

**Proceedings of sitting of Shri Maurice Kujur, Hon'ble Vice
Chairperson with Secretary, Dept. of Higher Education on 19.04.2011**

A list of officers present in the sitting is at Annexure.

ISSUE

Position of reservation to Scheduled Tribes as a result of declaration of a Central University, Jamia Millia Islamia a Minority Institution by National Commission for Minority Educational Institutions vide their decision dated 22.02.2011.

BACKGROUND

2. National Commission for Scheduled tribes is a body constituted in 2004 under Article 338A of the Constitution to monitor all matters relating to the safeguards provided for the Scheduled Tribes, and to participate and advise on the planning process of socio-economic development of the Scheduled Tribes. Section (9) of Article 338A of the Constitution also provides that "The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes".

3. A press news appeared in the "Indian Express" dated 23.02.2011 titled 'Green Light for Minority Status to Jamia Millia' mentioning that National Commission for Minority Educational Institutions (NCMEI) has ruled on a petition filed by the Jamia Teachers Association that Jamia Millia Islamia, a Central University was a minority institution founded by Muslims for the benefit of muslims. According to the press report, Jamia Millia Islamia will be the first Central University to be granted minority status. With grant of the minority status, it will no longer have to give reservation to SC and ST students and for recruitment/appointment also.

4. It was contended by the petitioner that Jamia was founded in October, 1920 by Sh.Maulana Mohd. Ali Jauhar and Haqim Ajmal Khan as they wanted Muslims to keep education in their own hands, free from Governmental interference. In 1939, some teachers of Jamia constituted a society and got it registered as Jamia Millia Islamia Society. In 1962, the UGC accorded it the status of a deemed university and it was later given the status of a Central University until the enactment of Jamia Millia Islamia Act, 1988. As per the NCMEI (Amendment) Act, 2010, universities were also included in the definition of "Minority Educational Institution". It appears NCMEI has interpreted the same to extend it to Central Universities also. According to Section 4 of the Central Educational Institutions (Reservation in Admissions) Act, 2006 reservation is not applicable in respect of a Minority Educational Institution defined in the Act. Thus, with the grant of minority status to the JMI, by the NCMEI, the reservation in admissions as well as in recruitment/appointment will henceforth not be applicable to this Central University.

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5. Ministry of HRD was requested vide letter dated 25.02.2011 to forward their comments on the implications of the decision of the NCMEI, which dilute the constitutional provision with regard to reservation of STs in admissions and appointments. No comments have been received from the Ministry of HRD in the matter even after a reminder dated 22.03.2011.

6. In view of the above, Shri Maurice Kujur, Hon'ble Vice Chairperson, NCST decided to hold a meeting with the Secretary, Ministry of Human Resource Development on 19.04.2011 at 1130 hrs in the Commission.

DISCUSSION

7. The Commission enquired about the current reservation status to STs in Jamia Milia Islamia as a result of its declaration as a Minority Institution. The Officials of the Ministry of HRD explained that as per the Article 15(5) and 31 of the Constitution and Central Educational Institutions (Reservation in Admission) Act, 2006, the reservation for SCs/STs is not applicable in Minority Institutions. It was further informed that the provisions of Central Educational Institutions (Reservation in Admission) Act, 2006 were reviewed by the Constitutional Bench of Hon'ble Supreme Court in 2008 in Ashok Kr Thakur & Ors. case and upheld the contents. The HRD officials also mentioned that a PIL has been filed in the Hon'ble High Court of Delhi, challenging the decision of the NCMEI of declaring JMI as the Minority Institution and perhaps Ministry has also been made party to it, but they have not yet received any notice from the Hon'ble court.

8. Replying to a query from the Commission regarding reservation status in the current academic year, officials of the Ministry of HRD explained that JMI has passed an Ordinance providing 50% reservation to Muslims which includes 10% reservation to (Muslim) STs/OBCs.

Earlier Recommendation of the Commission on the Subject

9. A number of Minority Educational Institutions have come into existence in various parts of the country. It is difficult for the ST/SC students to get admission in these institutions as the policy of reservation for SCs/STs is not applicable to these institutions as per the provisions of the Central Educational Institutions (Reservation in Admission) Act, 2006. The difficulty is more pronounced in the case of ST students as most of them belong to remote areas and cannot afford to get quality coaching for securing admission to these institutes by competing with the students belonging to more forward communities. There is therefore urgent need for review of the provisions of Central Educational Institutions (Reservation in Admission) Act, 2006. **The Commission has, therefore, earlier recommended that the Ministry of HRD and the Ministry of Minority Affairs should consider suitable amendment in the Central Educational Institutions (Reservation in Admission) Act, 2006 to ensure that reservation for STs is**

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made applicable in admissions to Govt. run educational institutions which have been granted minority status.

RECOMMENDATIONS

10. The Commission holds the view that Constitutional safeguards for Scheduled Tribes should not be diluted through incidental interpretation of laws. Article 15(5) of the Constitution enables the State to make special provision relating to admission of Scheduled tribes to educational institutions, including private educational institutions other than minority educational institutions referred to in clause (1) of Article 30.

11. In view of the discussion, the Commission recommended that Ministry should ensure continued reservation to STs in admissions (as well as employment) in all the educational institutions supported by grants from public funds. If necessary, the Ministry of HRD may take steps to amend the Central Educational Institutions (Reservation in admission) Act, 2006 to bring it squarely in line with Constitutional safeguards for Scheduled Tribes.

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ANNEXURE

The following were present in the sitting on 19.04.2011:

NCST

1. Shri Maurice Kujur, Hon'ble Vice Chairperson.....In Chair
2. Shri Vinod Aggarwal, Director
3. Shri K. C. Behera, PS to VC

Ministry of Human Resource Development

1. Smt. Vibha Puri Das, Secretary, Department of Higher Education
2. Shri Anant Kumar Singh, JS, Higher Education