

**A.F.R.**

**RESERVED**

**Court No. - 2**

**Case :-** WRIT - C No. - 19316 of 2020

**Petitioner :-** Mtv Buddhist Religious Andcharitable Trust Thru  
President Andanr

**Respondent :-** State Of U.P.Through Prin.Secy. Minorities  
Welfare And Ors.

**Counsel for Petitioner :-** Anuj Dayal,Amit Jaiswal Ojus  
Law,Nipun Singh,Raghav D. Garg

**Counsel for Respondent :-** C.S.C.,Gyanendra Kumar  
Srivastav,Kshitij Mishra,Rishabh Kapoor

**Hon'ble Devendra Kumar Upadhyaya,J.**

**Hon'ble Subhash Vidyarthi,J.**

1. Heard Shri Sudeep Seth, learned Senior Advocate, assisted by Shri Amit Jaiswal and Shri Anuj Dayal for the petitioners, Shri Sanjay Bhasin, learned Senior Advocate, assisted by Shri Rishabh Kapoor, learned counsel representing the Director General Medical Education and Training, Uttar Pradesh, learned State Counsel for other State-respondents and Shri Gyanendra Kumar Srivastava, learned counsel representing the National Medical Commission.
2. By instituting these proceedings under Article 226 of the Constitution of India initially a challenge was made to the orders dated 05.10.2020 and 07.10.2020, both issued by the Director General Medical Education and Training, U.P. requiring the Management/Principals of all Dental College and Medical Colleges in the State of U.P. running in private sector to submit their proposals so that the fee to be charged

by these institutions from the students may be determined. Another prayer made in the writ petition is to quash the order dated 26.07.2018 passed by the State Government in the Department of Medical Education and Training, whereby the representation dated 12.06.2018 preferred by the petitioner was rejected. The said order dated 26.07.2018 was passed by the State Government in compliance of an order dated 22.06.2018 passed by this Court in Writ Petition No.21980 of 2018 instituted by the petitioners whereby the State Government was directed to look into the grievance of the petitioners and pass appropriate orders on their representation. By the said order dated 26.07.2018 the State Government has refused to treat the petitioners-institution as Minority Institution.

3. The petitioners have also prayed to issue a direction to the Director General Medical Education and Training to treat the petitioner no.2-College as a Minority Institution in view of the minority status granted to the said College by National Commission for Minority Educational Institutions (herein after referred to as "National Commission"). It has also been prayed that the respondents-State of U.P. in the Department of Minority Welfare as also in the Department of Medical Education and Training be directed to allow the privileges of a Minority Institution to the petitioner-college. Subsequently by amending the writ petition, the petitioners have also prayed for quashing of a Government Order dated 06.11.2020, issued by the State Government, in the Department of Medical Education and Training, whereby the fee to be charged by the petitioner no.2-College from its students for pursuing MBBS and MDS courses has been determined. By amending the writ petition, another prayer

has been made to quash the Government Order dated 28.08.1999, whereby the State Government in the Department of Medical Education and Training has determined certain criteria for declaration of a non-Government Medical/Dental/Para Medical College to be a Minority Institution on the basis of language and religion, that is to say, Linguistic Minority Institution and Religious Minority Institution.

4. Shri Sanjay Bhasin, learned Senior Advocate, representing the Director General Medical Education and Training at the outset has submitted that this petition is not maintainable for the reason that prior to filing of the instant writ petition the petitioners had instituted Writ-C No.31941 of 2018 whereby a challenge was made to quash the order dated 26.07.2018 which is under challenge in this petition as well. He has also stated that another prayer made in the Writ-C No.31941 of 2018 was for issuing a direction to the State authorities to acknowledge and treat the petitioner-College as Minority Institution and to confer all benefits available to Minority Institutions. He has further stated that during the pendency of the Writ C No.31941 of 2018 the Director General Medical Education and Training had issued two letters/orders dated 29.01.2019 and 04.02.2019 directing the petitioner-College to submit its proposal for fixation of fee for its Post Graduate Courses and these two letters/orders dated 29.01.2019 and 04.02.2019 were challenged by the petitioners by filing Civil Misc. Writ Petition No.5612 of 2019. He has further stated that the aforesaid writ petitions, namely, Writ-C No.31941 of 2018 and Civil Misc. Writ Petition No.5612 of 2019 were withdrawn by the petitioners with the liberty to approach the respondent-authorities for

redressal of their grievances. In view of these facts, it has been submitted that in terms of the provisions contained in Chapter XXII Rule 7 of the Rules of the Court this petition is a successive writ petition on the same cause of action, which cannot be entertained.

5. It has, thus, been argued by Shri Sanjay Bhasin, learned Senior Advocate representing the Director General Medical Education and Training that the instant writ petition seeks a prayer to quash the orders dated 05.10.2020 and 07.10.2020 which are akin to the orders dated 29.01.2019 and 04.02.2019 which were challenged in the earlier writ petition which was withdrawn without seeking liberty to file a fresh petition. Further submission of Shri Bhasin is that the order dated 26.07.2018 which has been challenged in this writ petition was challenged in Writ C No.31941 of 2018 which was also withdrawn without seeking liberty to challenge the same. Accordingly, he submits that the instant writ petition being second writ petition for the same relief is not maintainable which is liable to be dismissed.
6. In reply to the objection raised by Shri Bhasin regarding maintainability of the writ petition, it has been argued on behalf of the petitioners by Shri Sudeep Seth that the instant writ petition has been preferred after disclosing filing of the earlier writ petitions and the order dated 05.08.2019 granting liberty to the petitioners to withdraw the said writ petitions so as to approach the authorities for redressal of the grievances. It has further been argued by Shri Sudeep Seth that through letters/orders dated 29.01.2019 and 04.02.2019 which were challenged in Writ-C No.5612 of 2019 proposal for fee fixation for the academic session

2019-20 was required to be submitted whereas by means of the orders dated 05.10.2020 and 07.10.2020, which are under challenge in the instant writ petition, proposal has been sought from the petitioner-College for fee fixation for the academic session 2020-21 and hence these orders dated 05.10.2020 and 07.10.2020 give fresh cause of action and hence the instant writ petition is maintainable. It has also been urged that the order dated 06.11.2020, whereby fee to be charged by the petitioner-College has been fixed by the State Government, also gives a fresh cause of action for which the instant writ petition is maintainable.

7. In respect of the order dated 26.07.2018 whereby the representation for treating the petitioner-College as Minority Institution was rejected by the State, it has been submitted that the said order was challenged by filing Writ-C No.31941 of 2018, however, the same was permitted to be withdrawn by this Court by means of the order dated 05.08.2019 with liberty to approach the authorities for redressal of the grievances. Further contention is that despite representations/letters made by the petitioners on 18.07.2020 and 27.09.2020 to the State Government in respect of the decision dated 26.07.2018 with the prayer to reconsider the same, since no decision was taken by the authorities as such the said order dated 26.07.2018 has been challenged in this writ petition which accordingly is maintainable in respect of the prayer for quashing the order dated 26.07.2018 as well.
8. When we consider the rival submissions made by the parties in respect of the maintainability of the writ petition, what we notice is that so far as the challenge to the orders/letters

dated 05.10.2020 and 07.10.2020 is concerned, the same pertain to proposal for fee fixation for the academic year 2020-21 which were never challenged in earlier writ petitions filed by the petitioners. As regards the prayer relating to quashing of the order dated 06.11.2020, we may record that the said order was also never challenged in the earlier writ petitions and as a matter of fact, the said order gives fresh cause of action to the petitioners to challenge the same. In respect of the decision dated 26.07.2018, which though was challenged in the earlier writ petition, we may observe that the representation made by the petitioners dated 12.06.2018 was considered in compliance of the order dated 26.06.2018 passed by this Court in Writ Petition No.21980 of 2018. By the said order, the prayer of the petitioners for treating the petitioner-College as Minority Institution was rejected. This order was challenged in Writ C No.31941 of 2018, however, the same was permitted to be withdrawn by this Court by means of the order dated 05.08.2019 with liberty to the petitioners to approach the authorities for redressal of their grievances. The petitioners are said to have made representations on 15.07.2020 and 27.09.2020 in regard to the order dated 26.07.2018 to reconsider the same and when no decision was taken by the authorities, in the present writ petition amongst other prayers, a prayer has been made to quash the said order dated 26.07.2018 as well.

9. Hon'ble Supreme Court in the case of **V. D. Barot vs. State of Gujarat and others, reported in (2002) 10 SCC 668** has held that in case earlier writ petition is permitted to be withdrawn by the Court without liberty to file a fresh petition to enable a person to approach departmental authorities to make representation in the matter, the same

will not amount to abandonment of the claim. Hon'ble Supreme Court has held that such matter should not be dealt with in a hypertechnical manner but the totality of the circumstances arising in a particular case has to be taken into consideration.

10. Dealing with the law relating to withdrawal of suit or abandonment of claim under the Code of Civil Procedure, Hon'ble Supreme Court in the case of **Himachal Pradesh Financial Corporation vs. Anil Garg and others**, reported in **(2017) 14 SCC 634**, has held that the language of the order for withdrawal will not always be determinative and that the background facts are to be necessarily examined for a proper and just decision. In the case of **Himachal Pradesh Financial Corporation (supra)** the appellant therein made an application for withdrawal of the suit stating therein that such application for withdrawal was made to pursue the remedies under H. P. Public Moneys (Recovery of Dues) Act, 1973. Hon'ble Supreme Court has held that since withdrawal of the suit was sought with the intention to pursue the remedy available under H. P. Public Moneys (Recovery of Dues) Act, 1973, hence the appellant in the said case never intended to abandon its claim by withdrawing the same. In this background Hon'ble Supreme Court has observed in the case of **Himachal Pradesh Financial Corporation (supra)** that the language of the withdrawal order cannot be determinative without considering the background facts.
11. If we consider the submissions made by Shri Bhasin raising the issue of maintainability of the writ petition in the background facts of the case and law laid down by Hon'ble

Supreme Court in the cases of **V. D. Barot (supra)** and **Himachal Pradesh Financial Corporation (supra)**, we are of the opinion that filing the earlier writ petition wherein liberty was granted to the petitioners to approach the authorities for redressal of their grievances, cannot amount to abandonment of the claim of the petitioners to seek a direction that the petitioner-institution be treated as Minority Institution and other ancillary reliefs.

12. For the reasons as aforesaid, the preliminary objection raised by Shri Sanjay Bhasin, learned Senior Advocate representing the Director General Medical Education and Training, merits rejection, which is hereby rejected. Thus, we hold that the writ petition is maintainable.
13. Before considering the submissions of the learned counsel for the parties on merit of their respective claims, we may note certain facts which are essential for appropriate adjudication of the issues involved in this case.
14. By means of the Government Order dated 28.08.1999 determination of certain standard/criteria for the purposes of declaring non-Government Medical/Dental/Par Medical Colleges to be religious or linguistic Minority Institutions has been provided. The National Commission for Minority Educational Institutions Act, 2004 (herein after referred to as "Act, 2004") was enacted by the Parliament to constitute a National Commission for Minority Educational Institutions and to provide for matters connected or incidental thereto. Section 2(g) defines "Minority Educational Institution" to mean a college or an educational institution established and administered by a minority or



minorities. Section 2(g) of the Act, 2004 is extracted herein below:

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

15. Section 11 of the Act, 2004 defines functions and powers of the Commission which empowers the Commission created under the said Act, *inter alia*, to decide all questions relating to the status of any institution as a Minority Educational Institution and declare its status as such. In pursuance of a judgment and order rendered by a Division Bench of this Court, dated 26.11.2015 in Special Appeal (Defective) No.552 of 2015 which was filed by the National Commission for Minority Educational Institutions challenging the judgment of learned Single Judge, the State Government in the Department of Minority of Welfare and Waqf issued a Government Order 18.05.2016 providing therein that if an institution is declared to be Minority Institution by the National Commission, the concerned department shall treat such institution as Minority Institution and accordingly give a certificate to the said effect to such an institution. The State Government in the Department of Higher Education also issued a Government Order dated 24.07.2017 which provided that the institutions which have been declared as Minority Institutions by the National Commission may make appropriate application for being treated as a Minority Institution, to the State Government annexing therewith certain documents as mentioned in the said Government Order.
16. The State Legislature enacted Uttar Pradesh Private Professional Educational Institutions (Regulation of

Admission and Fixation of Fee) Act, 2006 (U.P. Act No.24 of 2006). The said enactment was passed by the State Legislature with the object to provide for regulating admission and fixation of fee in private professional educational institutions and the matters connected therewith or incidental thereto. Section 2 of U.P. Act No.24 of 2006 provides that this act shall be applicable to the private aided or unaided professional educational institutions, excluding minority institutions. Thus the said Act excludes Minority Institution from its operation. Section 2 of U.P. Act No.24 of 2006 is quoted herein below:

***"2. This Act shall be applicable to the private aided or unaided professional educational institutions, excluding minority institutions."***

17. Section 3 (a) of U.P. Act No.24 of 2006 defines "aided institution" to mean a private professional educational institution, other than a minority institution. Sub section (h) of section 3 of the said Act defines "minority institution" to mean an institution established and administered by a minority and notified as such by the State Government. Section 3(o) defines "unaided institution" to mean a private professional educational institution, not being an aided institution. Section 3(h) of U.P. Act No.24 of 2006 is extracted herein below:

***"3(h). Minority Institution means an institution, established and administered by a minority and notified as such by the State Government."***

18. Thus, Minority Institution as defined in U.P. Act No.24 of 2006 in an institution which is not only established and is being administered by a minority but it should be notified as such by the State Government. Accordingly, an institution to acquire the status of Minority Institution, within the

meaning of U.P. Act No.24 of 2006, should be established and administered by a minority and it should also be notified as such by the State Government. In other words, unless and until an institution established and administered by a minority is not notified as such by the State Government, it will not be treated to be Minority Institution so far as the application of U.P. Act No.24 of 2006 is concerned.

19. Petitioner no.1 was accorded permission on 23.01.2001 by the Central Government to establish a new Medical College at Meerut. Pursuant to the said permission accorded to petitioner no.1 by the Central Government on 23.01.2001 the petitioner no.1 established Subharti Medical College, Meerut which is the petitioner no.2 in this writ petition. An application was made in the month of September, 2015 by the President of petitioner no.1-Trust to the National Commission for declaring the petitioner no.2 as Minority Institution. The National Commission took a decision on 20.03.2017 and decided to issue Minority Institution status certificate to the petitioner no.2. The said decision dated 20.03.2017 was communicated to the President of the petitioner no.1-Trust vide letter dated 26.04.2018 by the Secretary of the National Commission.
20. Accordingly, a certificate declaring the petitioner no.2 as Minority Educational Education covered under section 2(g) of the Act, 2004 was issued by the Secretary of the National Commission on 26.04.2018. After the said certificate was issued by the National Commission to the petitioner, an application was made to the State Government for issuance of a certificate for treating the petitioner no.2 as a Minority

Institution as per the Government Order dated 24.04.2017. The petitioner thereafter instituted a writ petition before this Court bearing No. 21980 of 2018 with the prayer to issue a direction to the State Government to treat the petitioner no.2 as Minority Institution and not to interfere in its working. The said writ petition was disposed of finally by a Division Bench of this Court by means of the order dated 22.06.2018 whereby the State Government in the Department of Medical Education and Training was directed to look into the grievance of the petitioners and pass appropriate order on the representation dated 12.06.2018.

21. In compliance of the said order dated 22.06.2018 passed by this Court, the matter was considered by the State Government in the Department of Medical Education and Training and the representation dated 12.06.2018 of the petitioners was rejected by means of the order dated 26.07.2018 which is one of the orders of the State Government which is under challenge in this writ petition.
22. While the matter was being considered by the State Government in the Department of Medical Education and Training which culminated in the order dated 26.07.2018, reports were called for by the State Government from the Director General Medical Education and Training which informed the State Government that before issuing the certificate declaring the petitioner no.2 as Minority Educational Institution under the Act, 2004, though opportunity was granted to the State Government, however, none of the representatives of the State Government could appear in the proceedings before the National Commission and accordingly the certificate issued by the National

Commission is a result of *ex-parte* proceedings. The State Government while passing the order dated 26.07.2018 has also stated that in the proceedings before the National Commission, the Minority Welfare Department was impleaded as a party-respondent which was a mischief played by the petitioners for the reason that the Medical Education Department was not impleaded as a party-respondent in the said proceedings though the institution in question, namely, petitioner no.2 comes under the supervision of Medical Educational Department of the State Government and not that of Minority Welfare Department. The order dated 26.07.2018 thus also observes that so far as the Department of Medical Education of the State Government is concerned, it did not have any information regarding the proceedings in which the petitioner no.2 was declared as Minority Educational Institution under the Act, 2004.

23. Regarding the applicability of the Government Order dated 18.05.2016 issued by the Minority Welfare Department of the State Government, it has been stated in the order dated 26.07.2018 that by the said order no direction was issued to the Medical Education Department. The State Government, thus, rejected the representation made by the petitioners whereby the prayer was made to treat the petitioner no.2 as Minority Institution. The order dated 26.07.2018, as noticed above, was challenged by the petitioners by filing Writ C No.31941 of 2018 which was withdrawn with liberty to approach the authorities for redressal of the grievances. The said order permitting withdrawal of Writ-C No.31941 of 2018 was passed by this Court on 05.08.2019.

24. As already noticed above, by means of the letters/orders dated 29.01.2019 and 04.02.2019 the Director General Medical Education and Training required the petitioner no.1 to submit its proposal for fixing the fee to be charged by the College for the academic session 2019-20. These orders dated 29.01.2019 and 04.02.2019 were challenged in Writ C No.5612 of 2019 which was dismissed on 05.08.2018 with liberty to approach the authorities for redressal of the grievances. It is the case of the petitioners, as noticed above, that after withdrawal of Writ-C No.31941 of 2018 the petitioners made representation/application to the authorities concerned for redressal of their grievances in terms of the order dated 05.08.2019 passed by this Court, however, no decision was taken and accordingly the order dated 26.07.2018 has been challenged in this writ petition. On 11.05.2020 and 05.10.2020 the Director General Medical Education and Training again required the petitioners to submit the proposal for fixation of fee to be paid by the students pursuing MBBS and BDS courses for the academic session 2020-21. The State Government by means of the order dated 06.11.2020 again determined the fee to be charged by the petitioner-College for the Academic Session 2020-21 from its students pursuing MBBS and BDS courses. These three orders, namely, orders dated 05.10.2020, 07.10.2020 and 06.11.2020 have been challenged in this writ petition.
25. It has been argued by Shri Sudeep Seth, learned Senior Advocate appearing for the petitioners that it is only the National Commission which is empowered to declare status of an institution as Minority Institution for the reason that sections 2 and 3 of U.P. Act no.24 of 2006 clearly exclude

the applicability of the said Act so far as the Minority Institutions are concerned. It has further been argued by Shri Seth that so far as the occurrence of the phrase "notified as such by the State Government" in section 3 (h) of U.P. Act No.24 of 2006 is concerned, once an institution has been declared as Minority Institution by the National Commission under the Act, 2004 the question of declaration as Minority Institution by the State Government does not arise. He has further argued that U.P. Act No.24 of 2006 not being applicable to Minority Institutions declared under the Act, 2004, which is a central enactment, its status so declared under the Act, 2004 cannot be altered.

26. Shri Sudeep Seth has further argued that so far as the instructions contained in the Government Order dated 28.08.1999 are concerned, after enactment of 2004 Act the same have lost significance for the reason that the Act, 2004 vests power only with the National Commission to declare and decide status of an institution as Minority Institution. He has thus, argued that the Government Orders dated 18.05.2016 and 24.07.2017 were issued not only in compliance of the judgment dated 26.11.2015 passed by a Division Bench of this Court in Special Appeal (Defective) No.522 of 2015 but also in view of the acceptance by the State Government of the authority/power of the National Commission under the Act, 2004 to declare an institution a Minority Institution.
27. Vehemently making the aforesaid submissions, Shri Seth has argued that refusal of the State Government to recognize the petitioner no.2 as Minority Institution and to issue a certificate to the said effect even after declaration having

been made by the Central Commission under the Act, 2004, cannot be sustained as the same is in derogation of the statutory authority vested in and available to the National Commission under the Act, 2004.

28. Opposing the writ petition, Shri Sanjay Bhasin, learned counsel representing the Director General Medical Education and Training has vehemently submitted that section 10 of the Act, 2004 though refers to right to establish a Minority Educational Institution and provides that anyone who desires to establish a Minority Educational Institution may apply to the competent authority for the grant of no objection certificate for the said purpose, however, the said provisions of section 10 of the Act, 2004 is subject to the provisions contained in any other law for the time being in force.
29. Shri Bhasin has further argued that section 3(h) of the U.P. Act No.24 of 2006 defines Minority Institution to mean an institution "**established**" and "**administered**" by a minority and notified as such by the State Government. He has, thus, submitted that an institution to qualify as Minority Institution should not only be administered by a minority but should also have been established by a minority. He has stated that so far as the petitioner no.2 is concerned, the said medical college was established on permission accorded for the said purpose to the petitioner no.1 by the Central Government in the year 2001 and since then petitioner no.2 has been running the petitioner no.2-Medical College whereas for the first time the petitioner no.1 moved the National Commission for declaring the petitioner no.2 as Minority Institution only in the month of September, 2015



whereupon the Commission by means of the certificate dated 26.04.2018 granted the petitioner no.2, run by the petitioner no.1, the status of Minority Educational Institution. In his submission, Shri Bhasin has urged that Subharti Medical College-petitioner no.2 was established by the Trust as a secular Trust in the year 2001 and the Trust deed of petitioner no.1 was amended only in the year 2015 and thus the members of petitioner no.1 adopted the minority religion much after establishment of Subharti Medical College-petitioner no.2. It has, thus, been argued that mere adoption of minority religion by the members of petitioner no.1 several years after establishment of the Medical College will not permit the petitioner no.2-Subharit Medical College to be treated as a Minority Institution for the reason that at the time when the petitioner no.2-Medical College was established by the petitioner no.1, the petitioner no.1 was not a Trust comprising of members of any minority community.

30. It has also been argued by Shri Bhasin that though Article 30 of the Constitution of India provides for right of minorities to establish and administer the educational institutions, however, such rights are not available to the petitioner-College for the reason that the institution should not only be administered but should have been established also and in the instant case, admittedly, at the time when the petitioner no.2-Medical College was established, the petitioner no.1 did not comprise of members of Minority Community for the reason that for the first time an alteration in the Trust deed was made in the year 2015 when the board of the trust adopted a minority religion, namely, Bhuddhism.

31. On careful analysis and examination of the submissions made by the learned for the parties, what we find is that right to establish minority education institution as given in section 10 of the Act, 2004 is subject to the provisions contained in any other law in force. Section 10 provides that any person desirous of establishing of a Minority Educational Institution may apply to the competent authority for the grant of no objection certificate for the said purpose. The facts of the instant case, admittedly, are that at the time when petitioner no.2-Medical College was established by the petitioner no.1, members of the petitioner no.1-Trust did not belong to Bhuddhism, a minority; rather the members are said to have adopted Bhuddhism only in the year 2015 and it is only thereafter that in September, 2015 the petitioner no.1 sought and prayed for a declaration from the National Commission under the Act, 2004 to the effect that the petitioner no.2 is a Minority Educational Institution.
32. The Act, 2004 has been in force from 11.11.2004. The petitioner no.2 has been in existence atleast from the year 2001 when the permission was accorded by the Central Government to the petitioner no.1 to establish the Medical College. From 11.11.2004 i.e. from the date 2004 Act was brought in force, till September, 2015 the petitioner no.1 did not seek any declaration from the National Commission that the petitioner no.2 is a Minority Educational Institution.
33. The definition of the word "Minority Educational Institution" as given in section 2(g) provides that an institution shall be Minority Educational Institution if it is established and administered by a minority or minorities.

Thus, mere administration of an educational institution by minority or minorities is not sufficient or enough to declare such an Educational Institution to be a Minority Educational Institution even within the meaning of section 2(g) of the Act, 2004. In the instant case at the time when the petitioner no.2 was established, the petitioner no.1, on its own showing was not a minority. Merely because after the members of the Trust-petitioner no.1 adopted Bhuddhism and thus the petitioner no.1 became minority and it has since been administering the petitioner no.2, petitioner no.2 will not become a Minority Educational Institution for the reason that it was established at a time when admittedly the petitioner no.1 was not a minority which is said to have become minority only in the year 2015.

34. As already observed above, mere administration of an Educational Institution by a minority will not confer on such educational institution status of a Minority Educational Institution in terms of section 2 (g) of the Act, 2004. Further, section 10 of the said Act, 2004 provides that a person who desires to establish a Minority Educational Institution may apply for grant of no objection certificate for the said purpose. Section 10, thus, does not permit any application to be moved by a person who did not establish a Minority Educational Institution; rather is only administering a Minority Institution, to seek grant of no objection certificate.
35. We may also note that the Act, 2004 was enacted by the Parliament for a purpose different than the purpose for which U.P. Act No.24 of 2006 has been enacted by the State Legislature. The purpose of enactment 2004 Act was to

constitute a National Commission for Minority Educational Institutions and to provide for matters connected therewith or incidental thereto, whereas the purpose of enacting U.P. Act No.24 of 2006 was to provide for regulation of admission and fixation of fee in private professional educational institutions and the matters connected therewith or incidental thereto. U.P. Act No.24 of 2006 excludes a Minority Institution from purview of its operation which, as observed above, operates to regulate admission and fixation of fee in private educational institutions.

36. What will be a Minority Institution for the purposes of U.P. Act No.24 of 2006 can be found in section 2(h) where Minority Institution has been defined to mean an institution established and administered by a minority and notified as such by the State Government. Thus for an institution to qualify a Minority Institution within the meaning of U.P. Act No.24 of 2006, it should be an institution not only being administered by a minority but it also ought to have been established by the minority and it should also be notified by the State as such. Thus, in terms of the provisions contained in section 2(h) of U.P. Act No.24 of 2006 there are three conditions for an institution to qualify as minority institution. The conditions are (i) that the institution should have been established by a minority, (ii) the institution should be administered by a minority and (iii) the institution should be notified as such by the State Government.
37. As already noticed above, the respondent no.2 was established at a time when the petitioner no.1 was not a minority as it became minority only in the year 2015. The petitioner no.1 currently said to be a minority since the year

2015 though at the time of establishment of petitioner no. 2, it was not a minority and hence the petitioner 2 will, in our considered opinion, not qualify to be a Minority Institution within U.P. Act No.24 of 2006. Once an institution does not qualify to be a Minority Institution under U.P. Act no.24 of 2006, it is difficult for us to hold that such an institution, despite being administered currently but was not established by a minority, will be excluded from operation of U.P. Act No.24 of 2006. Establishing an institution and administering it are two different happenings. If a society or a Trust did not comprise of members of any Minority Community (either linguistic or religious) at the time when it established an educational institution and subsequently attains the status of a minority and starts administering such an institution, in our considered opinion, in such a situation the educational institution concerned will neither be a Minority Institution within U.P. Act No.24 of 2006, nor shall it be Minority Educational Institution within Act, 2004.

38. For the reasons given and discussion made above, we do not find any illegality in the decision of the State Government not to treat the petitioner no.2 as Minority Institution so as to exclude it from the purview of U.P. Act No.24 of 2006 and accordingly we also do not see any illegality in the orders dated 05.10.2010 and 07.10.2010 whereby the Director General Medical Education and Training had sought the proposal from the petitioner no.2 for the purposes of fixation of fee to be charged from the students pursuing their MBBS and BDS Courses for the academic year 2020-21. For these reasons, we also do not find any illegality in the impugned order dated 06.11.2020 passed by the State

Government in the Department of Medical Education whereby fee to be charged from its students was fixed.

39. For all the reasons given above, we are unable to agree with the submissions made by the learned counsel for the petitioners. Accordingly, we find that the instant writ petition lacks merit.

40. Resultantly, the writ petition is hereby **dismissed**.

41. There will be no order as to costs.

**Order Date :-12.09.2022**

akhilesh/

**(Subhash Vidyarthi, J.) (D. K. Upadhyaya, J.)**