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MISBAH ALAM SHAIKH

v.

THE STATE OF MAHARASHTRA AND ANR.

FEBRUARY 10, 1997

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[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

*National Commission for Minorities Act, 1992.*

C *Ss. 3 and 9—Minority Commission—Set up by Government of Maharashtra—Abolished by successor State Government—Held, it cannot be said that the decision to abolish Minority Commission by State Government was not in accordance with law—There is no statutory compulsion on the part of State Government to constitute the "Minority Commission" in the State—It is the duty of the Central Government to constitute a National Commission and it shall be the duty and the responsibility of the National Commission to ensure compliance of the principles and programmes evaluated in s. 9 protecting the interest of minorities.*

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*Constitution of India, 1950 :*

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*Article 226—Held, State Government cannot be directed by a mandamus, to constitute a Minority Commission or to reconstitute the Commission which was abolished by it due to want of statutory compulsion.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 796 of 1997.

From the Judgment and Order dated 30.10.95 of the Bombay High Court in W.P. No 1349 of 1995.

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M.N. Shroff for the Appellant.

K.N. Bhat, Additional Solicitor General, S.K. Dholakia, Ms. Niranjana Singh, Ms. Sushma Suri, A.K. Srivastava, S.M. Jadhav and D.M. Nargolkar for the Respondents.

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The following Order of the Court was delivered :

Leave granted. We have heard the counsel on both sides.

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This appeal by special leave arises from the judgment of the Bombay High Court dated 30.10.95 made in W.P. No. 1349/95 dismissing the writ petition. The appellant has challenged the abolition of the Minority Commission set up by the State Government. When the matter had come up earlier, we had issued notice as to why the National Commission should not take up the issue of protecting the interest of the minorities in the State of Maharashtra as under :

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"to show cause why the National Commission for minorities should not undertake the responsibility under the statute for the protection and safeguarding the interest of the minorities in the State of Maharashtra."

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Pursuant thereto, the National Commission as well as the Central Government have filed their counter affidavits. The State of Maharashtra has independently filed its counter. Section 3 of the National Commission for Minorities Act, 1992, for short the Act, provides that the Central Government shall constitute a body to be known as "the National Commission" for Minorities to exercise the powers conferred on, and to perform the functions assigned to it under the Act. Section 9 of the Act in Chapter III envisages the functions of the Commission. The Commission shall perform all or any of the following functions, namely, (a) to evaluate the progress of the development of minorities under the Union and States; (b) to monitor the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State Legislatures; (c) make recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State Governments. Sub-section (2) postulates that the Central Government shall cause the recommendations referred to in clause (c) of sub-section (1) to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for non-acceptance, if any, of any of such recommendations. Thus, it could be seen that under the statute as rightly conceded by the learned counsel for the appellant, there is no statutory compulsion, on the part of the State Government, to

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- A constitute a Commission called "the Minority Commission" in the State. On the other hand, by operation of Section 3 read with Section 9, it is the duty of the Central Government to constitute a National Commission and it shall be the duty and the responsibility of the National Commission to ensure compliance of the principles and programmes evaluated in Section 9 of the
- B Act protecting the interest of the minorities for their development and working of the safeguards provided to them in the Constitution and the laws enacted by the Parliament as well as the State legislatures. The object, thereby, is to integrate them in the national main stream in the united and integrated Bharat providing facilities and opportunities to improve their
- C economic and social status and empowerment. The State Government cannot be directed, by a mandamus, to constitute a Commission or to reconstitute the Commission which was abolished by it, due to want of statutory compulsion.

D It is not in dispute that the State Commission for Minorities was constituted by the earlier Government of Maharashtra and it came to be abolished by the successor political party in power. It is contended by Shri M.N. Shroff, learned counsel for the appellant that the decision taken by the State Government is *mala fide*. We find no force in the contention.

- E It may be that perception of political parties differ from one, another. But when the Government found the necessity, after the political party was voted to power and the decision taken by the Cabinet, to abolish the minority Commission, it cannot be characterised a *mala fide* decision. May be the perception may not be correct in the view of another political party.
- F The decision may or may not be right, but it cannot be characterised as a *mala fide* decision.

Under those circumstances, we cannot hold that the decision to abolish the Minority Commission by the State Government, in the absence

G of any statutory compulsion, was not in accordance with law. It is now an admitted position that, as stated in the counter affidavit by the Central Government that they have undertaken to establish the branch of National Commission in Maharashtra at Mumbai to monitor the development of the minorities and the working of the safeguard as provided in the Constitution

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relation to the State of Maharashtra.

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Under those circumstances, the apprehension expressed by the appellant that the rights and the safeguards given to the minorities would not now be monitored is not correct. Under these circumstances, we do not find any compelling reason warranting interference. The appeal is accordingly disposed of. No costs.

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R.P.

Appeal disposed of.