

CASE NO.:
Appeal (civil) 4730 of 1999

PETITIONER:
Bal Patil & Anr.

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 08/08/2005

BENCH:
Chief Justice of India, D. M. Dharmadhikari & P. K. Balasubramanian

JUDGMENT:
J U D G M E N T
Dharmadhikari J.

The appellant is an organization representing a section of Jain community. It approached by writ petition the High Court of Bombay seeking issuance of a mandamus/direction to the Central Government to notify 'Jains' as a 'minority' community under section 2(c) of the National Commission for Minorities Act, 1992 (shortly referred to as the Act).

Section 2(c) of the Act defines minority thus :-
"Minority, for the purposes of this Act, means a community notified as such by the Central Government;"

The High Court of Bombay by the impugned order simply disposed off the petition on the ground that the claim of various communities to the status of 'minority' for purpose of seeking constitutional protections is one of the main issues pending before a bench of eleven judges of this court in the case of TMA Pai Foundation [2002 (8) SCC 481].

This appeal stood adjourned on several dates awaiting the judgment in the TMA Pai Foundation case. In the counter affidavit filed the Central Government stated that they would abide by the judgment of the eleven judges' Bench in TMA Pai Foundation case and thereafter consider the claim of Jains to the status of minority community under the Act.

During the pendency of this appeal, the eleven judges' Bench decision in TMA Pai was delivered and the decision is reported in 2002 (8) SCC 481.

Amongst several questions which were formulated for answer by the eleven judges Bench the most important question included was as under:-

"What is the meaning and content of the expression "minority" in Article 30 of the Constitution of India?"

The answer in the opinion of majority in the Bench of eleven judges speaking through Kirpal, CJ (as he then was) is the following :-

Ans: Linguistic and religious minorities are covered by the expression "minority" under Article 30 of the Constitution. Since reorganization

of the States in India has been on linguistic lines, therefore, for the purpose of determining the minority, the unit will be the State and not the whole of India. Thus, religious and linguistic minorities, who have been put on a par in Article 30, have to be considered statewise.

[Emphasis added]

After the decision of the eleven judges' Bench case (supra), additional affidavit by the Central Government through its Joint Secretary, Ministry of Social Justice & Empowerment has been filed. The stand now taken by the Central Government in this appeal before this court is that in accordance with the law laid down by the majority opinion in the TMA Pai case (supra), it is "for the State Government to decide as to whether the Jain community should be treated as a minority community in their respective states after taking into account their circumstances/conditions in that state". It is also informed that the State Governments of Chhatisgarh, Maharashtra, Madhya Pradesh, Uttar Pradesh and Uttaranchal have already notified Jains as 'minority' in accordance with the provisions of the respective State Minority Commissions Act.

Learned Counsel U.U. Lalit, in the light of law declared in the decision of the eleven judges' Bench (supra) and the consequent stand taken by the Central Government, strenuously urged that for the purpose of notifying a community as 'minority' at the national level, the Central Government, which is empowered to consider the claim of a particular community for being notified as such under section 2(c), cannot shirk its statutory responsibility. It is argued that the legal position explained by the majority view in the eleven judges Bench case that State Governments can determine the minority status of a community in states formed on linguistic basis under States Reorganisation Act, 1956 does not render the power of Central Government under section 2(c) of the Act redundant.

Learned counsel representing the claim of the members of the Jain community before this court further submitted that in accordance with section 2(c) of the Act, Muslims, Christians, Sikhs, Buddhists, Zoroastrians (Parsees) have already been notified as minority communities for the purpose of the Act and the Jains having substantiated their claim of being a religious minority, the refusal to notify them as such under the Act is unjustified and abdication of statutory powers of the Central Government.

We have heard Learned Additional Solicitor General Shri B. Dutta, appearing for the Central Government who merely reiterated the stand taken in the affidavit filed on behalf of the government that in view of the judgment in TMA Pai case (supra), the Central Government henceforth will have no role to play. It is for the respective State Governments to take decision on the claim of Jains depending upon their social condition in the respective states.

The expression 'minority' has been used in Articles 29 and 30 of the Constitution but it has nowhere been defined. The Preamble of the Constitution proclaims to guarantee every citizen 'liberty of thought, expression, belief, faith & worship'. Group of Articles 25 to 30 guarantee protection of religious, cultural and educational rights to both majority and minority communities. It appears that keeping in view the constitutional guarantees for protection of cultural, educational and religious rights of all citizens, it was not felt necessary to define 'minority'. Minority as understood from constitutional scheme signifies an identifiable group of people or community who were seen as deserving protection from likely deprivation of their religious, cultural and educational rights by other communities who happen to be in majority and likely to gain political power in a democratic form of

Government based on election.

In the background of constitutional scheme, the provisions of the Act therefore instead of giving definition of 'minority' only provide for notifying certain communities as 'minorities' who might require special treatment and protection of their religious, cultural and educational rights. The definition of 'minority' given under the Act in section 2(c) is in fact not a definition as such but only a provision enabling the Central Government to identify a community as a 'minority' which in the considered opinion of the Central Government deserves to be notified for the purpose of protecting and monitoring its progress and development through the Commission.

The Statement of Objects and Reasons for the enactment reads thus:-

"The Minorities Commission was set up on January, 1978 for providing an institutional arrangement for evaluating the safeguards provided in the Constitution for protection of the minorities and to make recommendations for ensuring implementation of the safeguards and the laws.

The Minorities Commission with statutory status would infuse confidence among the minorities about the working and the effectiveness of the Commission. It would also carry more weight with the State Governments/ Union Territory Administrations and the Ministries/ Departments and the other Organizations of the Central Government.

It has, therefore, been decided to give statutory status to the Minorities Commission by the proposed legislation.

The National Commission for Minorities will consist of a Chairperson and six members.

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, besides looking into the 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 and 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 Government."

The Commission set up under the Act has several functions to perform, which are provided, in section 9. The functions entrusted are for ensuring progress and development of minorities and protecting their religious, cultural and educational rights. There is no specific function conferred under section 9 on the Commission to identify any community as a 'minority' and recommend to the Central Government that it be so notified under section 2(c) of the Act.

On considering the general functions of the Commission enumerated under section 9 which are only illustrative and not exhaustive, the Commission cannot be said to have transgressed its authority in entertaining representation, demands and counter-demands of members of Jain community for the status of 'minority'. Keeping in view the provisions of the Act, the recommendation made by the Commission in favour of the Jains is in the nature of advice and can have no binding effect. The power under section 2(c) of the Act vests in the Central Government which alone, on its own assessment, has to accept or reject the claim of status of minority by a community.

After the verdict in the eleven judges' Bench in TMA Pai Foundation case (supra), the legal position stands clarified that henceforth the unit for determining status of both linguistic and religious minorities would be 'state'. This position is doubly clear not only from the answer given in conclusion to question no. 1 quoted above but also the observations contained in paras 76 and 81 of the majority judgment quoted hereinafter.

"76. If, therefore, the State has to be regarded as the unit for determining "linguistic minority" vis-à-vis Article 30, then with "religious minority" being on the same footing, it is the State in relation to which the majority or minority status will have to be determined.

81. As a result of the insertion of Entry 25 into List III, Parliament can now legislate in relation to education, which was only a State subject previously. The jurisdiction of Parliament is to make laws for the whole or a part of India. It is well recognized that geographical classification is not violative of Article 14. It would, therefore, be possible that, with respect to a particular State or group of States, Parliament may legislate in relation to education. However, Article 30 gives the right to a linguistic or religious minority of a State to establish and administer educational institutions of their choice. The minority for the purpose of Article 30 cannot have different meanings depending upon who is legislating. Language being the basis for the establishment of different States for the purposes of Article 30, a "linguistic minority" will have to be determined in relation to the State in which the educational institution is sought to be established. The position with regard to the religious minority is similar, since both religious and linguistic minorities have been put on a par in Article 30."

[Emphasis added]

Henceforth, before the Central Government takes decision on claims of Jains as a 'minority' under section 2(c) of the Act, the identification has to be done on a state basis. The power of Central Government has to be exercised not merely on the advice and recommendation of the Commission but on consideration of the social, cultural and religious conditions of the Jain community in each state. Statistical data produced to show that a community is numerically a minority cannot be the sole criterion. If it is found that a majority of the members of the community belong to the affluent class of industrialists, businessmen, professionals and propertied class, it may not be necessary to notify them under the Act as such and extend any special treatment or protection to them as minority. The provisions contained in the group of Articles 25 to 30 is a protective umbrella against the possible deprivations of fundamental right of religious freedoms of religious and linguistic minorities.

The recommendation in favour of Jains by the National Minority Commission was made before the Eleven Judges' Bench of this Court in TMA Pai case (supra) had clarified the concept of 'minority' for the purpose of extending constitutional protection.

It is not for this court to issue any direction or mandate on the basis of the claim of some members of the Jain community, which is opposed to by another section of the same community.

Before parting with this case, this Court cannot resist from making some observations which are considered necessary in order to remind the National and State Commissions for Minorities, the scope

and nature of their functions under the provisions of the Act and the role they have to play in constitutional perspective.

The history of the struggle for independence of India bears ample testimony of the fact that the concept of 'minorities' and the demands for special care and protection of their religious and cultural rights arose after bitter experience of religious conflicts which intermittently arose in about 150 years of British Rule. The demand of partition gained momentum at the time the Britishers decided to leave by handing over self-rule to Indians. The Britishers always treated Hindus and Muslims as two different groups of citizens requiring different treatment. To those groups were added Anglo-Indians and Christians as a result of large scale inter-marriages and conversions of several sections of communities in India to Christianity. Prior to passing of the Independence Act of India to hand over self-rule to Indians, Britishers in the course of gradually conceding some democratic rights to Indians, contemplated formation of separate constituencies or reservations of certain seats in legislature in proportion to the population of Hindus and Muslims. That attempt was strongly resisted by both prominent Hindu and Muslim national leaders who had jointly and actively participated in the struggle for independence of India.

The attempt of the Britishers to form separate electorates and make reservations of seats on the basis of population of Hindus and Muslims, however, ultimately led to revival of demand for reservations of constituencies and seats in the first elected government to be formed in free India. Resistance to such demands by Hindu and some Muslim leaders ultimately led to partition of India and formation of separate Muslim State presently known as Pakistan.

Many other revelations concerning competing claims for reservation of seats on religious basis can be gathered from the personal diary of prominent national leader late Abdul Kalam Azad. The diary was made public, in accordance with his last wish only after 25 years of independence. The publication of Azad's diary made it necessary for constitutional expert H. M. Seervai to re-write his chapter under caption 'Partition of India \026 Legend and Reality' in his book on 'Constitutional Law of India'. Many apprehensions and fears were expressed and disturbed the minds of the Muslims. They thought in democracy to be set up in India, the Hindus being in majority would always dominate and retain political power on the basis of their voting strength. There were also apprehensions expressed by many prominent Muslim leaders that there might be interference with and discouragement to their cultural, religious and educational rights. Abdul Kalam Azad acted as mediator in negotiations between the national leaders of the times namely late Nehru and Patel on one side and late Jinnah and Liaqat Ali on the other. Nehru and Patel insisted that in the new Constitution, there would be one united India belonging to people of various religious faiths and cultures with all having full freedom of their social, cultural, religious and other constitutional rights. They advocated one single citizenship to every Indian regardless of his language or religion. The opposing group of Muslim leaders, in the interest of members of their community, insisted on providing to them participation in democratic processes proportionate to their ratio of population and thus counter-balance the likely domination of Hindu majority. They also insisted that separate electoral constituencies based on their population be formed and seats be reserved for them in different parts of India. Late Abdul Kalam Azad tried his utmost to find a midway and thus break the stalemate between the two opposing groups but Nehru and Patel remained resolute and rejected the proposal of Jinnah and Liaqat Ali. The tragic result was that provinces with the highest Muslim population in the erstwhile States of Sindh, Punjab and Baluchistan had to be ceded to form a separate theocratic nation - Pakistan. See the following

paragraph 1.314 at pg. 153 of 'Constitutional Law of India' by H.M. Seervai, Fourth Edition, Vol.I :-

"1.314. Azad passionately believed in Hindu-Muslim unity, but he found that from the mid-twenties Gandhi had lost interest in Hindu-Muslim unity and took no steps to secure it. Further, Azad had played a leading part in providing a framework for the Constitution of a free and united India on which the Cabinet Mission Plan was largely based, a Plan which offered India her last chance to remain united. However, Gandhi, Nehru and Patel destroyed the Plan, and accepted partition instead. Azad did his utmost to prevent the partition of India, but he failed to persuade Nehru and Gandhi not to accept partition."

It is against this background of partition that at the time of giving final shape to the Constitution of India, it was felt necessary to allay the apprehensions and fears in the minds of Muslims and other religious communities by providing to them special guarantee and protection of their religious, cultural and educational rights. Such protection was found necessary to maintain unity and integrity of free India because even after partition of India, communities like Muslims and Christians in greater numbers living in different parts of India opted to continue to live in India as children of its soil.

It is with the above aim in view that the framers of the Constitution engrafted group of Articles 25 to 30 in the Constitution of India. The minorities initially recognized were based on religion and on national level e.g. Muslims, Christians, Anglo-Indian and Parsis. Muslims constituted the largest religious minority because Mughal period of rule in India was longest followed by British rule during which many Indians had adopted Muslim and Christian religions.

Parsis constituted a numerically smaller minority. They had migrated from their native State Iran and settled on the shores of Gujarat adopting the Gujarati language, customs and rituals thus assimilating themselves into the Indian population.

The so-called minority communities like Sikhs and Jains were not treated as national minorities at the time of framing the Constitution. Sikhs and Jains, in fact, have throughout been treated as part of the wider Hindu community which has different sects, sub-sects, faiths, modes of worship and religious philosophies. In various codified customary laws like Hindu Marriage Act, Hindu Succession Act, Hindu Adoption and Maintenance Act and other laws of pre and post-Constitution period, definition of 'Hindu' included all sects, sub-sects of Hindu religions including Sikhs and Jains.

The word 'Hindu' conveys the image of diverse groups of communities living in India. If you search for a person by name Hindu, he is unidentifiable. He can be identified only on the basis of his caste as upper caste Brahmin, Kshatriya or Vaish or of lower caste described in ancient India as Shudras. Those who fall in the Hindu class of 'Shudras' are now included in the Constitution in the category of Scheduled Castes with special privileges and treatment for their upliftment. This was found necessary to bring them at par with upper castes in Hindu society. The aboriginals, who have no caste were considered as distinct from four castes or Varnas of Hindu society. They have been treated favourably in the Constitution as Scheduled Tribes. For them also there are provisions for special treatment and grant of special privileges to bring them on level with the other castes from the main advanced streams of Indian society.

There is a very serious debate and difference of opinion between religious philosophers and historians as to whether Jains are of Hindu stock and whether their religion is more ancient than the vedic religion of Hindus. Spiritual philosophy of Hindus and Jains in many respect is

different but the quintessence of the spiritual thought of both the religions seems to be the same. The influence of Hindu vedic religion is quite apparent in the custom, style of living, belief and faith of Jains. Jains do not worship images or idols of Gods but worship their Tirathankars meaning their ideal personalities who have attained human perfection and excellence by a process of self-improvement. The literal meaning of the word 'Jain' is one who has attained 'victory'. It signifies a person who has attained victory over himself by the process of self-purification. 'Jain' is a religious devout who is continuously striving to gain control over his desires, senses and organs to ultimately become master of his own self.

This philosophy is to some extent similar to the vedic philosophy explained by Lord Krishna in 'Bhagwat Geeta', where Lord Krishna describes qualities of a perfect human as 'Stithpragya'. Geeta has used the example of Tortoise to describe a balanced human-being as one who has gained full control over his organs like a Tortoise does which whenever needed, opens its limbs of body and when not needed, closes them.

Thus, 'Hinduism' can be called a general religion and common faith of India whereas 'Jainism' is a special religion formed on the basis of quintessence of Hindu religion. Jainism places greater emphasis on non-violence ('Ahimsa') and compassion ('Karuna'). Their only difference from Hindus is that Jains do not believe in any creator like God but worship only the perfect human-being whom they called Tirathankar. Lord Mahavir was one in the generation of Thirthankars. The Tirathankars are embodiments of perfect human-beings who have achieved human excellence at mental and physical levels. In philosophical sense, Jainism is a reformist movement amongst Hindus like Brahamsamajis, Aryasamajis and Lingayats. The three main principles of Jainism are Ahimsa, Anekantvad and Aparigrah. [See :\026 1) Encyclopedia of Religion and Ethics Vol. 7 pg. 465; 2) History of Jains by A. K. Roy pgs. 5 to 23; and Vinoba Sahitya Vol. 7 pg. 271 to 284].

It is not necessary to go into greater details of philosophical and ideological beliefs and conduct of Jains. They have been dealt with in necessary detail in the recommendations of the National Commission for Minorities.

We have traced the history of India and its struggle for independence to show how the concept of minority developed prior to and at the time of framing of Constitution and later in the course of its working. History tells us that there were certain religious communities in India who were required to be given full assurance of protection of their religious and cultural rights. India is a country of people with the largest number of religions and languages living together and forming a Nation. Such diversity of religions, culture and way of life is not to be found in any part of the world. John Stuart Mill described India as "a world placed at closed quarters". India is a world in miniature. The group of Articles 25 to 30 of the Constitution, as the historical background of partition of India shows, was only to give a guarantee of security to the identified minorities and thus to maintain integrity of the country. It was not in contemplation of the framers of the Constitution to add to the list of religious minorities. The Constitution through all its organs is committed to protect religious, cultural and educational rights of all. Articles 25 to 30 guarantee cultural and religious freedoms to both majority and minority groups. Ideal of a democratic society, which has adopted right of equality as its fundamental creed, should be elimination of majority and minority and so called forward and backward classes. Constitution has accepted one common citizenship for every Indian regardless of his religion, language, culture or faith. The only qualification for citizenship is a person's birth in India. We have to develop such enlightened citizenship where each citizen of whatever religion or language is more

concerned about his duties and responsibilities to protect rights of the other group than asserting his own rights. The constitutional goal is to develop citizenship in which everyone enjoys full fundamental freedoms of religion, faith and worship and no one is apprehensive of encroachment of his rights by others in minority or majority.

The constitutional ideal, which can be gathered from the group of articles in the Constitution under Chapters of Fundamental Rights and Fundamental Duties, is to create social conditions where there remains no necessity to shield or protect rights of minority or majority.

The above mentioned constitutional goal has to be kept in view by the Minorities Commissions set up at the Central or State levels. Commissions set up for minorities have to direct their activities to maintain integrity and unity of India by gradually eliminating the minority and majority classes. If, only on the basis of a different religious thought or less numerical strength or lack of health, wealth, education, power or social rights, a claim of a section of Indian society to the status of 'minority' is considered and conceded, there would be no end to such claims in a society as multi-religious and multi-linguistic as India is. A claim by one group of citizens would lead to a similar claim by another group of citizens and conflict and strife would ensue. As such, the Hindu society being based on caste, is itself divided into various minority groups. Each caste claims to be separate from the other. In a caste-ridden Indian society, no section or distinct group of people can claim to be in majority. All are minorities amongst Hindus. Many of them claim such status because of their small number and expect protection from the State on the ground that they are backward. If each minority group feels afraid of the other group, an atmosphere of mutual fear and distrust would be created posing serious threat to the integrity of our Nation. That would sow seeds of multi-nationalism in India. It is, therefore, necessary that Minority Commission should act in a manner so as to prevent generating feelings of multinationalism in various sections of people of Bharat.

The Commission instead of encouraging claims from different communities for being added to a list of notified minorities under the Act, should suggest ways and means to help create social conditions where the list of notified minorities is gradually reduced and done away with altogether.

These concluding observations were required after the eleven judges Bench in TMA Pai Foundation Case (supra) held that claims of minorities on both linguistic and religious basis would be each State as a unit. The country has already been reorganized in the year 1956 under the States Reorganization Act on the basis of language. Differential treatments to linguistic minorities based on language within the state is understandable but if the same concept for minorities on the basis of religion is encouraged, the whole country, which is already under class and social conflicts due to various divisive forces, will further face division on the basis of religious diversities. Such claims to minority status based on religion would increase in the fond hope of various sections of people getting special protections, privileges and treatment as part of constitutional guarantee. Encouragement to such fissiparous tendencies would be a serious jolt to the secular structure of constitutional democracy. We should guard against making our country akin to a theocratic state based on multi-nationalism. Our concept of secularism, to put it in a nut shell, is that 'state' will have no religion. The states will treat all religions and religious groups equally and with equal respect without in any manner interfering with their individual rights of religion, faith and worship.

Let the Commission gear its activities to keep them in right direction with the above constitutional perspective, principles and ideals in its view.

With these observations and concluding remarks, this appeal stands disposed of as we do not find that any case is made out for grant of any relief to the appellants in exercise of writ jurisdiction of the High Court and hence, the appellate jurisdiction of this Court.

JUDIS