

GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR MINORITY
EDUCATIONAL INSTITUTIONS (NCMEI)

APPEAL No. 05 of 2018

In the matter of :-

Guru Nanak Khalsa College, Railway Road, Karnal, Haryana.

.....Appellant

V/s

Director General, Higher Education Department, Government of Haryana.

..... Respondent

Appeal u/s 12A(1) and 12B (1) of the NCMEI Act 2004 against the order dated 9.4.2018

Present: Mr. Junais P., Advocate for the appellant.
Mr. Virender Prasad Juyal, Assistant District Attorney for the respondent.

ORDER

DATED: 21st January 2021

Justice Narendra Kumar Jain, Chairman, NCMEI

1. In this appeal filed on 24.4.2018 under Section 12A (1) and 12B (1) of the National Commission for Minority Educational Institutions Act, 2004 (in short NCMEI Act 2004), the appellant has challenged the order dated 9.4.2018 passed by the respondent whereby the competent authority/ Director General, Higher Education Department, Government of Haryana has disposed of/ rejected the application preferred

by the appellant for grant of minority status certificate (in short 'MSC') to the appellant institution.

2. The learned competent authority of the State of Haryana passed the impugned order dated 9.4.2018 which reads as follows:

“प्रेषक
महानिदेशक उच्चतर शिक्षा, हरियाणा
शिक्षा सदन, सेक्टर-5, पंचकुला

सेवा में,

प्राचार्य/ प्रधान,
गुरु नानक खालसा कॉलेज, करनाल.

यादी क्रमांक 13/08-2016 सी- II (3)
दिनांक पंचकुला 9.4.2018

“उपरोक्त विषय पर आपके पत्र क्रमांक GNKC/16/887 दिनांक
25.07.2016 के सन्दर्भ में!

विषयांकित मामले में सूचित किया जाता है कि आपके द्वारा विभाग को उपलब्ध करवाई गई सूचना अनुसार वर्तमान समय में आपके कॉलेज में माइनोंरिटी कम्युनिटी से सम्बंधित छात्रों की संख्या 20% संख्या है जो कि विभागीय गाइड लाइन क्रमांक 1/66-2003 C.II (3) Dated 08.04.2013/ 22.09.2016 के पैरा न. 9 में अंकित प्रावधान की शर्त पूर्ण नहीं करती.

अतः आपके कॉलेज में सिख माइनोंरिटी कम्युनिटी से सम्बंधित छात्रों की संख्या 50% के लगभग होने पर गाइड लाइन में अंकित प्रावधान अनुसार कॉलेज को माइनोंरिटी का दर्जा प्रदान करने बारे विभाग में आवेदन किया जाये. माइनोंरिटी का दर्जा प्रदान करने के सन्दर्भ में आपके द्वारा विभाग में जमा करवाए गए माइनोंरिटी कम्युनिटी से सम्बंधित 6 सदस्यों के प्रमाण पत्रों की प्रतिया मूल रूप में वापिस लौटाई जाती है.

अधीक्षक महाविद्यालय-॥
कृते महानिदेशक उच्चतर शिक्षा, हरियाणा,
पंचकुला”

3. Background facts in a nutshell are that appellant has applied to the respondent for grant of MSC on dated 25.7.2016 with the fact that Guru Nanak Khalsa College, Karnal is a registered Society and running B.A/ B.Com & B.Com (voc.), C.A. (aided), B.Sc./ BTM/ BCA/ M.Sc. Maths/ M.Sc. Software Geography/ M.A. Punjabi/ M.Com/ PGDCA (Self-financed) in the name of Guru Nanak Khalsa College, Karnal. This society belongs to Sikh community and the 2/3 members of the society are belonging to Sikh minority community. Appellant has also filed copy of academic programmes and students intake. The appellant institution run/ administered and manager by the registered Society which is established by the members of the Sikh minority community with an aim to impart education primarily for the benefit of the Sikh minority community students. In connection with the application submitted by the appellant respondent herein dismissed/ rejected the said application of appellant institution by way of an order dated 9.4.2018 (impugned order herein) with an observation that the appellant institution is having only 20% of students belonged to Sikh minority community and as per G.P. No. 1/66-2003 Coord (3) dated 8.4.2013/ 22.9.2016 the institution must have minimum 50% students belonged to minority community. In these circumstances, aggrieved by the said order of respondent, the appellant filed

the present appeal before this Commission against the impugned order dated 9.4.2018.

4. Notice of this appeal was served on the respondent. Respondent thereafter has filed reply on dated 3.7.2018 and stated that appellant institution is an aided college and affiliated to the Kurukshetra University since 1974. That State Government provides grant-in-aid to the appellant college to the extent of 95% of deficit only in respect of salary of the employees working against sanctioned posts. The application of the petitioner institution was examined as per Government Guidelines issued on dated 8.4.2013/ 22.9.2016. The college was asked to intimate to supply information regarding class-wise student strength of minority community as per Condition No. 9 of the said Guidelines. The principal of the College supplied information relating to last three year's student strength that in session 2015-16, 2016-17, 2017-18 was 12%, 12% and 21%, respectively. The condition No. 9 of state guidelines clearly states that the admission of students should be to a reasonable extent (say upto 50%). Therefore, the college was informed by the respondent vide impugned order dated 9.4.2018 that institution should apply for grant of minority status only if its students strength of minority community approaches to a reasonable extent (say upto 50%) and prayed to dismiss the appeal or pass any other order as Commission deems fit.
5. On dated 6.9.2018 appellant institution has filed rejoinder and stated that NCMEI amended condition No. 9 of Government

letter dated 8.4.2013 in the petition No. 229 of 2016, even panel of minority institution declare at Chandigarh that no quota of percentage can be imposed on minority institutions. In case of Guru Nanak Khalsa College, Yamuna Nagar (Case No. 577 of 2012), this Commission has given an example of general population vs. minorities, where it was clearly shown that population of 10.13% can not admit students upto 50%. Similar in present case as per 2011 census population of Sikhs is 8.38% in the Karnal District. Overall population of Sikhs in Haryana is 4.91%, so it is clear that petitioner college is not able to admit Sikh students upto 50%. In the above circumstances, how petitioner institution can admit 50% students. Petitioner placed reliance on Case of T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481, 2005 (6) SCC 537 and Buckley Primary School, Cuttack, Orissa Vs. Government of Orissa (order passed by the Commission in Case No. 1320 of 2009 dated 6.7.2010). In view of above, this Commission is requested by the appellant to clarify the above point to the respondent and grant minority status certificate to the petitioner institution, which otherwise fulfill all other requirements.

6. Mr. Sunder Pal Singh has filed an application on dated 22.1.2019 under Order 41 Rule 27 CPC requesting to take the copies of documents, Certificate of Registration, Copy of Memorandum of Association of Society, Revised Certificate of Registration u/s 9 (4) of the Haryana Registration and Regulation of Societies Act, 2012, certificate of amendment in the Memorandum/ Byelaws of the Society, copy of Rules &

Regulations on record. Above documents are taken on record. On dated 26.4.2019, appellant has filed certified copy of the impugned order dated 9.4.2018.

7. Learned counsel for the appellant has again filed application under Order 41 Rule 27 CPC for taking on record the notarized copy of the Unique ID, notarized copy of the application submitted before the competent authority for minority status dated 25.7.2016, certified copy of the impugned order dated 9.4.2018 issued by the competent authority of the State Government, certified copy of the Registration Certificate, Memorandum of Association and Rules and Regulations of the Society, certified copy of the latest Registration Certificate and amended Memorandum of Association and Rules & Regulations of the Society, certified copy of the present Governing Body Members and certified copy of the affiliation order. On 1.8.2019 above documents were taken on record in the interest of justice. Thereafter, on dated 26.9.2019, learned counsel for the appellant filed affidavit of Shri Kanwarjit Singh, President, Guru Nanak Khalsa College Society and stated in the affidavit that appellant institution shall not deny admission to the eligible candidates of the minority community, subject to the eligibility of the students and availability of the accommodation in the appellant institution and also undertake that the appellant institution has not denied admission to any eligible students belonging to the minority community since its inception. The respondent was directed to enquire the matter and reply the above affidavit. On dated 22.10.2019 respondent has filed

reply. Thereafter, both the parties have filed written arguments which were taken on record.

8. We have heard both the parties, perused the written arguments, contentions of both the parties of appeal, reply of the appeal, rejoinder and also documents filed by both the parties. The main issue in this appeal is whether the stand taken by the respondent rejecting the application dated 25.7.2016 is legally tenable?

9. Learned counsel for the appellant Mr. Junais P. reiterated their contentions and submitted that the Hon'ble Apex Court, various High Courts as well as this Commission have categorically held that the percentage of admission of students from notified minority community in a minority educational institution is not an indicia for determining the minority status of such institution. The G.O. dated 8.4.2013 and 22.9.2016 of State of Haryana is unjustified, unlawful and unconstitutional. Learned counsel for the appellant drawn attention of this Commission on the Judgment dated 30.1.2019 passed by the Hon'ble High Court of Judicature at Madras in the matter of The Institute of the Franciscan Missionaries of Mary Vs. The Government of Tamil Nadu (W.P. No. 23789 of 2018). The facts and circumstances of the appellant case are very similar to the above case. In the above case, the Tamil Nadu Government has issued G.O. (MS) No. 65 dated 5.4.2018 framing additional guidelines for grant of minority status to the educational institutions, stipulating that the educational agency of all educational

institutions claiming minority status shall admit not less than 50% of the students belonging to the minority community in every academic year. The above G.O. was set aside by the Hon'ble High Court of Madras after recording the undertaking given by the petitioner therein that minority educational institution shall not deny admission to the eligible candidates of the minority community subject to the eligibility of the students and availability of the accommodation in the schools. Appellant has already filed an affidavit in above terms of undertaking before this Commission.

10. Learned counsel for the appellant further submitted that Hon'ble Apex Court in its judgment dated 25.9.2019 passed in Civil Appeal No. 106 of 2011 in the matter of Andhra Kesari College of Education & Anr. Vs. State of Andhra Pradesh has categorically affirmed the legal position that if a minority institution does not have the percentage of students belonged to such minority community as prescribed by the State Government, then such minority institution can admit eligible students from other communities also to fill up the vacant seats. Population of the Sikh community in Karnal, Haryana is only 7.86% as per the Census of 2011, so the rejection order of the respondent is arbitrary and unjustifiable and learned counsel for the appellant prayed to set aside the impugned order and decide on the minority status of the appellant institution and to give such directions if any in favour of the appellant.
11. On the other hand Mr. V.P. Juyal appearing for the respondent reiterated their contentions and submitted that the

strength of students in the appellant college is negligible, which is quite contrary to the instructions dated 8.4.2013 and 22.9.2016, where it is provided that there must be reasonable strength of students of minority community in the college. After filing affidavit of Shri Kanwarjit Singh, President, Guru Nanak Khalsa College Society, Karnal, the respondent has re-examined the entire matter and it has been observed that the petitioner institution has not fulfilled the specific condition No. 9 of department guidelines. In the academic session for the year 2019-20 only 387 minority students out of 1640 (Total students) i.e. 23.59% got admission. Respondent has placed reliance on Case P.A. Inamdar Vs. State of Maharashtra (Supra) Kerala Education Bill Case (Supra), guidelines for determination of minority status under the Constitution of India and prayed to dismiss the appeal.

12. Having heard the learned counsel for the appellant as well as representative of the respondent, perused the written submission, entire record including impugned order dated 9.4.2018, all the documents, citations relied on by both the parties. At the outset, we made it clear that his Commission has been created under an Act of Parliament to facilitate exercise of the educational rights of minorities enshrined in Article 30 of the Constitution of India. This Commission is a quasi-judicial tribunal and it has been vested with the jurisdiction, power and authority to adjudicate upon the dispute relating to grant of minority status certificate etc. covered under Article 30 of the Constitution of India. The rationale behind Article 30 of the Constitution is to give

protection to minorities to run educational institutions of their choice. These rights are protected by a prohibition against their violation and are backed by a promise of enforcement. The protection is contained in Article 30 which bars the State for making any law, rule and regulation abridging or limiting any of the fundamental rights guaranteed under Chapter 3 of the Constitution and these to veto any law rule or regulations found inconsistent with. Guidelines cannot take place of constitutional provisions and the provisions of Central Act. No government can destroy the said fundamental right under the grab of a policy decision.

13. By impugned order dated 9.4.2018, the respondent has rejected the application dated 25.7.2016 preferred by the appellant for grant of minority status certificate. The only reason given in the order dated 9.4.2018 is that the appellant institution is taking only 20% of students belonged to Sikh minority community and as per G.O. dated 8.4.2013 and 22.9.2016, the institution must take minimum 50% students belonging to minority community. So only one question of law is arises in the present appeal that whether the facts and circumstance of the present case

petitioner institution must have minimum 50% students from Sikh minority community?

14. It is pertinent to mention here that the similar issue has been decided by this Commission in favour of the minority institutions in various cases, Hon'ble Apex Court and various High Courts have also held that the percentage of admission of students from notified minority community in a minority educational institution is not an indicia for determining the minority status of such institutions. Above legal issue was clearly discussed by this Commission in the case of Buckley Primary School, Cuttack, Orissa Vs. Government of Orissa (order passed by the Commission in Case No. 1320 of 2009 dated 6.7.2010), which reads as under:

“ it has been held by the Supreme Court in TMA Pai (Supra) that the intake of minority students in the concerned institution has to be dependent upon variety of factors like what kind of institution it is, whether primary, secondary, high school or college or otherwise, the population of that community in the State and to the need of the area in which the institution is located. It is by considering these factors that the State may fix a minimum intake of minority and non-minority students. The Supreme Court has also held that “what would be a reasonable extent would depend upon variable factors, and it may not be advisable to fix any specific percentage.” From the above it is clear that a ceiling of 50% cannot be imposed against the minority institutions, requiring them to compulsorily admit the minority students upto 50%. There cannot be a common rule or regulation in respect of all types of educational institutions from primary to college level and for the entire State fixing the uniform ceiling in the

matter of admission of students in minority educational institutions”.

X X X X X

Consequently, we find and hold that the identifying criteria of fixation of a percentage governing admission of a minority community in a minority educational institution cannot be included in the indicia for determining the minority status of such an institution.”

X X X X X

15. As we have stated above, the population of Sikh community in Karnal, Haryana as per the Census of 2011 is only 7.86% and overall population of Sikhs in Haryana is only 4.91%. In our considered opinion even if petitioner institution make all efforts, may not be able to secure 50% admission from their own Sikh community. In this view Sikh community of Haryana State would lose its right to establish and administer educational institutions of its choice guaranteed under Constitution. If the fixed formula of 50% is to be adhered to, said right of the Sikh community of Haryana State under Article 30 would stand forfeited. Thus, imposition of a uniform ceiling on admission of minority students in all types of minority educational institution is virtual negation of the Constitutional protection.

16. In case of Andhra Kesari College of Education & Anr. Vs. State of Andhra Pradesh Civil Appeal No. 106 of 2011 judgment dated 25.9.2019, the Hon’ble Supreme Court has held that the requirement to fill up the vacant seats by non-minority candidates was based on statistical data which

showed that the number of colleges, and the seats available for minorities, were highly disproportionate, and far in excess of the population as per the 2001 census. The distinct possibility of seats remaining unfilled in the Minority Institutions every year, would not be in the interest of the Minority Educational Institutions. With this object in mind, G.O.M. No. 98 was issued to ensure that the vacant seats in the 85% Management Quota did not remain unfilled during any academic year. The G.O.M. merely stipulated that if the said Quota remained unfilled by minority students, it would be filled from the merit list of successful candidates, as allotted by the Convenor, Ed. CET to promote excellence in education. By this process, an opportunity was granted to the CET qualified non minority candidates to secure quality education, which would subserve the interest of the nation.

In above judgment Hon'ble Apex Court categorically affirmed the legal position that if a minority institution does not have the percentage of students belonging to such minority community as prescribed by the State Government, then such minority institution can admit eligible students from other communities also to fill full the vacant seats.

17. In the Judgement dated 30.1.2019 passed by the Hon'ble High Court of judicature Madras in the matter of The Institute of the Franciscan Missionaries of Mary, Chennai Vs. Government of Tamil Nadu in W.P. No. 23789 of 2018 has observed that:

“This batch of writ petitions has been filed questioning the correctness of the G.O. (Ms.) No. 65, School Education (MS) Department dated 5.4.2018 issued by the Principal Secretary to Government, Department of School Education, the first respondent herein framing additional guidelines for grant of minority status to the educational institutions, stipulating that the educational agency of all educational institutions claiming minority status shall admit not less than 50% of the students belonging to the minority community in every academic year, while fixing the upper limit of 75% in respect of the aided institutions.

X X X X X

Since Section 11 (f) of the National Commission for Minority Educational Institutions Act, 2004 confers jurisdiction on the NCMEI to issue a certificate regarding the status of the minority educational institution, the first respondent cannot seek to decide the minority status of the petitioners institutions, in the event of not securing admission of not less than 50% of students in the unaided minority institutions and 75% of the students in the aided minority institutions every academic year from the minority community.

Secondly, after the judgment in P.A. Inamdhar’s case holding that minority institutions are free to admit students of their own choice including students of non-minority community as also members of their own community from other State, both to a limited extent only and not in a manner and to such extent that their minority educational institution status is lost, because if they do so, they lose the protection of Article 30 (1). the Parliament introduced Article 15(5) amending the Constitution with effect from

21.1.2006 providing reservation for SC/ST/OBC in private institutions, both aided and unaided, in higher education, although it has safely excluded the minority educational institutions, both aided and unaided. But the said amendment was also questioned in *Ashoka Kumar Thakur v. Union of India and others*, (2008) 6 SCC 1. Again the Constitution Bench of the Hon'ble Supreme Court, repelling the challenge, has held that the minority institutions form a different class of institutions and therefore the Government cannot tamper with the admission process, consequently the ratio laid down in *T.M.A. Pai Foundation* in paragraph-161 relating to Question No. 4 and the ratio laid down in *P.A. Inamdhar's* case in paragraphs 127, 128 and 133 regarding the rule of reservation even in aided minority institutions, were held bad in law. (emphasis supplied)

In addition thereto, when the Government Educational Institutions (Reservation in Admission) Act, 2006 was introduced to provide for reservation in the admission of student belonging to the Scheduled Caste/ Scheduled Tribe and Other Backward Class of citizens to certain central educational institutions established, maintained or aided by the Central Government, Section 4(c) was introduced excluding minority educational institutions from the applicability of the Act. More importantly, thereafter, when the Right of Children to free and Compulsory Education Act, 2009 was introduced, while discussing the validity of Clause (5) of Article 15 of the Constitution, the Constitution Bench of the Apex Court has held in *Pramati Educational and Cultural Trust and others v. Union of India and others* (2014) 4 MLJ 486 that the 2009 Act insofar as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra vires of the Constitution.

X X X X X

It is made clear that the interference by the Government in any manner regarding the seat sharing in minority educational institutions, both aided and unaided, is unjustified, unlawful and unconstitutional. This position also has been restated by the Division Bench of this Court in the judgment dated 7.1.2014 passed in W.P. No. 14734 of 2012 (The Federation of the Catholic Faithful represented by its General Secretary, Chennai v. The Government of Tamil Nadu represented by its Secretary, Higher Education Department and others).

X X X X X

Since the first respondent has also taken a stand that the percentage of 50% is not rigid and in case of non-availability of minority students, the minority status will not be withdrawn on the ground of non-achievement of 50% target for new admissions and it is only when admission to minority students is denied within 50% target for new admissions and it is only when admission to minority student is denied within 50% limit, action will be taken against the institution for withdrawal of minority status on grounds of not promoting the interests of minority students, the writ petitions deserve to be allowed recording the undertaking given by the petitioners institutions

that they will not deny admission to the minority students, subject to their fulfilling the eligibility criteria and also the availability of vacancies.

X X X X X

The impugned G.O. (Ms.) No. 65, School Education (MS) Department dated 5.4.2018 is set aside, recording the undertaking given by the petitioners institutions that all the minority educational institutions shall not deny admission to the eligible candidates of the minority community, subject to the eligibility of the students and availability of accommodation in the schools.

X X X X X

18. As the G.O. dated 8.4.20-13 and 22.9.2016 issued by the Haryana Government is concerned in the light of above Judgments and observation clearly unjustified, unlawful and unconstitutional. Appellant institution case is also similar to the above case of Franciscan Missionaries of Mary Vs. The Government of Tamil Nadu (Supra). In above case T.N. Government has issued G.O. dated 5.4.2018 framing additional guidelines for grant of minority status certificate to the educational institutions, stipulating that all the educational institutions claiming minority status shall admit not less than 50% of the students belonging to the minority community in every academic year. Hon'ble High Court of Madras while adjudicating the legal issue held that interference by the Government in any manner regarding the seat sharing in

minority educational institutions both aided and unaided is unjustified, unlawful and unconstitutional. We are also of the above opinion.

19. In the facts circumstances and above observations, in our considered opinion, impugned order dated 9.4.2018 is arbitrary, unjustified, unlawful, unconstitutional and deserve to be set aside.
20. We find no impediment in the application being granted the minority status to the appellant institution. Appellant institution has already filed the affidavit of Shri Shri Kanwarjit Singh, President, Guru Nanak Khalsa College Society. The impugned order dated 9.4.2018 does not reveal any rationale for rejecting the appellants' application for grant of minority status certificate. Therefore, the impugned order dated 9.4.2018 is hereby set aside. The matter is remanded to the learned respondent authority of the State of Haryana for deliberating on the application for grant of minority status to the appellant institution.
21. The respondent competent authority of the State of Haryana is requested to deliberate on application for grant of minority status to the appellant at the earliest, expeditiously.
22. In the interest of justice in addition to the rules, appellant is also directed to produce certified copy of the order of this Commission before the respondent competent authority of

the State of Haryana immediately for compliance of this order.

23. In view of the above, the present appeal is disposed of in accordance with this order.

Signed, pronounced and published on **Thursday, 21st Day of January 2021.**

**JUSTICE NARENDRA KUMAR JAIN
CHAIRMAN**

**DR. JASPAL SINGH
MEMBER**

MD