

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

(PUBLIC INTEREST LITIGATION)

WRIT PETITION (CIVIL) NO. _____ OF 2020

IN THE MATTER OF:

1) Jamiat Ulema -I-Hind,
Through its secretary ,
Legal Cell,

...Petitioner no.1

2) Mr, Gulzar Ahmed Noor

of Maharashtra-400009

...Petitioner no.2

Versus

Union of India,
through Secretary,
Higher Education ,
Ministry of Human Resource
Development, Shastri Bhavan New
Delhi-110001

...Respondent

**A PETITION SEEKING JUDICIAL DOMINANCE IN
APPOINTMENTS OF CHAIRPERSON AND MEMBERS OF
THE NATIONAL COMMISSION FOR MINORITY
EDUCATIONAL INSTITUTIONS;**

AND

**A PETITION FOR ISSUANCE OF A WRIT OF MANDAMUS
OR ANY OTHER WRIT, ORDER OR DIRECTION IN THE
SIMILAR NATURE THEREBY COMMANDING THE
RESPONDENT TO APPOINT THE MEMBERS OF THE
NATIONAL COMMISSION FOR MINORITY EDUCATIONAL
INSTITUTIONS IN PLACE OF THE OUTGOING MEMBERS
AND ALL THE FUTURE APPOINTMENTS/NOMINATIONS
TO FILL FUTURE VACANCIES IN NATIONAL
COMMISSION FOR MINORITY EDUCATIONAL
INSTITUTIONS, ON RECOMMENDATIONS OF THE
COMMITTEE CONSTITUTED BY THE HON'BLE THE**

**CHIEF JUSTICE OF INDIA TILL CONSTITUTION OF THE
NATIONAL TRIBUNALS COMMISSION;**

To,

The Hon'ble Chief Justice of India
And His Companion Justices of the
Hon'ble Supreme Court of India

The humble petition of the
above named petitioners

MOST RESPECTFULLY SHOWETH:

- 1) The petitioners are filing the present Writ petition under Article 32 of the Constitution in the nature of the Public Interest Litigation to seek direction from this Hon'ble court to appoint Chairman and members of the 'National Commission for Minority Educational Institutions' on the recommendations of the Committee to be constituted by Hon'ble the Chief Justice of India for their selection and appointment till the constitution of the National Tribunals Commission in order to maintain the independence of the Judiciary.
- 2) The petitioner No. 1 organization was established in November 1919 with *inter alia* following main aims and objectives:

- a) Protection of Islam Islamic culture tradition, Islamic heritage and Places of Worship;
- b) Protection and promotion of religious, cultural, Educational and Citizenship rights of Muslim Community;
- c) Reformation of religious, Social and Educational Life of the Muslim community;
- d) Establishment of Institution that could empower Muslims educationally culturally, socially, economically;
- e) In accordance with the teaching of Islam, Promotion of Cordial and friendly relations among members of different Indian Communities;

3) Any male or female Muslim is eligible to become a member of the petitioner No 1 organization if he or she is of sound mind and fully agrees with the aims and objects of the Petitioner No. 1 Organization. The Petitioner No 1 Organization is not a registered organization.

4) The Petitioner No.1 organization is regularly involved in several philanthropic activities, some of the recent instances of the work done by the Petitioner No 1 organization includes extending relief to Nepal earth quack victims, extending relief for victims of fire in Pune, building of colonies for the homeless in Assam, extending relief to victims of floods in Jammu and Kashmir , and undertaking other relief works such as providing ambulances in the flood affected areas, rehabilitating the floods victims by building homes for them. Further the Petitioner no. 1 organization has also built homes in Malegaon for the victims who lost their houses due to fire, built homes in Bihar for the Victims who lost their houses due to flood, has extended relief to the Rohangia refugees and has set up medical camp in tribal areas including the district of Palghar in Maharashtra. Apart from such services the petitioner No 1 organization has worked in several other areas affected by riot and natural Calamities and has been spending huge amount of Money for Provision of education, medical and Legal Aid.

- 5) The petitioner No 2 is 86 years old Citizen of India, a social worker and General Secretary of the Petitioner No 1 Organization and also incharge of the legal cell of the Petitioner no.1. The Petitioner No2 has been duly authorized by the Petitioner No 1 Organization to sign the Vakalatnama and the affidavit for filing the present writ petition before this Hon'ble Court.
- 6) The petitioner no.1 is an unregistered association and is approaching this Hon'ble Court through its Secretary, Legal Cell, i.e., the Petitioner no.2. The details of the petitioner No 2 are as follows :-

- 7) That the petitioners have no personal gain, Private motive or oblique reasons in filing the present Petition. The Petition is filed for the common cause and the benefits of the society at large. The present petition is not limited to the Muslim Community but is concerned with all the minority communities as defined in Section 2 (f) of the National Commission for Minority Educational Institutions Act, 2004. The present petition seeks to protect the judicial independence by enforcing Judicial Dominance in the appointments to the National Commission for Minority Educational Institutions, as that would ensure that the Fundamental Right of minorities as Guaranteed by the Article 30(1) of the Constitution of India are protected.
- 8) That the petitioners state that no civil, criminal or revenue litigation involving the petitioners, which has or could have a legal nexus with the issues involved in the petition is pending .

- 9) The Respondent herein is the Union of India through the Secretary, Ministry of Human Resource Development Government of India .
- 10) That the petitioner state that there is no concerned Government authority which could be moved for the reliefs sought by the petitioners in the present petition as the only efficacious remedy lies before this Hon'ble court under Article 32 of the Constitution.
- 11) That the present petition arises in the following background:
- 12) That this Hon'ble Court has observed through numerous decisions that all courts are tribunals but all tribunals are not courts. The expression 'Tribunal' is of wide amplitude and it embraces within its fold a 'quasi-judicial tribunal' also. A test to determine whether a particular body was merely an administrative organ of the Executive or a Tribunal was evolved by this Court in **Jaswant Sugar Mills Ltd., Meerut vs. Lakshmichand** [AIR 1963 SC 677]. It was to be examined whether the body is vested with powers of a Civil Court or not, and it was held that

any adjudicatory body vested with powers of taking evidence, summoning of witnesses, etc. must be categorised as a Tribunal.

13) That in **R.K. Jain vs. Union of India** [(1993) 4 SCC 119] a three-judge Bench of this Hon'ble Court emphasised the need for a safe and sound justice delivery system adept at satisfying the confidence of litigants. It was further noted that since members of Tribunals discharge quasi-judicial functions, it is imperative that they possess requisite legal expertise, some judicial experience and an iota of legal training. Moreover, since Tribunals are constituted as substitutes to Courts, their efficacy in upholding the faith of litigants cannot be compromised.

14) That subsequently, in **L. Chandra Kumar v. Union of India** [(1997) 3 SCC 261], a Constitution Bench of Seven Hon'ble Judges of this Hon'ble Court examined reports of expert committees and commissions analysing the problem of arrears. **The Malimath Committee Report (1989-1990)** was also referred to, wherein it was found that many Tribunals failed the

test of public confidence due to purported lack of competence, objectivity and judicial approach. This Hon'ble Court thus called for drastic measures to elevate the standards of Tribunals in the country.

While criticising the short terms of members and the lack of judicial experience of non-judicial members, this Court Hon'ble observed a need for establishment of an oversight mechanism to review the competence of all persons manning Tribunals. Thus, it was suggested that all Tribunals be brought under a 'Single Nodal Ministry', most appropriately the Ministry of Law & Justice, for overseeing of working of Tribunals. Liberty was however, granted to the Ministry to appoint an independent supervisory body to delegate the aforesaid functions. Further, this Hon'ble Court noted that the procedure of selection of members of Tribunals, allocation of funds and all other intricacies would have to be culled out by such an umbrella organisation.

- 15) That in **Union of India vs. R. Gandhi, President, Madras Bar Association** [(2010) 11 SCC 1] , a

Constitution Bench of five Hon'ble judges of this Hon'ble Court reviewed the Constitutional validity of Parts I-B and I-C of The Companies Act, 1956 inserted by the Companies (2nd Amendment) Act, 2002. The bench observed that **if Tribunals are established in substitution of Courts, they must also possess independence, security and capacity.** Additionally, with transfer of jurisdiction from a traditional Court to a Tribunal, it would be imperative to include members of the judiciary as presiding officers/members of the Tribunal. **Technical members could only be in addition to judicial members and that also only when specialised knowledge or know-how is required. Any inclusion of technical members in the absence of any discernible requirement of specialisation would amount to dilution and encroachment upon the independence of the judiciary.**

This Hon'ble Court also observed that higher administrative experience does not necessarily result in better adjudication and that there had been a

gradual encroachment on the independence of the judiciary through inclusion of more administrative/technical members in the Tribunals. It held that such practice needed to be checked and accordingly made requisite corrections to Parts I-B and I-C of The Companies Act, 1956 (as amended in 2002).

16) That later, in **Madras Bar Association vs. Union of India** [(2014) 10 SCC 1], whilst striking down the newly-created National Tax Tribunal under the National Tax Tribunals Act, 2005, this Hon'ble Court was pleased to observe that **procedure of appointment and conditions of service of members must be akin to judges of the Courts which were sought to be substituted by the Tribunal(s)**. Only persons with professional legal qualifications coupled with substantial experience in law were held to be competent to handle complex legal issues. It was further held that a litigating party (Government) should never be a participant in the appointment process of members of the Tribunal. Similarly, a

provision for reappointment or extension of tenure is ipso facto prejudicial to the independence of the members of Tribunal. A difference was also drawn between appointments to Tribunals which substituted Courts of first instance and to those which were not subordinate to High Courts.

This Hon'ble Court also held that in order to uphold their independence and fairness it would be inappropriate for the Central Government to have any administrative control over members of the Tribunal.

- 17) That in **Madras Bar Association vs. Union of India** [(2015) 8 SCC 583], vires of the Companies Act, 2013 which contemplated establishment of National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) were challenged. Interestingly, while examining Chapter XXVII of Companies Act, 2013 i.e. Sections 407 to 434, this Hon'ble Court held that although the establishment of NCLT and NCLAT was not unconstitutional but there was a need for curing defects in accordance with the *dictum of R. Gandhi (supra)*.

Tribunals Commission" to oversee the selection process of members, criteria for appointment, salaries and allowances, introduction of common eligibility criteria, for removal of Chairpersons and Members as also for meeting the requirement of infrastructural and financial resources.

20) That with the aforesaid brief history of tribunalization of judiciary, it is submitted that Parliament passed The National Commission for Minority Educational Institutions Act, 2004 (Act no. 2 of 2005) to constitute a National Commission for Minority Educational Institutions and to provide for matters connected therewith or incidental thereto.

As per Section 2 (c) of the said Act, "Commission" means the National Commission for Minority Educational Institutions constituted under section 3.

As per Section 3 (1) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the National Commission for Minority Educational Institutions to exercise the powers conferred on, and to perform the functions assigned

to, it under the said Act. Section 3 (2) provides that the Commission shall consist of **a Chairperson** and **three members to be nominated by the Central Government.**

21) That following features clearly establish that the Commission is in fact a Civil Court:

- A. The Commission has been vested with the judicial powers to decide / determine the minority character of a minority educational institution. Thus the Commission has become full-fledged part of the Judicial System.
- B. Section 12(2) of the Act confers upon the Commission all powers of a Civil Court trying a suit.
- C. Section 12 (1) of the Act confers powers on the Commission to give decision or definitive judgment which has finality and an authoritativeness, which are essential tests of a judicial pronouncement.

D. Section 12 F of the Act ousts jurisdiction of a civil Court in respect of any order made under the Act.

E. Sections 12 A and 12 B of the Act confer appellate powers on the Commission.

F. Sub Section (5) of section 12 A of the Act declares that any order passed by the Commission shall be executable by the Commission as a decree .

G. Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of Sections 192, 228 and for the purpose of Section 196 of the Indian Penal Code and the Commission shall be deemed to be Civil Court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

22) That on 06.07.2006 The National Commission for Minority Educational Institutions (Salaries and Allowances and Conditions of Service of Chairperson and other Members) Rules, 2006 were framed by the

18) That in **Gujarat Urja Vikas Ltd. vs. Essar Power Ltd.** [(2016) 9 SCC 103], while examining the composition and working of Tribunals and statutory framework thereof, this Court reiterated its earlier decisions in **L. Chandra Kumar** (supra) and **Madras Bar Association (2014)** (supra). Since appellate tribunals, manned by non-judicial members, were adjudging complex questions of law, the composition of Tribunals was put under review by this Court and a reference to the Law Commission of India was made in this regard. Pursuant to this, the Law Commission of India, in its **272nd Report titled 'Assessment of Statutory Frameworks of Tribunals in India'** gave a detailed analysis of statutory framework with respect to Tribunalisation in India.

19) That while disposing of **Rojer Mathew Vs. South Indian Bank Ltd. & Ors.** and other allied matters [reported as (2020)6SCC1] on 13.11.2019 a Constitution Bench of 5 Hon'ble Judges of this Hon'ble Court was pleased to recommend constitution of an independent statutory body called the "National

Central Government in exercise of powers under Section 24 of the Act.

- 23) That here it is significant to point out that status of the Chairman and members of the Commission are that of a High Court Judge. They receive the salary of a Judge of the High Court. However, the rate of disposal of cases, it is most respectfully and humbly submitted, is abysmal. Though the statistics of disposal of cases is not available in public domain, however, as per estimation, on an average 10 to 15 cases annually are disposed of on merits.
- 24) That on 04.12.2015 Dr. Baljeet Singh Mann was appointed as a Member of the Commission. His term is expiring on 03.12.2020. Thereafter, on 07.12.2015 Dr. Naheed Abidi, a Shia Muslim, was appointed as a Member of the Commission. Her term is expiring on 06.12.2020.
- 25) That on 15.06.2018 as third Member of the Commission, Dr. Jaspal Singh was appointed. He will continue as a Member till 14.06.2023. Thereafter, on 01.10.2018 Hon'ble Mr. Justice Narendra Kumar Jain

[Retd.] was appointed as Chairman of the Commission. He will remain in office till 30.09.2023.

- 26) That it is submitted that these appointments were done by the Central Government without issuing any public advertisement, thus the appointments are done without any effort to get the best of the people as members of the Commission, which omission makes these appointment arbitrary. The arbitrariness in appointments of members is also manifest from the fact that out of 3 members, two members are from Sikh community, whereas, the Christian community, which is a flag bearer in the field of Education, has no representation in the Commission and the commission is also not represented by any member from Sunni Muslim community.
- 27) That it is also respectfully submitted that in the course of its functioning the Commission deals with intricate questions of law and fact, which baffles the mind of even judges. Hence, the Commission should be manned by such persons whose competence is based on years of experience, modicum of legal

training, knowledge and expertise in that particular branch of Constitutional law. However, at present none of the members of the Commission has any legal or judicial background. This clearly shows that before appointment of Members the Central Government has not considered the necessary skills that are required while acting as member of the Commission.

- 28) That it is significant to point out that the Judicial members act as a bulwark against apprehensions of bias and ensures compliance with basic principles of natural justice such as fair hearing and reasoned orders. The judicial members also ensures impartiality, fairness and reasonableness in consideration. The members of adjudicatory Commissions/Tribunals in fact discharge the Constitutional functions of dispensing justice to public.
- 29) That since the National Commission for Minority Educational Institutions constituted under the aforesaid Act of Parliament is a Commission of National importance, is clothed with all the features of

a Civil Court, enjoys all the trappings of a Civil Court, and is definitely not a department of the Government. Further, as its order are given finality with an exception to a challenge before this Hon'ble Court or before High Courts only under Article 226 or 227 of the Constitution, hence, it is expedient in the interest of independence of judiciary that the appointments of Chairman and Members of the Commission are made by the Respondent based on the recommendations of a Committee constituted by the Hon'ble Chief Justice of India

- 30) That it is reiterated that as term of two members of the National Commission for Minority Educational Institutions is coming to an end on 03.12.2020 and 06.12.2020, hence, it is imperative to take a decision in that regard in a swift manner. Due to the paucity of time, the petitioners have not been able to send a representation to the Respondent prior to filing the present petition.

- 31) That the petitioners have not filed any other petition before this Hon'ble Court or before any High Court for the same and similar relief.
- 32) That the petitioners do not have any other similarly efficacious remedy.
- 33) That the petitioners prefer the present petition on the following amongst other:

-:GROUNDS:-

- a) Because, Tribunalisation of justice was done not because the courts were incapable of handling the matters but mainly because there were huge delays in settling matters. Now even for complex commercial matters, specialised commercial courts have been set up. However, at the same time, one cannot deny that in the fast-expanding technological world, there is a need to have expert adjudicators. Therefore, there is a need to have specialised tribunals. These tribunals being substitutes for courts must also meet the expectations of our founding fathers and be totally independent and fearless.

- b) Because, a large number of tribunals, especially those cast with the duty of discharging adjudicatory functions have been constituted with a view to replace the courts and in many cases the jurisdiction earlier exercised by the High Courts has been vested in such tribunals. It is, therefore, imperative that these tribunals must be manned by persons of impeccable integrity, high intellect and having vast experience in the field in which they will exercise jurisdiction.
- c) Because, this Hon'ble Court has observed many a times that if there has to be separation of powers then the tribunals must have functional autonomy to run themselves as they best feel like.
- d) Because, the Tribunals, especially those which have been enjoined upon the duty to discharge adjudicatory functions, must have functional autonomy. This autonomy cannot be achieved unless the appointments of those men who man the Tribunal is done in an impartial and transparent manner through a mechanism which frees the Tribunal from Government's control.

- e) Because, Chairman and the Members of the Tribunals are enjoined upon to discharge a constitutional function of delivering justice to the people.
- f) Because, the stature of the people manning an institution lends credibility and colour to the institution itself. There is a perceptible signalling effect in having retired Supreme Court justices as presiding officers of a particular Tribunal of National importance. The same instils an inherent fairness, dignity and exalted status in the Tribunal. Permitting such institutions to be also occupied by persons who have not manned an equivalent position or those with lesser judicial experience, does not bode well for the Tribunal besides discouraging competent people from offering their services.
- g) Because, the National Commission of Minority Educational Institutions, constituted under the National Commission for Minority Education Institutions Act, 2004 is a quasi-judicial Tribunal in view of the tests laid down by this Hon'ble Court in the matter of **Jaswant Sugar Mills Ltd., Meerut vs.**

Lakshmichand [AIR 1963 SC 677]. Further in view of the functions the National Commission of Minority Educational Institutions discharges.

- h) Because, as the National Commission for Minority Educational Institutions constituted under the aforesaid Act of Parliament is a Commission of National importance, is clothed with all the features of a Civil Court, enjoys all the trappings of a Civil Court, and is definitely not a department of the Government. Further, finality is given to its orders with an exception to challenge the same before this Hon'ble Court or before High Court under Article 226 of 227 of the Constitution, hence, it is expedient in the interest of independence of judiciary that the appointments of Chairman and Members of the Commission are made by the Respondent based on the recommendations of a Committee constituted by the Hon'ble Chief Justice of India.
- i) Because, amongst the functions the National Commission for Minority Educational Institution discharges is to enquire the deprivation or violation of

rights of minorities to establish and administer educational institutions of their choice; to review the safeguard provided by or under the Constitution or any law for the time being in force, for the protection of educational rights of the minorities; to hear appeals. In view of the aforesaid, in discharge of its essential adjudicatory functions the National Commission has to deal with the proceedings/complaints/appeals filed against the actions/omissions of the Central Government and Ministry of Human Resource Development (Department of Secondary & Higher Education). Hence, it would be in the interest of the independence of the Judiciary that the appointments of Chairman and Members of the Commission are made by the Respondent based on the recommendations of a Committee to be constituted by the Hon'ble Chief Justice of India

- j) Because, the National Commission for Minority Educational Institutions is not amongst the 19 Tribunals dealt with under the 'Tribunal, Appellate

Tribunal and other Authorities [Qualification, Experience and other Conditions of Service of Members], Rules 2020'.

k) Because, the term of two of the members of the National Commission for Minority Educational Institutions is going to end in the first week of December, 2020.

PRAYER

IN THE PREMISE IT IS MOST RESPECTFULLY SUBMITTED THAT THIS HON'BLE COURT MAY GRACIOUSLY BE PLEASED TO:

a) issue a Writ of Mandamus or any other Writ, Order or Direction in the similar nature thereby commanding the Respondent to appoint the members of the National Commission for Minority Educational Institutions in place of the outgoing members and all the future appointments/nominations to fill future vacancies in National Commission for Minority Educational Institutions, on recommendations of the Committee constituted by the Hon'ble the Chief

Justice of India till the constitution of the National
Tribunal Commission;

b) pass any such and further orders as deemed fit in the
interest of justice.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER,
AS IS DUTY BOUND, SHALL EVER PRAY.

DRAWN ON: 24.11.2020 DRAWN AND FILED BY 
FILED ON: 30.11.2020

WAJEEH SHAFIQ
ADVOCATE FOR THE PETITIONERS