

DISTRICT: EAST KHASI HILLS

**IN THE HIGH COURT OF MEGHALAYA
AT SHILLONG
(CIVIL EXTRA - ORDINARY JURISDICTION)**

P.I.L No. OF 2020

Category: Public Interest Litigation

Code: 10194

To,

The Hon'ble Mr. Justice Biswanath Somadder, Chief Justice of the High Court of Meghalaya and his Lordship's Companion Justices of the Said Hon'ble High Court.

IN THE MATTER OF:-

A public Interest Litigation for the interest of the general public as a whole.

-AND-

IN THE MATTER OF:-

An application under Article 226 of the Constitution of India for issuance of a Writ in the nature of Mandamus and certiorari /or in the nature of any other appropriate Writ, Order or Direction.

-AND-

IN THE MATTER OF:-

Violation and infringement of fundamental Rights and other legal rights of the public as a whole guaranteed under part III of the Constitution of India, specifically mentioned in Article 14, 15, 21, 25, 26, 29 and 30.

-AND-

IN THE MATTER OF :

Illegal and ultra-vires the notification dated 23.10.1993, issued by the Central government under Sec 2(c) of the NCM Act, 1992, which is very much arbitrary, discriminatory and also violative of the fundamental rights guaranteed under Article 14, 15, 21, 25, 26, 29 & 30 of the Constitution of India.

-AND-

IN THE MATTER OF :

Unbridled power exercised by the Central Government in publishing the notification dated 23.10.1993, with utter disregard to the federal form of government and reality on the ground.

-AND-

IN THE MATTER OF :-

Illegal deprivation of non-dominant people in the state of Meghalaya with the benefits of various scheme relating to religious and linguistic minority due to non notification of Hindu as well as other indigenous religions of the state of Meghalaya i.e Niam Khasi, Niam Tynrai, Songsarek etc. as minority in terms of Section 2 (c) of the National Commission for Minorities Act 1992.

-AND-

IN THE MATTER OF :-

Failure on the part of the Central Government to notify the Hindu and other indigenous religions of the state of Meghalaya such as Niam Khasi, Niam Tynrai, Songsarek etc. as minority in the state.

-AND-

IN THE MATTER OF :-

Failure on the part of the Central Government to identify and notify minority on state wise basis in spirit of Articles 29-30 and TMA PAI JUDGMENT [(2002) 8 SCC 481)].

-AND-

IN THE MATTER OF :-

Failure on the part of the Central Government to appreciate the fact that Bharat is a Federal form of Government and people in Bharat irrespective of any religion resides in the units and governed through the unit state wise and in the circumstances when people in the units are always bound and governed through various state laws, policies including reservation etc

and benefitted by way of schemes implemented through the state, which are prepared keeping in mind the minority as declared through illegal notification dated 23.10.1993 by the Central Government under Sec 2(c) of NCM Act 1992, no scheme which has been prepared for minority can become a success and in the event if minority is not assessed state wise in terms of the population of every state, actual minority who are being governed unit wise will be deprived of the benefits of minority scheme and for state like Meghalaya, the benefits of scheme for minority will be enjoyed in continuity by Christian majority forever and the actual minority such as Hindu as well as other indigenous religions of the state like Niam Khasi, Niam Tynrai, Songsarek etc. will remain unprotected and gradually become extinct in the state and this will continue to be happening at the cost of our hard earned tax payers money for a total waste in the name of protection of minority, which will only benefit the majority.

-AND-

IN THE MATTER OF :-

Smti. Delina Khongdup

.....PETITIONER

-VERSUS-

1. Union of India
Through the Secretary,
Ministry of Home Affairs
North Block, New Delhi-110001
2. The Ministry of Law & Justice, Government of India,
represented by its Secretary, Shastri Bhawan, New
Delhi-110001

3. The Ministry of Minority Affairs,
Government of India, represented by its Secretary,
Paryavaran Bhawan, CGO Complex, New Delhi-
110003.

.....**RESPONDENTS**

The humble petition of the above named petitioner;

MOST RESPECTFULLY SHEWETH:

1. That the petitioner states that she is instituting this instant petition as a Public Interest Litigation and the petitioner has no personal interest in the litigation and that the petition is not guided by self gain or for gain of any other person/ institution/ body and that there is no motive other than of public interest in filing this petition.
2. That the source of averments made in this petition is personal knowledge and information collected from various sources, including newspapers and websites. Petitioner is filing this PIL for identification of minority in spirit of Articles 29-30 and TMA PAI JUDGMENT [(2002) 8 SCC 481) and further inquiries/investigation was made to determine the veracity of the same.
3. That the Present petition is for benefit of poor, disabled, economically weaker section and socially-economically down trodden people. As they are incapable of accessing this Hon'ble Court themselves, petitioner is filing this PIL to secure fundamental rights guaranteed under Article 21, 29 and 30 of the Constitution.
4. That the Union Government, minority affairs, and Law Commission of India, is likely to be affected by the orders sought in this petition, which has been impleaded as Respondents. Petitioner submits that to its knowledge, no other persons, bodies, institutions are likely to be affected by the order sought in this petition.
5. That the Petitioner's full name is Smti. Delina Khongdup, resident at :
Meghalaya. Petitioner is an Advocate, LL.M and a social-political activist, contributing her best to the development of socially and

economically downtrodden people. Petitioner is able to bear the cost if any, imposed by this Hon'ble Court.

6. That the Petitioner has not filed any representation before any authority as the issue involved herein requires interpretation of the provision of the constitution of India and therefore the petitioner is before this Hon'ble Court for such interpretation of the word "minority" as specified in Article 29 & 30 of the Constitution, keeping in view the federal form of government in our country and for direction to respondents to identify and notify minority under the NCM Act 1992 on state wise basis in spirit of the eleven judges Bench decision in **TMA Pai Case [2002 (8) SCC 481]**, and the petitioner is also before this Hon'ble Court as per liberty given vide order dated 20.02.2020, by the Hon'ble Supreme Court in a public interest litigation bearing Writ Petition (Civil) No.316/2020 to approach alternative Court for issues involved in this petition. That there is no other remedy except approaching this Hon'ble Court under Article 226.
7. That the Petitioner has not filed any other public interest Litigation or Letter petitions before this Hon'ble Court or in any other Court.
8. The facts constituting cause of action accrued on 23.10.1993 when the Central Government had notified minority in terms of Sec 2 (c) of the National Commission for Minorities Act, 1992, without declaring the Hindus and other indigenous religious communities such as Niam Khasi, Niam Tynrai, Songsarek etc in the State of Meghalaya as Minority and on every date thereafter as long as these religious communities are not declared minority in the state and also on 20.02.2020 when the Hon'ble Supreme Court in a public interest litigation bearing Writ Petition (Civil) No.316/2020 has given liberty to approach the alternative Court for issues involved in this petition.

*(Copy of the notification dated 23.10.1993 issued by the Central Government in terms of Sec 2 (c) of the National Commission for Minorities Act, 1992 is enclosed herewith and marked as **Annexure-1** and order 20.02.2020 passed by the Apex Court in Writ Petition (Civil) No.316/2020 is enclosed as **Annexure-2**)*

9. The injury caused to the public because Section 2(c) of the NCM Act is arbitrary and contrary to Articles 14, 15, 21, 25, 26, 29 & 30 of the Constitution. The Notification dated 23.10.1993 facilitates violation of fundamental rights viz. right to health, right to education, right to shelter and right to livelihood etc. It is also against the equality, justice and secularism, the great golden goals of our Constitution.

10. The main issues are: **(i)** Whether Section 2(c) of The National Commission for Minority Act, 1992 confers unbridled power to the Executive **(ii)** Whether Notification dated 23.10.1993 declaring Muslims, Christians, Sikhs, Buddhists, Parsis, Jains as minority, is arbitrary, unreasonable and offends Articles 14, 15, 21, 25, 26, 29 and 30 and thereby liable to be declared invalid and ultra-vires. **(iii)** Whether the Executive has disregarded the principles set by the Hon'ble Supreme Court in TMA Pai Case, which held that it is the state in relation to which the majority or minority status will have to be determined. **(iv)** Whether there is a need to define "Minority" under Articles 29-30. **(v)** Whether due to non notifying of minority on a state wise basis, there has been a failure of the government scheme prepared for minority, **(vi)** Whether in a federal form of government minority can be notified at national level, in circumstances when it is a fact that people always resides in units i.e states or union territories and all welfare schemes framed for minority either by centre or the state is always implemented through the state. **(vii)** Whether due to non consideration of the minority on state wise basis, people actually belonging to minority either of religious or linguistic are always deprived of the benefits of the welfare schemes prepared by the government. **(viii)** Whether due to non consideration of the minority on state wise basis, people belonging to majority religion like Christians are getting the benefit of the minority scheme in the state of Meghalaya and as such leading to wastage of tax payers money which is further contributing to total failure of all minority scheme. **(ix)** Whether non notification of the Hindu and other indigenous religions of Meghalaya such as Niam Khasi, Niam Tynrai, Songsarek etc, as minority, will lead to extinct of these actual minority religions from the state of Meghalaya and similarly in other north eastern states. **(x)** Whether non notification of minority linguistic community in state wise basis, will also lead to extinct of these various smaller linguistic community from the state of Meghalaya. **(xi)** Whether this Court

is bound by the 11 judge bench decision of the TMA Pai Case in terms of Article 141 of the Constitution of India.

- 11.** That as per the census report 2011 Religion wise population of the State of Meghalaya is as under:-

RELIGION	PERCENTAGE
Hindu	11.53%
Muslim	4.40%
Christian	74.59%
Sikh	0.10%
Buddhist	0.33%
Jain	0.02%
Other Religions	8.71%
Not Stated	0.32%

- 12.** That the petitioner states that Hindus are merely 11.53% in the state of Meghalaya and other indigenous religions like Niam Khasi, Niam Tynrai and Songsarek, which has been enumerated in census report as other religions, consist of only 8.71%, whereas Christian which is at majority religion consist of 74.59% in the state. That the people belonging to Christian which is the majority religion in the state of Meghalaya are getting the benefit of the minority religion, on the other hand, people belonging to actual minority religion like Hindu, Niam Khasi, Niam Tynrai, Songsarek etc in the state have been deprived of the benefit of any minority scheme and thereby contributing to loss of tax payers money with utmost certainty for failure of minority scheme for reason that the benefits of such minority scheme has been landing in the hands of majority in the state and therefore requires interference by this Hon'ble Court for ensuring justice to the needy and poor who are at minority in the state.
- 13.** That Article 29(1) relates to protection of interest of minorities and it clearly states that ***'any section of the citizens residing in the territory of India or any part thereof having distinct language script or culture of its own shall have the right to conserve the same'*** and as such the word ***"any part thereof"*** herein means a State

or Union Territories and hence for the purpose of consideration of minorities, it has to be looked at the **part** i.e the state or union territories, wherein such citizens resides. In our country wherein federal form of Government exists, people cannot reside in the **territory of India** without residing in the parts i.e States or Union Territories. As it is not possible to remove or take away the concept of States/Union territories from our country India, we cannot apply to identify or notify minority at the national level, it has to be notified state wise. Notification of minority at the national level will be possible only when there will be no concept of states/union territories in a country, which is not a case in country like India, where people are always resident of the parts i.e the State/Union Territories. Further, most of the welfare scheme are implemented through the State/Union territories and people are bound by various state laws and reservation policy of states and in such circumstances if minority is not assessed state wise in terms of the population of every state, no scheme which has been made for the development of minority will become a success and for state like Meghalaya, the benefits of scheme for minority will be enjoyed in continuity by Christian majority forever and the actual minority such as Hindu as well as other indigenous religions of the state such as Niam Khasi, Niam Tynrai, Songsarek etc. will remain unprotected and gradually become extinct in the state and this will continue to be happening at the cost of our hard earned tax payers money for a total waste in the name of protection of minority, which will only benefit to the majority.

14. Although the word 'minorities' occurs in the marginal note of Article 29, it does not occur in the text. The original proposal of the Advisory Committee in the Constituent Assembly recommended thus: "(1) *Minorities in every unit shall be protected in respect of their language, script and culture and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.*" [B. Siva Rao, "Select Documents" (1957) Vol. 2, Page 281] But after the clause was considered by the Drafting Committee on 1st November 1947, it emerged with substitute of 'section of citizens'. [B. Siva Rao, Select Documents (1957) Vol. 3 pages 525-26, clause 23, Draft Constitution]. It was explained that the intention had always been to use 'minority' in a wide

sense, so as to include (for example) Maharastrians who settled in Bengal.[7 CAD 923]

15. In Article 30(1), the crucial words are: **(i)** minorities **(ii)** establish and administer **(iii)** educational institutions **(iv)** of their own choice. The word 'minority' has not been defined in the Constitution. The MotiLal Nehru Report (1928) showed a prominent desire to afford protection to minorities but did not define the expression. The Sapru Report (1945) also proposed, a Minority Commission but did not define minority. According to a definition offered in 1977 by Francesco Capotorti, Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, a minority is: *A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.*
16. That Article 27 of the International Covenant on Civil and Political Rights does not define the expression minority but states that *"In those States, in which ethnic, religious or linguistic minorities exists, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language"*. The word 'minority' is not defined in Constitution but it means 'a non-dominant' group. It is relative term, represent the smaller of two numbers, sections or group called 'majority'. In that sense, there may be political minority, religious minority, linguistic minority, etc.
17. Amongst the questions which were formulated for answer by the eleven judges Bench in **TMA Pai Case [2002 (8) SCC 481]**, the most important was: ***"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 Justice Kirpal, CJ (as he then was) is thus: ***"Linguistic and religious minorities are covered by the expression 'minority' under Article 30 of the Constitution. Since reorganization of the States***

has been on linguistic lines, therefore, for the purpose of determining the minority, the unit will be State and not whole India. Thus, religious and linguistic minorities, who have been put on a par in Article 30, have to be considered state wise". Further, it was held that "... a perusal of Articles 350A and 350B which were inserted by the Constitution (7th Amendment) Act 1956 indicates that the status of linguistic minorities has to be determined as state-wise linguistic minorities/groups. Thus the intention of the framers of the Constitution and subsequent amendments in the Constitution indicate that protection was conferred not only to religious minorities but also to linguistic minorities on basis of their number in a State (unit) where they intend to establish an institution of their choice. It was not contemplated that status of linguistic minority has to be judged on basis of population of the entire country. If the status of linguistic minorities has to be determined on basis of the population of the country, the benefit of Article 30 has to be extended to those who are in majority in their own States..."

18. Therefore, for the purpose of notifying a community as 'minority' at the national level, Union is empowered to consider claim of a particular community for being notified as such under section 2(c), and cannot shirk its statutory responsibility. The legal position explained by the majority view in the TMA Pai case that States can determine the minority status of a community, does not render the power of Union under section 2(c) of the Act.
19. That by using the power under section 2(c) of the Act, Central Government declared Muslims (14.2 % as per 2011 census), Christians(2.3 %), Sikhs(1.7 %), Buddhists (0.7 %), Jains (0.4 %) and Zoroastrians (0.2 %) as 'minority' community for the purpose of the Act, but did not declare the followers of Hinduism in the state of Meghalaya who are at (11.53%) and other indigenous religion of the state such as niam khasi, niam tynrai and songsarek, which has been enumerated in census report as other religions consisting of only 8.71% as a religious minority, which is unjustified and abdication of statutory powers of the Central Government.

- 20.** That the Hindus and other indigenous religions like niam khasi, niam tynrai and songsarek are actual religious minority in the state of Meghalaya similar to the fact that Hindus are minority in Laddakh, Mizoram, Lakshdweep, Kashmir, Nagaland, Meghalaya, Arunachal Pradesh, Punjab and Manipur. But, their minority rights are being siphoned off illegally and arbitrarily to the majority population because neither Centre nor respective State has notified them as a 'minority' under Section 2 (c) of the NCM Act. Thus, Hindus are being deprived of their basic rights, guaranteed under the Articles 30. That the Christians are majority in the state of Meghalaya similar to the fact that the Muslims are majority in Lakshdweep (96.58%) and Kashmir (96%) and there is significant population in Laddhakh (44%), Assam (34.20%), West Bengal (27.5%), Kerala (26.60%), Uttar Pradesh (19.30%) and Bihar (18%). But to utmost shock and surprise the Christian who are in majority with 74.59% in the state of Meghalaya, are getting and enjoying the 'minority' status, on the other hand the Hindus who are at 11.53% and the other indigenous religions like niam khasi, niam tynrai and songsarek, which has been enumerated in census report of 2011 as other religions, which consist of only 8.71% are not getting their legitimate share for reason of non-identification and non-notification of minorities at State level, thereby jeopardizing their basic rights guaranteed under Part III of the Constitution.
- 21.** Similarly, Christians are undoubtedly in majority in Mizoram (87.16%), Nagaland (88.10%) and Meghalaya (74.59%) and there is significant population in Arunachal Pradesh, Goa, Kerala, Manipur, Tamil Nadu and West Bengal but they are treated as minority. Likewise, Sikhs are majority in Punjab and there is significant population in Delhi, Chandigarh and Haryana. But, they are also treated as minority. Buddhists are majority in Laddakh.
- 22.** That the Union Government offered 20000 scholarships in field of technical education for minority students. In J&K, Muslims are 68.30% and government allotted 717 out of 753 scholarships to Muslim students but none to Hindu students citing Notification on Minority Communities [1993-SO No.816(E), F.No.1/11/93-MC(D)] dated 23.10.1993, which declares Muslim's as minority community, but not

the Hindus and other indigenous religions of Meghalaya like niam khasi, niam tynrai and songsarek etc who are real minority in State.

- 23.** That the Prime Minister's 15 Points Programme meant for religious and linguistic minorities is not being appropriately used, particularly in Arunachal Pradesh, Assam, Goa, Jammu & Kashmir, Kerala, Lakshadweep, Manipur, Meghalaya, Mizoram, Nagaland, Punjab, Tamil Nadu, Uttar Pradesh and West Bengal. That the legitimate share of Hindus and other indigenous religions of Meghalaya like niam khasi, niam tynrai and songsarek are being siphoned off arbitrarily to unqualified sections of the population, because of non-identification and non-notification of minorities at State level. Although, it is duty of the Government to identify and notify religious and linguistic minorities at State level so as to safeguard the rights of minorities guaranteed under Articles 25-30.
- 24.** Denial of minority rights to real minorities and arbitrary unreasonable disbursement of minority benefits to majority, infringes upon fundamental right to prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth [Article 15(1)]; impairs the right to equality of opportunity in matters related to public employment [Article 16(1)]; and freedom of conscience and right to freely profess, practice and propagate religion [Article 25(1)]. It also erodes the obligation of the State 'to endeavour to eliminate inequalities in status, facilities and opportunities' [Article 38 (2)]. Therefore, this Hon'ble Court may be pleased to declare the Notification of the Central Government on Minority Community dated 23.10.1993 to be invalid and ultra-vires the Constitution of India and further pray that direction may be given to the respondents to identify minority on state wise basis, whereby all people irrespective of any religion who belong to minority will get the benefit of the same.
- 25.** 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 and worship*'. 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. As understood from constitutional scheme, Minority 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.

- 26.** 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 section 2(c) is in fact not a definition but only a provision enabling the Central Government to identify a community as a 'minority' which in the considered opinion of the Government deserves to be notified for the purpose of protecting and monitoring its progress and development.
- 27.** After TMA Pai Case, 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, 78, 79 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-a-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.

78. In two cases pertaining to DAV College, this Court had to consider whether the Hindus were a religious minority in the State of Punjab. In DAV College v. State of Punjab [1971 (Supp) SCR 688], the question posed was as to what constituted a religious or linguistic minority, and how it was to be determined. After examining the opinion of this Court in the Kerala Education Bill, 1957 Case, the Court held that the Arya Samajis, who were

Hindus, were a religious minority in the State of Punjab, even though they may not have been so in relation to the entire country. In another case, DAV College v. State of Punjab [1971 (Supp) SCR 677], the observations in the first DAV College case were explained, and at page 681, it was stated that "what constitutes a linguistic or religious minority must be judged in relation to the State in as much as the impugned Act is a State Act and not in relation to the whole of India." The Supreme Court rejected the contention that since Hindus were a majority in India, they could not be a religious minority in the State of Punjab, as it took State as the unit to determine whether the Hindus were a minority community.

79. *There can, therefore, be little doubt that this Court has consistently held that, with regard to a State Law, the unit to determine a religious or linguistic minority can only be the State."*

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. 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."*

- 28.** The history of struggle for independence bears ample testimony of the fact that the concept of 'minorities' and demands for special care and protection of their religious and cultural rights arose after bitter experience of religious conflicts, which intermittently arose in 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 conversion of many communities to Christianity. Prior to passing of the Independence Act of India, Britishers in the course of gradually conceding some democratic rights to Indians, contemplated formation of separate constituencies in proportion to population of Hindus and Muslims. That attempt was strongly resisted by Hindu and Muslim national leaders, who had jointly and actively participated in the struggle for independence of India.

- 29.** That 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.
- 30.** 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 apprehensions and fears in the minds of Muslims and other communities by providing them special guarantee and protection of their religious, cultural, educational rights. Such protection was found necessary to maintain unity and integrity of India, because even after partition, communities like Muslims, 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.
- 31.** That Articles 25 to 30 of the Constitution, is 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 create a separate Commission or Ministry on the basis of religion. The Constitution 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. 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. Our Constitution has accepted one common citizenship for every Indian regardless of his religion, language, culture or faith.

- 32.** That thousands of freedom fighters lost their life for self-rule and achieve the goal of '*One Nation, One Constitution, One Anthem, One Flag, One Citizenship*'. Therefore, rather than establishing Minority Commission and Minority Affair Ministry, on the basis of religion, State must develop enlightened citizenship where each citizen of whatever religion is more concerned about his duties and responsibilities to protect rights of other group than asserting his own rights. Constitutional goal is to develop citizenship in which everyone enjoys 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 Fundamental Rights and Fundamental Duties, is to create social conditions, where there remains no necessity to shield or protect rights of minority or majority.
- 33.** The above mentioned constitutional goal has to be kept in view and State should direct their activities to maintain unity and national integration by eliminating the minority and majority classes. If, only on the basis of a different religious thought, less numerical strength or lack of health, education, wealth, power or social rights, a claim of a section of 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. It is, therefore, necessary that State should act in a manner so as to prevent generating feelings of multi nationalism in various sections of people. Instead of encouraging claims from different communities for being added to list of notified minorities under the Act, State should create social conditions where the minority and majority division is removed.

- 34.** That India has been reorganized in 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/social conflicts due to various divisive forces, will further face division on the basis of religious diversities.
- 35.** That the Minority status, purely based on religion would increase in the fond hope of various sections of people getting special protections, privileges, treatment as part of constitutional guarantee. Encouragement to such fissiparous tendencies would be a serious jolt to secular structure of constitutional democracy. Centre and State Governments should guard against making our country akin to a theocratic State based on multi nationalism.
- 36.** Our concept of secularism, to put it in a nut shell, is that 'State' will have no religion. Hence, State must treat all religions equally without in any manner interfering with their individual rights of religion, faith, worship. Centre and State Government should gear their activities to keep them in right direction with above constitutional perspective, principles and ideals in its view.

GROUND

- A.** Because in a federal form of government like Bharat, minority cannot be notified at the national level for reason that people in such form of government always resides in the units and governed through the units which is the State or Union Territories and all scheme of the government whether of minority or otherwise is

implemented through such units and in the circumstances when people in the units are always bound and governed through various state laws, policies including reservation etc and benefitted by way of schemes implemented through the state, which are prepared keeping in mind the minorities declared through illegal notification, no scheme which has been prepared for minority can become a success. In our country wherein federal form of Government exists, people cannot reside in the **territory of India** without residing in the parts i.e States or Union Territories and hence for the purpose of notification of minority, the whole population of the country cannot be taken into consideration, as it is not possible to remove or take away the concept of States/Union territories from our country India or remove governance in state wise basis, we cannot apply to identify or notify minority at the national level, it has to be notified state wise. Notification of minority at the national level will be possible only when there will be no concept of states/union territories in a country or state wise governance does not exist, which is not a case in country like India, where people are always resident of the parts i.e the State/Union Territories and governed in every ways by state laws and policies and therefore if minority is not declared in state wise basis, only the majority like Christian with 74.59% in the state of Meghalaya, will take away the benefit of minority scheme in terms of the notification dated 23.10.1993 and the actual minority in the state such as Hindus, Niam Khasi, Niam Tynrai and Songsarek etc will always be deprived of benefit of any such scheme and this will further make futile any scheme for minority at the cost of the tax payers money.

- B.** Because it is now well-settled principle that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being.

- C.** Because every discretionary power vested in the executive should be exercised in a just, reasonable and fair manner. The authority must act properly for the purpose for which the power is conferred. He must take a decision in accordance with the provisions of the act and the statutes and in absence of any provision for exercise of such discretion, must act for the purpose for which such discretion has been vested so that the goals of the act can be achieved and in the present case the goal of the NCM Act is to protect minority and not the majority and when the people are governed state wise, the minority must also be declared state wise or else the very purpose of the act fails.
- D.** Because Hindus are minority in Laddakh, Mizoram, Lakshdweep, Kashmir, Nagaland, Meghalaya, Arunachal Pradesh, Punjab and Manipur. But, they cannot establish educational institutions of their choice in spirit of Article 30(1).
- E.** Because Muslims are majority in Lakshdweep, Kashmir and Laddakh and there is significant population in Assam, West Bengal, Kerala, Uttarakhand, Delhi, Goa and Haryana, but, they are treated as minority under Articles 29-30.
- F.** Because Christians are majority in Mizoram, Nagaland, Meghalaya and there is significant population in Arunachal Pradesh, Goa, Andaman, Kerala, Sikkim and Puducherry; but they are treated as minority under Articles 29-30.
- G.** Because Sikhs are majority in Punjab and there is significant population in Chandigarh, Haryana and Delhi but they are treated as minority.
- H.** Because Buddhists are majority in Laddakh but they are treated as minority.

PRAYER

Keeping in view the above facts, it is respectfully prayed that this Hon'ble Court may be pleased to issue writ, order, direction or mandamus to respondents to:

- a)** define 'minority' and frame guidelines for their identification at State level, in spirit of the provision of Article 29 and 30 of the Constitution of India and the judgment of the Hon'ble Apex Court in TMA Pai Case [(2002) 8 SCC 481], in order to ensure that only those religious and linguistic groups, which are socially economically and politically non-dominant and numerically very inferior, enjoy rights and protections, guaranteed under Articles 29-30 of the Constitution of India;
- b)** declare invalid and ultra-vires by this court the Notification dated 23.10.1993 issued by the Central Government on Minority under Sec 2(c) of the National Commission for Minorities Act 1992.
- c)** declare the Hindus (11.53%) and other indigenous religions of Meghalaya, like Niam Khasi, Niam tynrai and Songsarek, which had been enumerated in census report of 2011 as other religions, consisting of only 8.71% to be as minority on state wise basis in terms of the NCM Act 1992 and in light of the decision of the constitutional bench of the Hon'ble Apex Court in the case of TMA Pai Case [(2002) 8 SCC 481].
- d)** pass such other order(s) and/or direction(s) as this Hon'ble Court may deem fit in the facts and circumstances of the case and allow the cost to petitioner.

Dated; Shillong

The ____ September, 2020

HUMBLE PETITIONER

AFFIDAVIT

I, Smti. Delina Khongdup, W/o- Shri. Mani Mawpat, aged about ____ years, R/o- Lyndem
solemnly
affirm and declare as follows:-

1. That I am the petitioner in this instant petition and as such I am fully conversant with the facts and circumstances of the case.
2. That I have filed the present petition as a Public Interest Litigation.
3. That I have gone through the High Court of Meghalaya (Public Interest Litigation) Rules, 2013 and do hereby affirm that the present Public Interest Litigation is in conformity thereof.
4. That I have no personal interest in the litigation and neither myself nor anybody in whom I am/petitioner is interested would in any manner benefit from the relief sought in the present litigation save as a member of the General Public. This petition is not guided by self gain or gain of any person, institution, body and there is no motive other than of public interest in filing this petition.
5. That I have done whatsoever inquiry/investigation which was in my power to do, to collect all data/materials/information which were available and which were relevant for this court to entertain the present petition.
6. That I further confirm that I have not concealed in the present petition any data/material/information which may have enabled this court to form an opinion whether to entertain this petition or not and/ or whether to grant any relief or not.
7. That the statements made in paragraphs _____ of the petition are true to my knowledge, belief and information and in paragraphs _____ are matter of record and the rest are my humble submissions before the Hon'ble Court.

And I sign this affidavit on this the _____ day of _____, 2020 at Shillong.

Identified by,

DEPONENT

Advocate, Shillong.

VERIFICATION

I, Smti. Delina Khongdup, _____, aged about____years,
Meghalaya, do hereby solemnly declare that the statements made in
paragraph _____ of this writ petition are true to the best of my
knowledge, belief and information and those made in paragraphs _____
are matter of record and the rest are my humble submission before this
Hon'ble Court.

And in proof whereof, I sign this verification on this the____day of
_____, 2020 at Shillong.

HUMBLE PETITIONER

Annexure-1

2 THE GAZETTE OF INDIA : EXTRAORDINARY [PART II—Sec. 3(ii)]

MINISTRY OF WELFARE

NOTIFICATION

New Delhi, the 22th October, 1993

S.O. 816(E).—In exercise of the powers conferred by clause (c) of Section 2 of the National Commission for Minorities Act, 1992 (19 of 1992), the Central Government hereby notifies the following communities as "the minority communities" for the purposes of the said Act, namely :—

1. Muslims.
2. Christians.
3. Sikhs.
4. Buddhists.
5. Zoroastrians (Parsis).

[F. No. 1/11/93-MC(D)]
P. K. MOHANTY, Jt. Secy.

Printed by the Manager, Govt. of India Press, Ring Road, Maya Puri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054, 1993

ITEM NO.31

COURT NO.4

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No. 316/2020

ASHWINI KUMAR UPADHYAY

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.
(FOR ADMISSION)

Respondent(s)

WITH

W.P.(C) No. 323/2020 (PIL-W)
(FOR ADMISSION)

Date : 20-02-2020 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For Petitioner(s) Mr. Vikas Singh, Sr. Adv.
Mr. Gopal Sankaranarayana, Sr. Adv.
Mr. Ashwini Kumar Upadhyay, Adv.
Mr. Ashwani Kumar Dubey, AOR
Mr. Pankaj Sharma, Adv.
Mr. Prashant Kumar Umrao, Adv.
Mr. Chandra Shekhar Mishra, Adv.
Mr. Kapish Seth, Adv.
Ms. Shikha Rai, Adv.
Ms. Sheetal Rajput, Adv.
Mr. Vishal Sinha, Adv.
Ms. Gayatri Verma, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E RThe writ petitions stand dismissed as withdrawn with
liberty to approach alternative Court.(NIDHI AHUJA)
AR-cum-PS(NISHA TRIPATHI)
BRANCH OFFICER