



## **CHALLENGES FACED BY CATHOLIC EDUCATIONAL INSTITUTIONS IN INDIA**

### **MEETING OF REGIONAL EDUCATION SECRETARIES AND NATIONAL EDUCATION COORDINATORS**

**ORGANISED BY**  
**OFFICE FOR EDUCATION AND CULTURE – NEW DELHI**  
**CATHOLIC BISHOPS CONFERENCE OF INDIA**  
**22 JUNE 2021 (11.00 am to 12.30 pm)**

## **REPORT**

### **▼ Agenda**

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1. Prayer by Fr. Biju Thottankara, Regional Education Secretary of Madhya Pradesh
2. Welcome- Archbishop Most Rev Thomas D'Souza, Chairperson – CBCI OEC
3. Introduction – Fr. Maria Charles SDB, National Secretary – CBCI OEC
4. Appointment of Teachers in Minority Institutions:
  - a. Gujarat Government Order by Fr. Teles Fernandes, Secretary, GEBCI GUJARAT
  - b. Allahabad Court Verdict by Fr. Sahayadas, Education Secretary, Meerut
  - c. Move to take over Aided Schools in Telangana by Fr. V.K. Swamy, Regional Education Secretary of Andhra Pradesh and Telangana
5. Challenges and Legal Implications for Catholic Minority Institutions –  
*by Advocate Jose Abraham*
6. Questions and Clarifications
7. A Model Format for obtaining Data about COVID 19 Care and Relief Services by Catholic Educational Institutions in India by Fr. John Ravi, National Education Coordinator for Society of Jesus, India
8. Feedback by Member Bishops
9. Sharing by the Regional Secretaries/National Heads
10. Concluding words by Archbishop Most Rev Thomas D'Souza, Chairperson – CBCI OEC.
11. Vote of Thanks by Fr. Charles Leon, Regional Education Secretary of Kerala

The Meeting began with a prayer led by Rev. Fr. Biju Thottankara, Regional Secretary of Madhya Pradesh in which he thanked the Lord for the blessings received and prayed for all the Educators who had fallen for the Corona virus and prayed for God's continual grace on every one of us carrying out the ministry of Education.

Most Rev. Thomas D'Souza, the Chairperson of CBCI OEC and the Archbishop of Kolkata welcomed everyone for the meeting and gave his introductory words. He started with why this meeting was held and explained that as the fruit of the last meeting which was held on the 13<sup>th</sup> of May 2021 in which we had taken the theme of "Spirituality of Catholic Educators during COVID 19" and there were some Secretaries who had raised concerns over some of the States bringing in Laws or changes in the Education (Amendment) Act which go against the rights of the minority institutions. Hence this meeting was called for to address this issue. The Archbishop also once again emphasized that we need to come together to learn from each other and also to network with each other. The meeting can enable us to plan together for carrying out Education Ministry in the best possible manner in the country.

Fr. Maria Charles SDB, National Secretary for CBCI OEC welcomed the Chairperson Most Rev. Thomas D'Souza, Most Rev. Andrews Thazhath, Member Bishop of CBCI OEC and the Archbishop of Trichur and Most Rev. John Moolachira, Member Bishop of CBCI OEC and the Archbishop of Guwahati, the National Coordinators of Education from various Congregations and the Regional Secretaries of Education of the Catholic Church in India. He also welcomed the Resource person for the meeting Mr. Jose Abraham, Advocate from the Supreme Court. He then explained the dynamics of the meeting and the purpose of this meeting: To be aware of the various cases pending before the court in Gujarat and in Allahabad and also the controversial guidelines given by the State of Andhra Pradesh; to seek clarification from Mr. Jose Abraham, Supreme Court Advocate on various legal issues connected with minority institutions and to share about the format for collecting data on various COVID care and relief services carried out by the Catholic Educational Institutions.

The National Secretary then invited Rev. Fr. Teles Fernandes, Secretary for Gujarat Education Board of Catholic Institutions to share about the Order of the Gujarat Government and the action taken by the Church in Gujarat.

Fr. Teles Fernandes shared the following points:

**Writ filed against Gujarat Secondary & Higher Secondary (Amendment) Act, 2021 by Gujarat Education Board of Catholic Institutions and other Minority Institutions**

The Gujarat Secondary & Higher Secondary Education (Amendment) Act, 2021 has been 'Notified' by the Government of Gujarat and has come into force from 1st June, 2021.

The implications for the Minority Education (Grant-in-Aid) Institutions are as follows:

1. We can no longer appoint Staff (Principal, Teaching & Administrative) in our schools on our own.
2. The Government through its Central Recruitment Committee will select & appoint staff in our schools as per their 'Merit List'.
3. TAT (Teacher's Aptitude Test) which was Exempted for the minorities earlier will now be applicable.

With this, the last nail on the coffin is truly nailed and our Minority Right under Article 30(1) "...to establish and administer educational institutions of one's choice..." has gone for a toss.

The 'Gujarat Education Board of Catholic Institutions' which has 181 registered Catholic schools from all 4 Dioceses of Gujarat has already drafted a Petition through our lawyers to challenge this 'Amended Act' which is Ultra Vires to the Constitutional Provisions; in the Hon'ble High Court of Gujarat.

Some of the other Minority institutions run by Jews, Muslims, Jains, other Christian denominations and the Linguistic Groups have joined us too, in our legal challenge.

Gujarat has been a Laboratory for the present dispensation. So if they succeed in Gujarat, they will try and implement it for the whole of India.

On June 21, 2021 our petitions against the 'Gujarat Secondary & Higher Secondary (Amendment) Act, 2021 were listed before the Division Bench headed by Hon'ble CJI of Hon'ble High Court of Gujarat.

Our lawyers were represented by Advs. Paritosh, Ashwariya and Senior Counsel Mihir Thakore who briefed the court about the clauses that impinged upon our minority rights namely deletion of Sections 17(26), 34(2)(1) and 35.

The court was seized of the matter and was made aware that basically our minorities rights have summarily been taken away by the said Amendment except for Section 36 viz Termination of the Employee. This was one big positive of today's hearing.

The shocker came when our Counsel pressed for an Amendment to our main petition pointing out the letter dated 4-6-2021 from the Commissionerate of Schools, wherein, the Government could also fill up the vacancies in our schools through its Centralized Process given the Act being come into force.

After a studied discussion between the two judges, they came up with the suggestion that the State could appoint staff in a minority educational institution with a rider saying that if and when the case is decided in favour of the minorities, these appointments would be declared 'Null and void'!

This could definitely have hurt us as we would have been saddled with these employees for the next 3- 4 years till the case got decided in our favour.



The court asked our counsel to report back on its proposal after the lunch break at 2.30 p.m. We briefed our Counsel not to latch on to the bait thrown by the Court as it would be an 'Advantage' to the State to get a foothold into our institutions. But instead, we asked them to issue a Notice to the Government in view of our petition.

The Court then issued a Notice to the Government and gave them 3 weeks' time to reply to our petition and thereafter one-week time for us to file a Rejoinder to their Reply.

Adv. Romy Chacko of the Supreme Court who was following our matter virtually said, "You acted sensibly!"

One more positive thing is that we are leading the matter by filing first. 29 petitions were listed today. Others will follow.

We now have another day to fight our battle. Thanks for your sustained prayers. God be praised!

The National Secretary thanked Fr. Teles Fernandes, Secretary for GEBCI for his concise report and also for all the initiatives taken to protect the rights of the minority institutions. He then invited Rev. Fr. Sahayadas, Education Secretary Meerut Diocese to share his views about the writ filed before the honourable Allahabad High Court.

Fr. Sahayadas shared the following points:

### **Report on Catholic Diocese of Meerut and along with other Minority Institutions filing Writ Petitions before the Honourable High Court of Allahabad**

There were four GOs by the Government of Uttar Pradesh making amendments in the section 17 of the Uttar Pradesh Intermediate Act 1921.

GOs are listed under:

- a. 20-03-2018
- b. 06-11-2018
- c. 18-04-2019
- d. 12-08-2019

This procedure under regulation 17 (A) in respect of Minority institutions has undergone amendments by the above said 4 GOs. Against which The Catholic Diocese of Meerut along with other minority institutions filed a number of Writs in the Allahabad High Court. The following is the argument and Judgement over 32 Writs

In the section 16FF of the Intermediate Act 1921 special status is given to institutions run by minorities:

16FF. Minority savings as to minority institutions. - (1) Notwithstanding anything in sub-section (4) of Section 16-E, and Section 16-F, the Selection Committee for the appointment of a Head of Institution or a teacher of an institution established and administered by a minority referred to in clause (1) of Article 30 of the Constitution shall consist of five members (including its Chairman) nominated by the Committee of Management.

According to the counsel for petitioners these directions and restrictions caused by impugned GOs by introducing firstly private Recruitment Agency: secondly introducing screening test / written test of 90 marks and thirdly by reducing the weight of interview which earlier gave wider subjective authority of assessment to the selection committee of Minority Institutions but now has been marginalised, only to the extent of 10 per cent, and has affected the right of establishment and administration of Minority Institutions, therefore amendment of Regulation 17 to this extent is ultra-virus of Article 30 of the Constitution of India. It was argued by the counsel of the petitioners that the amendment made in Regulation 17-D to this extent is bad, therefore, all the consequential amendments and provisions inserted are also bad and illegal.

The Court after having heard the argument rejected the Writ petitions. The summary of the Judgement is "The judgement really focused upon the regulation of recruitment process for qualitative education and the State Government appointed Tata Consultancy Services a private recruitment agency to look into the process under regulation 10 and 17 of Intermediate Act as per section 30 of the Act.

Here only an element of open test in the form of written test has been introduced, which will determine the merit of the candidates. Further scope of subjective element of selection, when the selection was made only on the basis of interview, has been curtailed to a large extent. This is for bringing in transparency, impartiality, fairness and non-arbitrariness in selection and it is in the interest of public at large, student's community and national interest. In selection and appointment no Government Authority has any direct role except that it has to forward papers from one to another.

Even for recruitment i.e holding of screening / written test, no Government Machinery has been given any power of interference but a private recruitment agency has to be employed. Its role is limited as it is only a written examination conducting body and has to prepare merit list on the basis of marks secured in written test and the same to forward through educational authorities to the Management for holding selection in accordance with the statute. It is not in dispute that all the educational institutions before this court are 100 percent Government Aided Minority institutions and therefore in view of afore said law laid down by the Supreme Court, it cannot be said that statutory provision in question, in any manner, affects their right to administer minority institution and it can not be said to be violative of Article 30 of the Constitution, We, therefore, find no merit in these writ petitions. And dismissed accordingly.

The National Secretary thanked Fr. Sahayadas for his well-prepared intervention and then invited Fr. V. Kulandai Swamy, the Regional Education Secretary of Andhra Pradesh and Telangana to share his views on the situation in the State of Andhra Pradesh.

## **GEBCIA brief Report on the latest developments in Aided institutions of Andhra Pradesh**

### **Background:**

The private aided schools are notified by the Government of Andhra Pradesh asking them to give an explanation for the following areas of deficiency and non-performance, in spite of offering these private-aided schools facilities on par with the Government schools (like the midday meal, uniforms, books, Ammavodi scheme).

The questions raised were:

1. Why there is not enough strength in the schools? The ratio of TPR is much below than the standard stipulated by the Government, that is 1:40.
2. There is no proper infrastructure conducive for pupils and teachers to conduct schools.
3. In spite of the facilities provided by the Government why is the enrolment still low?
4. The Government gave an assessment of the past three years' data available with them.

\*They asked for an explanation within 15 days.

Minority Institutions gave their explanation in the following manner:

1. Due to the Memo by the Govt on 21 October 2004 banning all the appointments, transfers and deputations, there was no sufficient staff, hence our schools could not attract more children. The reality is that many schools have ended up with a single teacher.
2. In its G.O., dated 18 June 2013 the Govt had issued orders for Rationalization in the Schools but in practice, the Government did not implement it and never allowed the private aided schools to implement it either in spite of several requests made by the Correspondence.
3. The private-aided schools are not given permission to convert their schools into English Medium Schools. Since there is more demand for English Medium Education even in the villages, many children opted to move to Government English Medium Schools for free education.
4. Most of our primary schools are located in Dalit area. Our concentration in our District was to educate the children of the low-income group. The parents of these children do migrate for seasonal work. The children also go along with them and when the work is over, they return to the village and again begin to attend school. There is a discontinuity of schooling in the case of some children.

However, there is a variation from diocese to diocese:

1. Willing to surrender the schools (meaning staff and the children) to the Government for an alternative arrangement. They are suggesting concentrating on the development of the existing good schools (that are not affected by strength).
2. The Diocese of Guntur is in the advantageous position to fill the vacant posts since they have a court order to fill the vacant posts.



Note: The Govt has agreed to fill up the vacant positions in principle in the Diocese of Guntur based on the following conditions:

- a) TPR should be followed strictly.
- b) Infrastructure should be adequate as per the Govt norms.
- c) Wherever, TPR is inadequate, transfer those teachers to the rest of the schools within the same management.
- d) Still if the vacancy positions are found in any institution, apply to Director of School Education to fill up the vacancy and permission will be granted. This is the direction given by the Govt of AP to the implementation of the High Court Order.

### **My Observation:**

- a) Many dioceses the DGMs are not active (due to transfer/ no data is collected regarding vacant positions)
- b) Nobody is daring to bell the cat, going to the Court since they have to spend huge money for the legal process.
- c) It is better that the Minority institutions maintain quality with an affordable fee, by converting local medium schools into English. It is a big challenge. We can test this approach in a limited way.

The National Secretary thanked Fr. V. Kulandai Swamy for the comprehensive report and then asked Mr. Jose Abraham, a Supreme Court Advocate, who was always in close collaboration with the CBCI Office for Education and Culture to make his intervention.

### **Intervention of Mr. Jose Abraham, Supreme Court Advocate**

Mr. Jose Abraham started with the various cases pending before the Hight Courts and the Supreme Court regarding the collection of fees in our institutions. He said that this issue of tuition fee was settled by the court but there are a few cases pending about the annual fee and the Maintenance fee etc.

He also said there is no need for unnecessary fear over the National Education Policy 2020 and he emphasized that it was only a policy and it has not been approved by the Parliament. One cannot challenge the NEP 2020 as it is not a legislation. He recalled that the Right to Education which was an Act posed a lot of challenges for the minority institutions but ultimately the Supreme Court upheld the rights of the minority!

He spoke about Kesavananda Bharati Case in which a bench of 13 judges was constituted to hear the matter. In a seven-six majority, the bench held that Parliament's power to amend the Constitution was not explicitly limited but was limited to not altering or modifying the basic features or structure of the Constitution.

**Article 30** of the Indian **Constitution** states the right of minorities to establish and administer educational institutions. It says: "All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice." This is fundamental and it is part of the basic structure of the Constitutions and thus it cannot be changed. Even if

the Constitutions were to be amended by the Parliament, this basic fundamental right cannot be taken away!

He spoke about the National Commission for Minority Educational Institutions (NCMEI) which was established, to begin with, through the promulgation of an Ordinance. The Department of Secondary and Higher Education, Ministry of HRD, Government of India, notified the National Commission for Minority Educational Institutions Ordinance 2004 (No. 6 of 2004) on 11th November 2004. Mobile App for Complaint Management System named NCMCMS is available on Play Store. NCMCMS enable the submission of grievances by citizens from anywhere and to track their Grievances.

Initially the commission was issuing 1500 certificates a year but in 2021 only 10 certificates were issued. The authorities can delay the process in granting the minority status certificate.

Speaking about the present Government ordinances in Gujarat and in Uttar Pradesh about the appointment of teachers, he says it is not the first time this is happening and he quoted about the Kerala Education Bill 1957. The minority communities are given a substantial importance in India. The Constitution specifically provides them certain fundamental rights under Articles 29 and 30. There were incidents in the past whereby the minorities felt that their rights have been infringed. The Kerala Education Bill that was introduced in 1957 was presupposed to contain some provisions contrary to that of the rights of minorities. To clear the doubts raised in relation to the bill, the President under Article 143 of the Constitution seeks the opinion of the Supreme Court. The Court thought of all the questions placed before it and gave its opinion consequently. The Supreme Court upheld the fundamental rights given to the minority.

He also quoted the 1974 case of Ahmedabad St. Xavier's College Society Vs State of Gujarat where once again the honourable Supreme Court in its landmark verdict of April 26, 1974, upheld the minority to establish and administer educational institutions.

Mr. Jose Abraham also quoted that the Supreme Court has upheld Bengal law on hiring teachers for madrasas on 20th January 2020. The reason given by the Supreme court was that if merit was not the sole and governing criteria for the selection of teachers in minority institutions, they may lag behind non-minority institutions rather than keep in step with them.

He recalled that the Five Judges Bench of the Supreme Court which had reversed the RTE and upheld the rights of the minority. He affirmed that in all the cases, there are many precedence in the Supreme Court, the rights of the minority institutions have been upheld.

His presentation was followed by questions and clarifications sought by the participants.

Some of the clarifications given by Mr. Jose Abraham were:

- The minorities both Religious/ Linguistic have the right to establish and administer educational institutions



- Since there are no subsequent legislations for the right of the minority as mentioned in Const. art 30, there are many interpretations of the same in different courts. This is also the same reason why we have to go to the honourable courts every time.
- The verdict of both SC/HC are sacred to us. Sometimes the philosophy and ideology of the Judges are also different from each other.
- About the NEP 2020, as long as they are generic, we have to leave it as it is. But if there are legislations passed on that and if it is against the rights of the minorities, then we can challenge it in the honourable court.
- Sometimes the Lawyers who take up the case against minority rights have to be given the precedent judgments pronounced by the Courts
- We need to ascertain the merit of the teachers and the qualification of the teacher in the court if the standard of the school is questioned.
- Though the NEP 2020 speaks about the overarching committee which will overtake the previously held committees, yet we have to be careful that no outsiders can be part of the Governing Body of the minority institutions. The CBSE has allowed different committees to be formulated but these are not Governing Bodies.
- In today's political context, we are not sure if the Judges are acting out of fear or if they are fair in their verdicts. These concerns are there but the Supreme Court cannot ignore the precedents and we strongly believe that this country is governed by the rule of law and the Judiciary acts according to rule of law.
- Sometime an outsider can enter into the Governing Body of a minority institution. This can be challenged in the court and that person can be removed from the Governing Body.
- When the High Court gives order for the teachers to be appointed in a minority school and if we have challenged it in the Supreme Court, we are worried if we have to appoint teachers as per HC or can we wait for the SC to deliver its order. If the Division Bench of the HC has given order, then the teachers have to be appointed as per the Government Order but sometime the Judges can also give time for us to challenge it. There is no stipulated time frame.
- It is good for our schools also to have proper screening tests in the appointment of teachers and also offer programmes for qualifying them continually.
- As the Supreme Court has said, there can be regulations and guidelines by the State Government to raise the standard of aided schools and the State Government has the right to ask for clarification. But we can approach the court only if there are violations of our rights.
- In some States, the School Education Department transfers our teachers from our Catholic aided schools and they do interfere with our rights and they are planning to go to the High Court. But we have to see which provisions are going against right to establishment and the right to administer and in what way it is interfering with our rights

One of the members opined that as minority institutions, our administrative problems have increased. Whenever there are certain issues coming up, we need to approach the Government and block it at the level of policy making. We need to approach legal people to see how we can

avoid getting into legal battle with the Government. We need to solve our problems with intervention rather than going to the court.

We need to strengthen our people who are involved in education ministry to be clear about our problems and we need to wake up and be alert to situations. We need to educate our authorities not to have fear but act in an assertive way.

The Regional Secretary from the State of Kerala, Fr. Charles Leon said that following the Disability Act 1996, he said, the Supreme Court, in its judgment dated 18<sup>th</sup> September 2002, upheld the judgment of the Calcutta High Court for extending 3% reservation in admissions in educational institution for persons with disabilities. He said that the Church in Kerala was in favour of implementing it in our Catholic Educational Institutions from the year 2020 and not retrospectively. They have approached the Supreme Court to see if they can implement it from the year 2020. Mr. Jose Abraham replied that the Church is proactive but we need to remember that no reservation to be given in our minority institutions.

The Archbishop thanked Mr. Jose Abraham for his sharing and for clarifying various issues on minority rights and he emphasized with the Regional Secretaries and National Coordinators that we need to know the provisions of our Constitutions and this knowledge is our strength. He also thanked the National Secretary for organizing such webinars and meetings and thanked the members for actively taking part in the meeting.

### **Format for collecting data on COVID Relief and Care Services**

Fr. John Ravi, National Education Secretary for the Jesuits shared with the members a format for gathering data on various types of services carried out by our educational institutions during COVID 19 Second wave. Please find attached with this Report, the format for gathering data in your regional/National level and after filling in the data please send it to our office at [cbcieducation@gmail.com](mailto:cbcieducation@gmail.com)

Then the Member Bishop of our CBCI OEC Most Rev. John Moolachira, Archbishop of Guwahati expressed his gratitude for the immense information shared and he also thanked the organizers and the participants.

The National Secretary led the group into prayer and Archbishop John Moolachira said the blessing and gave his benediction!

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Report compiled by:

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