socio, economic and cultural limitations. It has a constitutional right to conserve such culture and language. Thus, it would have a right to choose teachers, who possess the eligibility and qualifications, as provided, without really being impressed by the fact of their religion and community. Its own limitations may not permit, for cultural, economic or other good reasons, to induct teachers from a particular class or community. The direction, as contemplated under Rule 64(1)(b), could be enforced against the general or majority category of the Government aided school but,

it may not be appropriate to enforce such condition against linguistic minority schools. This may amount to interference with their right of choice and, at the same time, may dilute their character of linguistic minority. It would be impermissible in law to bring such actions under the cover of equality which in fact, would diminish the very essence of their character or status. Linguistic and cultural compatibility can be legitimately claimed as one of the desirable features of a linguistic minority in relation to selection of eligible and qualified teachers.

113. A linguistic minority institution is entitled to the protection and the right of equality enshrined in the provisions of the Constitution. The power is vested in the State to frame regulations, with an object to ensure better organization and development of school education and matters incidental thereto. Such power must operate within its limitation while ensuring that it does not, in any way, dilute or impairs the basic character of linguistic minority. Its right to establish and administer has to be construed liberally to bring it in alignment with the constitutional protections available to such communities.

114. The minority society can hardly be compelled to perform acts or deeds which per se would tantamount to infringement of its right to manage and control. In fact, it would tantamount to imposing impermissible restriction. A school which has been established and granted status of a linguistic minority for years, it will not be proper to stop its grant-in-aid for the reason that it has failed to comply with a condition or restriction which is impermissible in law, particularly, when the teacher appointed or proposed to be appointed by such institution satisfy the laid down criteria and/or eligibility conditions. The minority has an inbuilt right to appoint persons, which in its opinion are better culturally and linguistically compatible to the institution."

16. The contention that the post which was sought to be filled by appointing the respondent No.1/writ petitioner was not a language post but a general subject post in English and therefore, the educational institution in question could not seek protection under Article 30(1) of the Constitution, also cannot be countenanced. Reference in this behalf may be made to the judgment of the Supreme Court in the case of ***D.A.V. College, Bhatinda etc, v. State of Punjab & ors: 1971 (2) SCC 261***, wherein their Lordship

held that right of linguistic minority to establish and administer educational institutions of their choice would include choice of medium of instruction and examination. It was also held that in exercise of the power under Section 4(2) of the Punjabi University Act, 1961, making Punjabi the sole medium of instruction and examination for all colleges affiliated under Punjabi University does not require the university to make Punjabi as the sole medium of instruction. It was contended before the Supreme Court that prescription of medium of instruction and examination in a language which is not a mother tongue of the minority educational institution is violative of the rights conferred under Articles 29(1) and 30(1) of the Constitution. Repelling of the argument of the State, the Constitution Bench in *D.A.V. College, Bhatinda etc.* (supra) held as under:-

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

Clearly the Constitution Bench in *D.A.V. College, Bhatinda etc.* (supra) held that the right of the minorities to establish and administer educational institutions of their choice is absolute. Therefore they have the choice of medium of instruction in which education will be imparted in the institutions established and administered by them.

We may in this connection also refer to the judgment of the Constitution Bench of the Supreme Court in ***State of Karnataka & anr v. Associated Management of English Medium Primary & Secondary Schools & ors: (2014) 9 SCC 485*** in which it was held that the State cannot compel a linguistic minority to choose its mother tongue only as a medium

of instruction in a primary school established by it in violation of its fundamental right under Article 30(1). The relevant discussion in para 63 of the judgment is reproduced hereunder:-

> *"*63. We have extracted Article 350A of the Constitution above and we have noticed that in this Article it is provided that it shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups. We have already held that a linguistic minority under Article 30(1) of the Constitution has the right to choose the medium of instruction in which education will be imparted in the primary stages of the school which it has established. Article 350A therefore cannot be interpreted to empower the State to compel a linguistic minority to choose its mother tongue only as a medium of instruction in a primary school established by it in violation of its fundamental right under Article 30(1). We accordingly hold that the State has no power under Article 350A of the Constitution to compel the linguistic minorities to choose their mother tongue only as a medium of instruction in primary schools."

17. The Supreme Court in a recently delivered judgment in *Chandana Das (Malakar)* (supra) has again reiterated this position of law in the following terms:-

> "31. There can be no doubt that qua the State of West Bengal, Sikhs are a linguistic minority vis-à-vis their language, namely, Punjabi, as against the majority language of the State, which is Bengali. The argument of the learned counsel appearing on behalf of the State that the school is, in fact, teaching in the Hindi medium is neither here nor there. What is important is that the fundamental right under Article 30 refers to the "establishment" of the school as a linguistic minority institution which we have seen is very clearly the case, given paragraphs 5(a) and 5(b) of letter dated 19th April, 1976. Therefore, the medium of instruction, whether it be Hindi, English, Bengali or some other language would be wholly irrelevant to discover as to whether the said school was founded by a linguistic minority for the purpose of imparting education to members of its community. This argument also, therefore, must be rejected."

18. The fact that the RPNCHS School was established by the linguistic minority was feebly contested by the appellant-State in their counter affidavit by relying on the notification dated 18.01.2005, which plea it has again reiterated in the memo of appeal in the following terms:-

> "**C(IX)** It is to be further clarified that Rilbong PNC School is not a minority institution notified by the Government of India dated 18.01.2005 which includes Muslims, Christians, Sikhs, Buddhist, Zoroastrians (Parsis) neither the school is declared linguistic minority institution. It is to be further stated that the school was established to protect and advance Bengali language and preserved Bengali culture and the literature within Shillong, the medium of instruction in the school is English and not the vernacular language and the vacant post which was advertised is not for the language post but for the general post in English as clarified by the Director of Higher and Technical Education."

Article 29(1) mandates that any section of citizen residing in the territory of India, having distinct language, script or culture of its own, shall have the right to conserve the same. And Article 30(1) of the Constitution provides that the minorities whether based on religion or language shall have the right to establish and administer educational institutions of their choice. The aforesaid extracted averments in the pleadings of the memo of appeal which also find place in the counter affidavit would make it amply evident that even the appellant-State conceded that the object of setting up the school in question was to promote Bengali language and preserve Bengali culture and literature within Shillong. The character of the educational institution being that of a linguistic minority, which was being run over seven decades, thus stands fully established.

Adverting now to the Supreme Court in ***Sisters of St. Joseph of Cluny v. State of West Bengal & ors: (2010) 6 SCC 722*** relied by learned

Senior Government Advocate, the Supreme Court in that case was called upon to examine the question whether National Commission should be approached only by newly established minority institution or Section 11(f) of the Act of 2004 also confers the power on the National Commission to declare status of any pre-existing institution as a minority educational institution. Various High Courts had expressed conflicting opinion on this question. The Calcutta, Bombay and Punjab High Courts had taken the view that an appellate power cannot be confused with an original power and that, therefore, Section 11(f) of the Act of 2004 cannot be pressed into service at all when it comes to declaring of the status of a minority institution. The Supreme Court however did not approve of this line of reasoning as would be evident from the observations in para 18 which read as under:-

> "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. The Supreme Court in an earlier judgment in *Manager, Corporate Educational Agency* (supra) held that in so far as the existing institutions are concerned, the National Commission would be acting within its jurisdiction and the mandate of Section 11(f) of the Act of 2004 to issue the

certificate regarding the status of minority educational institution. It is significant to notice the following observations made in para 11 of the judgment:-

> "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."

The aforesaid extracted para 11 clearly shows that even after introduction of the Act of 2004, it is within the jurisdiction and mandate of the National Commission to issue the certificate regarding status of a minority educational institution, even to such institutions which were set up and were being run prior to the enforcement of the Act of 2004. Once the National Commission issues such certificate, it is merely declaration of an existing status, which is not newly acquired status but only recognize pre-existing character of the institution as such minority educational institution.

Having analyzed the material on record and pleadings of the parties, we find that there was sufficient material and justification for the learned Single Judge to hold that the RPNCHS School run by the respondent-Management Committee was having character of a minority educational institution.

This now bring us to the argument that the learned Single Judge in the concluding part of the impugned judgment in para 18 observed that since the Act of 2004 has come into force w.e.f. 11.11.2004, the RPNCHS School and the State Government may, if necessary, take steps in order to

avoid complicacy in all aspects. It would be apposite to reproduce para 18 as under:-

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

The question which calls for consideration is what binding force observations made in the afore-quoted para 18 of the judgment would carry after the writ petition was already allowed in para 17? In order to answer this question, we have to find out whether these observations are integral part of the judgment or were made in the passing and if so, could be construed only as *obiter dictum*. *Obiter dictum (plural obiter dicta)* is an opinion or a remark made by a Judge which does not form a necessary part of the court's decision. The word obiter dicta is a Latin word which means "things said by the way." *Obiter dicta* can be passing comments, opinions or examples cited by a Judge. The statements by way of obiter dicta are therefore not considered binding. For example, if a court dismisses a case due to lack of territorial jurisdiction yet makes certain observations on merits, such observations would be deemed *obiter dicta.* We are fortified in taking that view from the following observations in an English judgment in ***Flower v. Ebbw Vale Steel Iron & Coal Co.: 1934 KB 132***:-

> "It is of course perfectly familiar doctrine that obiter dicta, though they may have great weight as such, are not conclusive authority. Obiter dicta in this context mean what the words literally signify– namely, statements, by the way. If a Judge thinks it desirable to give his opinion on some point which is not necessary for the decision of the case that of course has not the binding weight of the decision of the case and the reasons for the decision."

20. *Black's Law Dictionary*, (9th Edn., 2009) defines the term "obiter dictum" as:

> "Obiter dictum". – A judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive). – Often shortened to *dictum* or, less commonly, obiter.
>
> 'Strictly speaking an "obiter dictum" is a remark made or opinion expressed by a judge, in his decision upon a cause, "by the way" – that is, incidentally or collaterally, and not directly upon the question before the court; or it is any statement of law enunciated by the judge or court merely by way of illustration, argument, analogy, or suggestion.... In the common speech of lawyers, all such extrajudicial expressions of legal opinion are referred to as 'dicta,' or 'obiter dicta,' these two terms being used interchangeably.' "

21. What is 'dicta' has been also been explained in *Halsbury's Laws of England*, 4th Edn. (Reissue), Vol. 26, para. 574 as thus:

> "**574. *Dicta***. – Statements which are not necessary to the decision, which go beyond the occasion and lay down a rule that it is unnecessary for the purpose in hand are generally termed "dicta". They have no binding authority on another court, although they may have some persuasive efficacy. Mere passing remarks of a judge are known as "obiter dicta", whilst considered enunciations of the judge's opinion on a point not arising for decision, and so not part of the ratio decidendi, have been termed "judicial dicta". A third type of dictum may consist in a statement by a judge as to what has been done in other cases which have not been reported.
>
> ... Practice notes, being directions given without argument, do not have binding judicial effect. Interlocutory observations by members of a court during argument, while of persuasive weight, are not judicial pronouncements and do not decide anything."

22. The concept of "dicta" has also been discussed in *Corpus Juris Secundum*, Vol. 21, at pp. 309-12 as thus:

> "190. *Dicta*
>
> a. In General
>
> A Dictum is an opinion expressed by a court, but which, not being necessarily involved in the case, lacks the force of an

adjudication; an opinion expressed by a judge on a point not necessarily arising in the case; a statement or holding in an opinion not responsive to any issue and not necessary to the decision of the case; an opinion expressed on a point in which the judicial mind is not directed to the precise question necessary to be determined to fix the rights of the parties; or an opinion of a judge which does not embody the resolution or determination of the court, and made without argument, or full consideration of the point, not the professed deliberate determination of the judge himself. The term 'dictum' is generally used as an abbreviation of 'obiter dictum' which means a remark or opinion uttered by the way.

Such an expression or opinion, as a general rule, is not binding as authority or precedent within the stare decisis rule, even on courts inferior to the court from which such expression emanated, no matter how often it may be repeated. This general rule is particularly applicable where there are prior decisions to the contrary of the statement regarded as dictum; where the statement is declared, on rehearing, to be dictum; where the dictum is on a question which the court expressly states that it does not decide; or where it is contrary to statute and would produce an inequitable result. It has also been held that a dictum is not the "law of the case," nor res judicata."

23. *Word and Phrases*, Permanent Edn., West Publishing Co. Vol. 29 at page 16 defines the expression "obiter dicta" or "dicta" thus:

> "Dicta are opinions of a judge which do not embody the resolution or determination of the court, and made without argument or full consideration of the point, are not the professed deliberate determinations of the judge himself; obiter dicta are opinions uttered by the way, not upon the point or question pending, as if turning aside for the time from the main topic of the case to collateral subjects; it is mere observation by a judge on a legal question suggested by the case before him, but not arising in such a manner as to require decision by him; 'Obiter dictum' is made as argument or illustration, as pertinent to other cases as to the one on hand, and which may enlighten or convince, but which in no sense are a part of the judgment in the particular issue, not binding as a precedent, but entitled to receive the respect due to the opinion of the judge who utters them; discussion in an opinion of principles of law which are not pertinent, relevant, or essential to determination of issues before court is 'obiter dictum.' "

24. *Wharton's Law Lexicon* (14th Edn., 1993) defines term "obiter dictum" as an opinion not necessary to a judgment; an observation as to the

law made by a judge in the course of a case, but not necessary to its decision, and therefore of no binding effect; often called as obiter dictum, 'a remark by the way'.

25. The Supreme Court in ***Director of Settlements, A.P. & ors v. M.R. Apparao & anr: AIR 2002 SC 1598***, held that the law declared by the Supreme Court shall be binding on all the Courts within the territory of India under Article 141 of the Constitution, but what is binding is the ratio of the decision and not any finding of facts. It was further observed that "*obiter dictum*" as distinguished from a ratio decidendi, is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced. In this context, we may also refer to the similar observations by the Supreme Court in para 24 of the report in ***Arun Kumar Aggarwal v. State of Madhya Pradesh & ors: (2014) 5 SCC (Cri) 803: (2014) 13 SCC 707*** as under:-

> "24. At this stage, it is pertinent to consider the nature and scope of a mere observation or obiter dictum in the Order of the Court. The expression "obiter dicta" or "dicta" has been discussed in *American Jurisprudence* 2d, Vol. 20, at p. 437 as thus:
>
> "74. Dicta
>
> Ordinarily, a court will decide only the questions necessary for determining the particular case presented. But once a court acquires jurisdiction, all material questions are open for its decision; it may properly decide all questions so involved, even though it is not absolutely essential to the result that all should be decided. It may, for instance, determine the question of the constitutionality of a statute, although it is not absolutely necessary to the disposition of the case, if the issue of constitutionality is involved in the suit and its settlement is of public importance. *An expression in an opinion which is not*

necessary to support the decision reached by the court is dictum or obiter dictum.

'Dictum' or 'obiter dictum' is distinguished from the holding of the court in that the so-called "law of the case" does not extend to mere dicta, and mere dicta are not binding under the doctrine of stare decisis.

As applied to a particular opinion, the question of whether or not a certain part thereof is or is not a mere dictum is sometimes a matter of argument. And while the terms "dictum" and "obiter dictum" are generally used synonymously with regard to expressions in an opinion which are not necessary to support the decision, in connection with the doctrine of stare decisis, *a distinction has been drawn between mere obiter and "judicial dicta," the latter being an expression of opinion on a point deliberately passed upon by the court*."

(*Emphasis supplied*)

Further at pp. 525 and 526, the effect of dictum has been discussed:

"190. *Decision on legal point; effect of dictum*

... In applying the doctrine of stare decisis, a distinction is made between a holding and a dictum. Generally stare decisis does not attach to such parts of an opinion of a court which are mere dicta. The reason for distinguishing a dictum from a holding has been said to be that a question actually before the court and decided by it is investigated with care and considered in its full extent, whereas other principles, although considered in their relation to the case decided, are seldom completely investigated as to their possible bearing on other cases. Nevertheless courts have sometimes given dicta the same effect as holdings, particularly where "judicial dicta" as distinguished from "obiter dicta" are involved."

26. As is evident from wordings of the observations in afore-quoted para 17, it was merely left open to the RPNCHS School and the State Government to take steps, in order to avoid complicacy in all aspects, if necessary as provided under the Act of 2004. These observations were made after the learned Single Judge in para 17 of the judgment had allowed the writ petition on merits. It is trite that the statements which are not necessary to the decision, which go beyond the occasion, and lay down a

proportion that is unnecessary for the purpose in hand, are termed *obiter dicta*. Though they may have certain value in given circumstances but they do not have any binding force. In any case, the observations of the learned Single Judge were only advisory in nature that the RPNCHS School and the State Government, may take steps, "if necessary" and did not mandatorily require any of them to approach the National Commission. Such observations have to be therefore taken only as an *obiter dicta*, not necessary for deciding the writ petition.

27. In view of the above discussion, we do not find any infirmity in the impugned judgment allowing the writ petition and directing appointment of respondent No.1/writ petitioner. Consequently, writ appeal fails and is accordingly dismissed.

28. There shall be no order as to costs.

(R.V. More)
Judge

(Mohammad Rafiq)
Chief Justice

Meghalaya
23.03.2020
"lam AR-PS"