

W.P.(C) No. 14017/2021 : 1 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 29<sup>TH</sup> DAY OF JULY 2021 / 7TH SRAVANA, 1943

WP(C) NO. 14017 OF 2021

PETITIONER/PETITIONER:

CITIZEN'S ASSOCIATION FOR DEMOCRACY , EQUALITY, TRANQUILITY  
AND SECULARISM (CADETS IN SHORT)  
SEETHARAM COMPLEX, 41/1789, OPPOSITE TO SREE SUDHEENDRA  
HOSPITAL, KACHERIPADY, CHITTOOR ROAD, NORTH, ERNAKULAM  
DISTRICT 682 018  
REP. BY ITS SECRETARY, E. G. MANOJ, AGED 50 YEARS, S/O.A.K.  
GOVINDAN NAIR, EDAPPATTU HOUSE, S. VAZHAKKULAM P.O., ALUVA  
(VIA), ERNAKULAM, KERALA 683 105

BY ADVS.  
C.RAJENDRAN  
K.VIJAYAN

RESPONDENTS/RESPONDENTS:

- 1 UNION OF INDIA  
REP. BY THE CABINET SECRETARY, GOVERNMENT OF INDIA,  
NEW DELHI 110 001
- 2 THE SECRETARY  
MINISTRY OF AFFAIRS, GOVERNMENT OF INDIA, NEW DELHI 110 001.
- 3 THE SECRETARY  
NATIONAL COMMISSION FOR MINORITIES, GOVERNMENT OF INDIA,  
3RD FLOOR, BLOCK NO.3, CGD COMPLEX, LODHI ROAD,  
NEW DELHI 110 003
- 4 STATE OF KERALA  
REP.BY THE CHIEF SECRETARY, SECRETARIAT,  
THIRUVANANTHAPURAM 695 001.

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- 5 SECRETARY  
MINORITIES WELFARE DEPARTMENT, KERALA SECRETARIAT,  
THIRUVANANTHAPURAM 695 001.
- 6 THE SECRETARY  
KERALA STATE COMMISSION FOR MINORITIES, ANJANEYA,  
SASTHAMANGALAM, THIRUVANANTHAPURAM 695 010.
- 7 THE KERALA CATHOLIC BISHOP'S COUNCIL  
PADIVATTAM, ERNAKULAM KOCHI PIN 682 025, REP. BY ITS  
SECRETARY
- 8 THE SECRETARY  
SUNNY MAHALLU FEDERATION, SAMASTHALAYAM, CHERALI,  
MALAPPURAM PIN 607 636  
  
BY ADV SRI.KRISHNADAS P.NAIR, CGC

R4 BY SRI. TEK CHAND, SR. GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
29.07.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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**Dated this the 29<sup>th</sup> day of July, 2021.**

**JUDGMENT**

**SHAJI P. CHALY, J.**

This is a Public Interest Litigation filed by a registered Organisation registered under the Indian Trusts Act, 1882 at the office of the District Registrar, Ernakulam. According to the petitioner, the aims and objects of the petitioner Organisation include fight against discrimination on the basis of religion, caste, sex etc. and for maintaining equality among the citizens and peace and tranquility in all fields of life and to uphold the principles of secularism.

2. The grievance highlighted by the petitioner is in regard to the minority status continued to the Muslim and Christian communities in the State of Kerala, since according to the petitioner, the members of such communities have grown up to such a level in the fields of socio-economic and education, and therefore, their status is to be redetermined. It is also submitted that the report of the Committee appointed by the State Government, namely Paloli Muhammed kutty Committee, is a falsely created one suppressing the facts and figures so as to give undue advantage to the Muslim Communities and as such, it cannot be acted upon.

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3. It was the predominant submission that the original inhabitants of India were termed as Hindus, and later with the advent of the Arabs and Christian Missionaries, several citizens of this country got converted to Islam and Christianity. It is also the case that the British regime, as part of their strategy to perpetuate their rule, divided the inhabitants as Hindus, Muslims and Christians etc. According to the petitioner, neither the Constitution nor any other enactments have defined the term 'minority'. But, the Government of India introduced an enactment by name National Commission for Minorities Act, 1992 and even in the said Act, instead of defining minority, certain religious communities were included in the list of minorities.

4. The petitioner has also pointed out various facets of the Act, 1992 and also rely upon the judgments of the Apex Court in **T.M.A. Pai Foundation v. State of Karnataka** [2002 (8) SCC 481] and **Bal Patil and another v. Union of India and others** [AIR 2005 SCC 3172] to contend that minority rights are not defined anywhere in the Constitution. The petitioner has also raised a contention with respect to the political advantage secured by the members of the Muslim and Christian communities in the State of Kerala, and has further pointed out the names of the Chief Ministers of the State belonging to the

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minority communities to contend that the members of the Muslims and Christians in Kerala had enough representation in the Ministry and the assembly from 1957 onwards.

5. That apart, it is stated that the data provided by the petitioner shows that the Ministers and members of the Legislative assembly belonging to the aforesaid communities were in the integral part of the decision making process and were holding powerful, valuable, and substantial portfolios and were in the forefront of developmental activities. Therefore, the sum and substance of the contention of the petitioner is that it is crystal clear that at no point of time, they were subjected to any sort of discrimination and there is no chance of any apprehension on their part that the majority communities will dominate them. According to the petitioner, the minority communities have dominated the majority communities from the very inception of elected Governments in Kerala. That apart, it was submitted that in the field of education, the Muslims and Christians communities are much more advanced than the communities in the Hindu fold, and as an attempt to substantiate the same, petitioner has set out the details of various self financing and other colleges and educational institutions in the State of Kerala owned and managed by the minority communities.

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6. In the writ petition, the petitioner has also pointed out other facts and figures in the matter of representation of minority communities in various important walks of life, presumably with the intention of canvassing the proposition that the minority communities namely the Muslims and Christians are not entitled to continue with the minority status they are enjoying. It was also contended that the Muslims and Christians in Kerala do not apprehend any deprivation of the religious, cultural or educational rights in the State of Kerala. It was finally contented that the Muslims, Christians, Buddhists, Jains, Sikhs and Parsis were notified as minorities, taking into account the whole of India as a unit and not state specific. In the above backdrop, the petitioner has sought for the following reliefs:

1. To issue a writ in the nature of MANDAMUS or any other appropriate writ, order or direction compelling and commanding the first respondent to re-determine the minority status Muslim and Christian Communities in Kerala taking into account the Kerala State as a unit.
2. To issue a writ in the nature of MANDAMUS or any other appropriate writ, order or direction compelling and commanding the 1st respondent to refer to the 3rd respondent to re-assess the socio-economic and educational progress of the Muslim and Christian communities in Kerala as contemplated under section 9 (1) (i) of the National Commission for Minorities Act, 1992 and thereafter, re-determine as to whether these two communities are entitled to get the minority status further.
3. To issue a writ in the nature of mandamus or any other appropriate writ, order or direction compelling and commanding the first

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- respondent not to give any protection, consideration, preferential treatment to the Muslims and Christians in the State of Kerala as if they are minority communities forthwith.
4. To issue a writ in the nature of mandamus or any other appropriate writ, order or direction compelling and commanding the 4<sup>th</sup> and 5<sup>th</sup> respondents not to give any protection, consideration, preferential treatment to the Muslims and Christians in the State of Kerala as if they are minority communities forthwith.
  5. To issue a writ in the nature of mandamus or any other appropriate writ, order or direction compelling and commanding the 3<sup>rd</sup> respondent to evaluate the progress of development of minorities in Kerala and report to the 1<sup>st</sup> respondent within a time frame fixed by this Hon'ble Court.
  6. To declare that the findings in Paloli Muhammed Committee are not based on true facts and figures and the Committee itself is constituted against the principles of secularism and democratic values and as such it cannot be acted upon.

7. We have heard, Sri. C. Rajendran, learned counsel appeared for the petitioner and perused the pleadings and materials on record.

8. The basic contention advanced by learned counsel for the petitioner is that under the Constitution of India, the term 'minority' is not defined and therefore, the Muslim as well as the Christian communities are not entitled to enjoy any constitutional status in the guise of the minority communities. The thrust of the contention advanced by the petitioner was that, going by the facts and figures provided by the petitioners, in respect of the socio-economic

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conditions on the basis of the representation of the members of the community in the State Legislative Assembly and in the management and affairs of the private and self financing educational institutions, the communities in question have grown up to such a level that they do not require any beneficial treatment considering them as minority communities.

9. To consider the high decibel contentions advanced by the petitioner, we propose to start with the aspects dealt with under the Constitution of India. It is an undisputed fact to which we have no doubt in our mind that the framers of the Constitution have considered in depth the issue with respect to the well being, protection, and welfare of the minority communities and that is the reason why after an analysis of the entire situation, freedom of conscience and free profession, practice and propagation of religion was incorporated in Article 25 of the Constitution of India. So also, Article 26 granted freedom to manage religious affairs, subject to public order, morality and health and right to establish and maintain institutions for religious and charitable purposes; to manage its own affairs in matters of religion; to own and acquire movable and immovable property; and to administer such property in accordance with law.

10. Article 29 clearly protects interests of minorities and clause



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(1) thereto clearly specifies that any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. Clause (2) thereto further stipulates that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

11. Further, Article 30 protects the right of minorities to establish and administer educational institutions and clause (1) thereto clearly specifies that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. Clause (2) of Article 30 prescribes that the State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

12. Now, coming to Article 14 of the Constitution of India, it is clear that the framers of the Constitution intended that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. It is well settled that what Article 14 prohibits is class legislation and not reasonable classification for the purpose of legislation. It is true that the rights guaranteed

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under part III of the Constitution of India are not absolute in terms, since they are subjected to reasonable restrictions.

13. In order to protect the larger interests of the nation as such, Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth. But, clause (4) of Article 15 makes it clear that nothing in Article 15 or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. Clause (5) also enunciates the principle that nothing in Article 15 or in sub-clause (g) of clause (1) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes, in so far as such special provisions relate to their admission to educational institutions, including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30.

14. Clause (6) of Article 15 further makes it clear that nothing in the Article or sub-clause (g) of clause (1) of Article 19 or clause (2) of Article 29 shall prevent the State from making any special provision

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for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten percent of the total seats in each category.

15. Article 16 emphasizes equality of opportunity in the matters of public employment or appointment to any office under the State. It has various facets, including the enabling provision that it shall not prevent the State from making any provision for reservation or posts in favour of any economically weaker sections of citizens which in the opinion of the State is not adequately represented in the services under the State. Among others, clause (6) stipulates that nothing in Article 16 shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause

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(4), in addition to the existing reservation and subject to a maximum of ten percent of the posts in each category.

16. Article 38 (1) under part IV dealing with the directive principles of state policies, casts a duty upon the State to strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Clause (2) thereto specifies that the State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

17. Article 39-A introduced on and with effect from 03.01.1977 encompasses a situation where the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

18. Article 46 imbibes a duty on the State to promote with special care the educational and economic interests of the weaker

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sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

19. In order to understand the true intention of the framers of the Constitution, a reference to the preamble of the Constitution would only be appropriate, which reads thus:

“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a [SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC] and to secure to all its citizens:  
JUSTICE, social, economic and political;  
LIBERTY of thought, expression, belief, faith and worship;  
EQUALITY of status and of opportunity;  
and to promote among them all  
FRATERNITY assuring the dignity of the individual and the [unity and integrity of the Nation];  
IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”

20. On an analysis of the preamble, it is clear that the main objective of the Constitution framers was to incorporate the ideals and aspirations which inspired the country in its struggle for independence and freedom. It is also explicit that the framers intended solemnly to constitute India into a sovereign, socialist secular democratic republic

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and to secure to all its citizens, justice, social, economic and political and among others equality and status and of opportunity in the welfare and developmental activities of the nation. There, the concept of, 'we the people' include all, irrespective of caste, creed, religion, language, boundaries and other barriers, majority and minority, to give ourselves the solemn document to be followed by all.

21. Therefore, it was taking into account the spirit of preamble and the intention of the framers of the Constitution that Part IV-A dealing with the fundamental duties was inserted on and with effect from 03.01.1977, which makes it clear that it shall be the duty of every citizen of India to abide by the Constitution and respect its ideals and institutions among others; to cherish and follow the noble ideals which inspired our national struggle for freedom; to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; and to value and preserve the rich heritage of our composite culture.

22. Therefore, on an analysis of the provisions of the Constitution and its multifaceted principles and theories, it is abundantly clear that the framers of the Constitution were very conscious about the realities and other dynamic ethos that were

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prevailing in the nation in regard to the social, economic and other material aspects among the weaker sections and minorities, and that is why the interests of the backward classes and the socially educationally, and economically weak are very well protected under the Constitution of India.

23. Therefore, we have no hesitation to say that no citizen is expected to think, visualise or figure out a situation outside the aforesaid basic structure of the Constitution of India. The National Commission for Minorities Act, 1992 is to be looked into and considered in the aforesaid background. That is to say, even if the minority is not defined under the Constitution, that will not in any way belittle, digress or dilute the importance of the obligations instilled in "we the people of India", by the framers of the Constitution.

24. To put it otherwise, the citizens of this country are expected to live in absolute harmony by following the principles of a give and take policy. That is to say the thought process of the citizens should be eloquently guided by the tempered futuristic and far far sighted vision of the founders of our solemn document, the 'CONSTITUTION OF INDIA'. To fortify what we have stated above, we are reminded of the internationally reputed slogan often chanted by us to describe our country in its shortest form, which we cherish and value in our hearts and minds

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in its deepest sense, "UNITY IN DIVERSITY". It actually contain in its folder everything conceptualized by the constituent assembly in regard to the matter in question and many more, and nothing more and nothing less.

25. The National Commission for Minorities Act, 1992 is constituted and made effective from 17.05.1992, and its objectives and reasons show that it is constituted for the protection of the minorities and to make recommendations for ensuring implementation of the safeguards and the laws. The Parliament also thought that the Minority Commission with statutory status would infuse confidence among the minorities about the working and the effectiveness of the Commission and it would also carry more weight with the State Governments/Union Territory Administration and Ministries/Departments and Ministries/Departments and other Organisations of the Central Government. It consists of a Chairperson and 6 members and the main task of the Commission shall be to evaluate the progress of the development of minorities, monitor the working of the safeguards provided in the Constitution for the protection of the interests of minorities and in laws enacted by the Central Government or State Governments, apart from looking into the



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specific complaints regarding deprivation of rights and safeguards of the minorities. It shall also cause studies, research and analysis to be undertaken on the issues relating to socio-economic and educational development of the minorities and make recommendations for the effective implementation of the safeguards for the protection of interests of minorities by the Central Government or State Governments. It may also suggest appropriate measures in respect of any minority to be undertaken by the Central Government or State Governments.

26. The term 'minority' is defined under Section 2(c) to mean a community notified as such by the Central Government. The procedure for the constitution of the National Commission and other attendant circumstances were also provided under the Act, which may not be very relevant to the facts of this case. The functions of the Commission is dealt with under Section 9 of Act, 1992, which reads thus:

“9. Functions of the Commission .-(1) The Commission shall perform all or any of the following functions , namely:-

(a) evaluate the progress of the development of minorities under the Union and States.

(b) monitor the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State Legislatures;

(c) make recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State Governments.

(d) look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities;

(e) cause studies to be undertaken into problems arising out of any discrimination against minorities and recommend measures for their removal;

(f) conduct studies, research and analysis on the issues relating to socio educational development of minorities;

(g) suggest appropriate measures in respect of any minority to be undertaken by the Central Government or the State Governments;

(h) make periodical or special reports to the Central Government on any matter pertaining to minorities and in particular difficulties confronted by them; and

(i) any other matter which may be referred to by the Central Government.

(2) The Central Government shall cause the recommendations referred to in clause (c) of sub-Section (1) to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance , if any, of any of such recommendations.

(3) Where any recommendation referred to in clause ( c) of sub-

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section (1) or any part thereof with which any State Government is concerned, the Commission shall forward a copy of such recommendation or part to such State Government who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance if any, of any of such recommendation or part.

(4) The Commission shall, while performing any of the functions mentioned in sub- clauses (a), (b) and (d ) of sub- section ( 1), have all the powers of a civil court trying a suit and in particular, in respect of the following matters , namely:-

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

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

(f) any other matter may be prescribed.”

27. On a reading of Section 9, it is explicit and clear that the functions of the Commission is to evaluate the progress of the development of minorities under the Union as well as the States and among other functions, it has to monitor the working of the safeguards

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provided in the Constitution and the laws enacted by the Parliament and State Legislatures and also to make recommendations for the effective implementation of safeguards for the protection of interest of minorities by the Central Government or the State Governments. It has also got the power to look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities. Its functions further include to deal with problems arising out of any discrimination against the minorities and to recommend measures for their removal. It has also got powers to make periodical or special reports to the Central Government on any matter pertaining to minorities and in particular, difficulties confronted by them and any other matter which may be referred to by the Central Government. The Central Government shall cause the recommendations referred to in clause (c) of of sub- section (1) to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance if any, of any of such recommendations.

28. The State Government is also imbued with such duties akin to the Central Government. Therefore, it is clear that specific and

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definite powers are conferred on the National Commission to basically look into the safeguards and interests of the minority communities and do the necessary so as to protect the interest of such minorities. Thus, in exercise of the powers conferred by clause (c) of Section 2 of the Act, 1992, the Central Government had notified Muslims, Christians, Sikhs, Buddhists, and Zoroastrians (Parsis) as minority communities for the purpose of Act, 1992 as per notification bearing No SO 816 (E) dated 22<sup>nd</sup> October, 1993.

29. Likewise, by virtue of clause (f) of Section 2 of National Commission for Minority Educational Institutions Act, 2004 ('Act, 2004' for short), the Central Government notified, Muslim, Christians, Sikhs, Budhists and Zoroastrians (Parsis) as minority communities for the purpose of Act, 2004. As per the Act, 2004, a Commission is constituted to perform the functions assigned to it under Section 11 of the said Act, which reads thus:

“11. **Functions of Commission.**— Notwithstanding anything contained in any other law for the time being in force, the Commission shall— (a) advice the Central Government or any State Government on any question relating to the education of minorities that may be referred to it;

1 [(b) enquire, suo motu, or on a petition presented to it by any

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Minority Educational Institution, or any person on its behalf into complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating to affiliation to a University and report its finding to the appropriate Government for its implementation;

(c) intervene in any proceeding involving any deprivation or violation of the educational rights of the minorities before a court with the leave of such court;

(d) review the safeguards provided by or under the Constitution, or any law for the time being in force, for the protection of educational rights of the minorities and recommend measures for their effective implementation;

(e) specify measures to promote and preserve the minority status and character of institutions of their choice established by minorities;

(f) decide all questions relating to the status of any institution as a Minority Educational Institution and declare its status as such;

(g) make recommendations to the appropriate Government for the effective, implementation of programmes and schemes relating to the Minority Educational Institutions; and

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

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30. Apart from the same, other powers are also vested with the Commission under the Act, 2004, including to resolve the disputes arising between minority educational institutions and a University relating to its affiliation to such University and the Commission. The Commission is also conferred with powers under the Act, 2004 to cancel the minority status given to any minority educational institutions, after giving a reasonable opportunity of being heard, if the Commission is of the opinion that if the constitution, aims and objects of the educational institution, which has enabled it to obtain minority status has subsequently been amended in such a way that it no longer reflects the purpose or character of a Minority Educational Institution; and if, on verification of the records during the inspection or investigation, it is found that the Minority Educational Institution has failed to admit students belonging to the minority community in the institution as per rules and prescribed percentage governing admissions during any academic year.

31. The Commission is also vested with powers under Section 12D of Act, 2004 to investigate into the complaints relating to the deprivation of the educational rights of minorities, and for the purpose of conducting any investigation pertaining to the complaints under the

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Act, 2004, it is vested with a power to utilize the services of any officer of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be. Various other powers are also conferred under the Commission under Act, 2004.

32. The statement of objects and reasons shows that the long felt demand of the Minority communities was considered in a series of meetings held by the Ministry of Human Resource Development with educationists, eminent citizens and community leaders associated with minority education. Among various issues raised by the representatives of the Minority communities, they expressed the difficulty faced by them in establishing and running their own educational institutions, despite the constitutional guarantees accorded to them in that regard. In the subsequent meeting of the National Monitoring Committee for Minority Education held on August 27, 2004, similar views were expressed by many experts, and participants from the various minority communities affirmed the need to provide access to such affiliation, in view of the often restrictive conditions imposed by the existing statutes of the Universities, relating to the affiliation of such institutions. It was in the said background that ultimately the



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Act, 2004 was introduced by the Government of India.

33. A reading of the provisions of the Act, 1992 and Act, 2004 make it clear that it was on the basis of the fundamental guarantees extended to the minorities under the Constitution of India, the Acts were formulated by the Government of India.

34. On an analysis of the functions and the powers conferred on the Commission under the Act, 1992 and Act, 2004, it is amply clear that the object of the constitution of the Commission is to protect the interests of the minorities notified by the Central Government. In fact, 'minority' is defined under section 2 (c) the Act, 1992 to mean a community notified as such by the Central Government. Similarly, the Government of India has defined 'minorities' typically, by virtue of the powers conferred under Section 2(f) of the Act, 2004.

35. Now we come to the prayers sought for by the petitioner. The petitioner has sought for a writ of mandamus commanding the first respondent ie., the Union of India, to redetermine the minority status of Muslims and Christian communities in Kerala taking into account the Kerala State as a unit. In our view, there is no power vested with the Central Government to redetermine the minority status under the provisions of either Act, 1992 or Act, 2004. The

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power is vested with the respective commission under Section 9 of Act, 1992 and Section 11 of Act, 2004. The Central Government is given power only to refer any matter to the National Commission for Minorities under the Act, 1992.

36. As we have pointed out above during discussion of Section 9 of Act, 1992, the Commission is constituted for the purpose of protecting and safeguarding the interest of the minorities and not to act against its interests. Insofar as the second prayer is concerned, a writ of mandamus is sought for, for compelling the Union of India to refer to the 3<sup>rd</sup> respondent to reassess socio-economic and educational progress of the Muslim and Christian communities in Kerala as contemplated under Section 9(1)(i) of the Act, 1992 and thereafter redetermine as to whether those two communities are entitled to get the minority status further.

37. Going through the provisions of the Act, we have no doubt that such a relief sought for by the petitioner cannot be granted, since there is no power vested with the Central Government to make any such compulsion under the Act, 1992. However there is a power conferred on the Central Government under clauses (i) of Section 9 (1) of Act, 1992 to make a reference to the Commission, which, in our

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considered view, can only be any matter akin and similar to the functions of the Commission conferred under various clauses of section 9 (1) and not any adverse factors and other disadvantageous circumstances as is pointed out by the petitioner in the writ petition.

38. The third and fourth prayers are seeking a direction to the Union of India and the State of Kerala and the Secretary, Minorities Welfare Department not to give any protection, consideration and preferential treatment to the Muslims and Christians in the State of Kerala. The deliberation made above by us referring to the constitutional guarantees and the provisions of the Act, 1992 and Act, 2004 makes it clear that no such direction can be given to stop the preferential treatment given to the Minority Communities in the State of Kerala, since the powers for evaluating the progress and development, safety and protection of minority communities and other aspects are vested with the respective Commission under the Act, 1992 and Act, 2004.

39. Other declarations sought for seeking directions to the National Commission for Minorities to evaluate the progress and the development of the minorities in Kerala and report to the Union Government is the subject matter to be considered by the National

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Commission for Minorities. It is clear and evident from the pleadings and documents produced by the petitioner that the petitioner has neither submitted any representation before the Government of India nor any complaint or petition before the National Commission for Minorities under the Act, 1992 as well as the Act, 2004.

40. A writ of mandamus can be sought for by the petitioner only when the statutory authorities fail to discharge their duties and functions in contemplation of the respective statutes. There is no case for the petitioner that there was any laxity on the part of the authorities under the Act, 1992 and Act, 2004 to act upon any complaints/petitions or representations. Therefore, we are of the considered view that the petitioner has not made out any case for issuing any mandamus to the respondents as is sought for in the writ petition.

41. Above all, the powers and functions of the Commission under the respective acts are independent and judicious in nature thus debarring the Central and State Governments from interfering with such powers and functions in any manner of, whatsoever, nature and therefore, the reliefs sought for in the writ petition to compel the Central and state Governments to do so are superfluous in nature and

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character dissuading us to grant them. It is also discernible from the provisions of the respective Acts that the power of the Commission is superior in nature, since it is empowered to advise the Government on the material aspects under the Acts.

42. Yet another contention advanced by the learned counsel for the petitioner Sri.C. Rajendran was that the term 'minority' is not defined in the Constitution so as to give any constitutional status to such communities. Though the contention seems attractive, it has no factual basis and legal foundation for the fundamental reason that, the discussion of the constitutional provisions made above would make it clear that the framers of the Constitution were so careful and doubly cautious in providing various protection under the Constitution of India with the noble object of protecting and safeguarding the interest of the minorities, apart from making imperative duties and obligations on the Central and State Governments to make legislations so as to safeguard the interests of the minority communities.

43. Therefore, we are of the view that merely because the term 'minority' is not defined under the Constitution of India, that would not take away the fundamental rights and guarantees conferred on the minorities under the Constitution of India and the laws which are

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fundamental in the governance of the nation. Further, merely because in the definition or interpretation clause of the Constitution the term 'minority' is not included and defined, that will not, in any way, create a fetter to the duties and obligations of the Government of India to protect the interests of the minorities guaranteed under the Constitution of India. To put it otherwise, rather than looking into the interpretation clause, the duty of the Government is to identify the rights and privileges conferred on the minorities under the Constitution of India broadly and act accordingly.

44. Even though intrinsic facts pleaded by the petitioner may not be much relevant in view of the legal deliberations made above, we deem it proper to answer the aspects put forth by the petitioner regarding the Chief Ministers/Ministers and members of Legislature/Parliament from Muslim and Christian communities; the educational institutions started by the members of the minority communities; and the persons who are rich in the said communities. Insofar as the political leadership and choice of Chief Minister and Ministers are concerned, it is done by the political parties or the political coalition succeeded in the fray of general elections conducted and that would not have any bearing in the matter of considering the

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status of minority in terms of the guarantee under the Constitution of India and the laws discussed above. On the aspect of establishment of educational institutions by the members of the minority and any trust formed with members of the minority, it is done on the basis of the right conferred as per Articles 29 and 30 of the Constitution of India, which is a fundamental right recognised by the framers of the constitution, which cannot be diluted or watered down in any manner.

45. We also find from the Act, 1992 and the Act, 2004 that the starting of educational institutions by members of the minority communities would not create any fetter in the matter of grant of minority status, probably for the reason that such establishments are started by virtue of the right conferred under Articles 29 and 30 of the Constitution of India, which stands independent and above the provisions of any statute, as long as such persons continue to be recognised as minorities. So also, merely because rich individuals are there in the community, who are able to afford very luxurious living conditions, that would not stand in the way of the Commission ascertaining the minority status of the communities as such. Merely because there are a few people who are rich in the minority communities, one cannot be expected to understand that their richness is due to them belonging to minority communities and further merely for that factor, it cannot be taken for granted that the entire members of the minority communities are economically and socially advanced.

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46. Assimilating the factual situations so, we are unable to issue any directions as is sought for in the writ petition for compelling the State of Kerala and the Secretary, Minorities Welfare Department --4<sup>th</sup> and 5<sup>th</sup> respondents not to give any protection, consideration and preferential treatment to the Muslims and Christians in the State of Kerala as if they are minority community henceforth. It is also apposite to point out that the status is given by the Commission taking into account various factual inputs that are available before the Commission for consideration and making due enquiries in accordance with the statutory requirements.

47. To put it otherwise, the National Commissions are well guided by the provisions of Act, 1992 and Act, 2004 and therefore, no manner of fetter can be created in whatever way for the independent functioning of the Commission by issuing any directions and that too, when the contentions put forth by the petitioner are substantially and materially surrounded by factual circumstances, which is not expected to be delved deep into by the writ court exercising powers under Article 226 of the Constitution of India, as is well settled by a plethora of judgments of the Apex Court.

48. Deducing the facts and circumstances, and the law, we have no hesitation to hold that the petitioner has not made out any case for interference as is sought for in the writ petition. Suffice it to say, the



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Government of Kerala has also brought out Kerala State Commission for Minorities Act, 2014 for the comprehensive educational advancement, welfare, protection and empowerment of Minorities in the State of Kerala and to provide for matters connected therewith or incidental thereto. The State Government is also vested with powers and functions similar to the Act, 1992 and the Act, 2004. It is significant to note that the term 'minority' is defined under the Act, 2014 to mean a community notified by the Central Government under the National Commission for Minorities Act, 1992.

49. Thus, cogitating the legal and factual aspects, we have no hesitation to hold that the petitioner has not made out any case of arbitrariness, illegality, unfairness or other legal infirmities justifying us to exercise the power of discretion conferred under Article 226 of the Constitution of India.

Upshot of the discussion is, writ petition fails and accordingly it is dismissed.

sd/-  
**S. MANIKUMAR,**  
**CHIEF JUSTICE.**

sd/-  
**SHAJI P. CHALY,**  
**JUDGE.**

*Rv*

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**APPENDIX OF WP(C) 14017/2021**

PETITIONER EXHIBITS

- Exhibit P1 A TRUE PHOTOCOPY OF THE LIST OF APPROVED MINORITY INSTITUTES PROVIDING ENGINEERING, MBA, PHARMACY COURSES PUBLISHED BY GOVERNMENT OF KERALA AND DOWNLOADED FROM THE WEBSITE
- Exhibit P2 A TRUE PHOTOCOPY OF THE RELEVANT PAGES OF THE REPORT PERTAINING TO KERALA PREPARED BY THE NATIONAL COMMISSION FOR RELIGIOUS AND LINGUISTIC MINORITIES, VOLUME II
- Exhibit P3 A TRUE PHOTOCOPY OF THE PALOLI COMMITTEE REPORT DATED 21.2.2008

RESPONDENTS' EXHIBITS: NIL

/True Copy/

PS to Judge.

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