

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

Case No. 767 of 2019

In the matter of :-

**St. Joseph's Convent Higher Secondary School, Civil Lines,
Khandwa District, Madhya Pradesh-450001**

..... **Petitioner**

V/s

**Secretary, Backward Classes and Minority Welfare Department,
Government of Madhya Pradesh**

..... **Respondent**

**Present: Mr. Jose Abraham, Advocate for the petitioner
None for the respondent**

ORDER

DATED 07.10.2021

Justice Narendra Kumar Jain, Chairman, NCMEI

1. This application has been received on 04.10.2019 by hand through Mr. Jose Abraham, Advocate of the petitioner institution for grant of Minority Status Certificate (in short 'MSC') to St. Joseph's Convent Higher Secondary School, Civil Lines, Khandwa District, Madhya Pradesh-450001 .
2. Learned counsel for the petitioner filed affidavit of Sr. Prabha Malayil, President of Snehdhara Welfare Society, Tanmaya A Block, Kurana P.O., Bhopal, MP in support of the averments made in the petition and also to prove that the beneficiaries of the petitioner institution are primarily members of the Christian minority community.
3. Learned counsel for the petitioner has filed copy of Unique ID No. : MP/2018/0190492 of the petitioner's Society as given by the Niti Aayog Portal NGO Darpan, copy of application dated 23.01.2019 submitted to State Competent Authority i.e. Secretary, Backward Classes and Minority Welfare Department, Government of Madhya Pradesh for grant of No Objection Certificate (in short 'NOC') alongwith its postal receipt and tracking report, certified copy of Society Registration Certificate of Snehdhara Welfare Society, certified copy of Memorandum of Association alongwith list of founding members of the society, certified copy of amended Memorandum of Association the Society alongwith list of Present Members of the Society and the Affiliation Order dated

27.07.2017 issued by Deputy Secretary (Aff), Central Board of Secondary Education (CBSE) to the petitioner institution for Secondary School Examination and Senior School Certificate Examination for the period from 01.04.2017 to 31.03.2022. Learned Counsel for the petitioner also submitted that out of total 1500 students, 398 students are from Christian minority community.

4. It is stated in the petition that on dated 23.01.2019, the petitioner institution has applied to the State Competent Authority for grant of NOC which was delivered on 24.01.2019 to the State Competent Authority and the said application is still pending before the State Competent Authority. The State Competent Authority has not granted NOC in favour of the petitioner institution till now and also not rejected the said application and not communicated the same to the petitioner. After 90 days from the receipt of the application for grant of NOC, the petitioner has filed this application for grant of MSC to this Commission straightway as per the provisions of Section 10 and 11(f) of National Commission for Minority Educational Institutions (in short 'NCMEI') Act, 2004.
5. It is argued by the Learned Counsel for the petitioner on merits that the Competent Authority of the State of MP has failed to appreciate the provisions of NCMEI Act, 2004 and wrongly disposed of the application with the observations in the impugned order dated 17.08.2021. Learned Counsel for the petitioner submitted that the petitioner institution is established and administered by the Snehdhara Welfare Society, which is the registered society having Registration No. 01/01/01/18840/08 dated 14.03.2008. All the founding and present members of the Society are belonging from Christian minority community. It is worthwhile that the said Society is formed by the members of the Christian minority community in the year 2016 in the name of Snehdhara Welfare Society, Tanmaya A Block, Kurana P.O., Bhopal, MP .
6. Learned Counsel for the petitioner further submitted that the petitioner institution is being established by the Christian minority community under Snehdhara Welfare Society. The petitioner institution sent NOC application dated 23.01.2019 to the State Competent Authority i.e. Secretary, Backward Classes and Minority Welfare Department, Government of Madhya Pradesh for grant of NOC under Section 10 of the NCMEI Act, 2004 to establish the petitioner institution as a minority

educational institution. Without considering that the petitioner institution fulfilled all the indicia for grant of NOC to establish the petitioner institution as a minority educational institution denied / refused to give NOC after lapse of more than 2.5 years. Learned Counsel for the petitioner submitted that the stand taken by the respondent to deny/refuse NOC after lapse of more than 2.5 years to the petitioner institution on the ground that since the petitioner institution has already been established and in operation from the year 2016, so under section 10 of the NCMEI Act, 2004 the respondent could not issue NOC to the petitioner institution, is nothing but it is clearly against the verdict of the Hon'ble Apex Court in the matter of SISTERS OF ST. JOSEPH OF CLUNY V/s THE STATE OF WEST BENGAL & ORS (Civil Appeal No. 3945/2018, Judgement dated 18/04/2018). Establishment of any institution and establishment of such institution as a minority institution are entirely different and, therefore, the petitioner institution approached to the respondent to grant NOC to the petitioner institution to establish the petitioner institution as a minority educational institution as per Section 10 of the NCMEI Act, 2004, but the respondent without considering the facts and law settled by the Hon'ble Apex Court passed the said illegal order and the application filed by the petitioner institution by simply stating that the petitioner institution is established in the year 2016 and is in operation, impugned order passed by the respondent on application dated 23.01.2019, on 17.08.2021 after a lapse of more than 2.5 years. Respondent has not communicated the said order to the petitioner institution. But letter sent by the respondent to this Commission which was received by the Commission on 19.08.2021.

7. Learned Counsel for the petitioner argued that the petitioner institution is fulfilled all the criteria for grant of MSC as per the provisions of NCMEI Act, 2004. The petitioner institution is established primarily for the benefits of Christian minority community, so he prayed to grant MSC to the petitioner institution.
8. We have gone through the entire records of the file, affidavit of Sr. Prabha Malayil, President of Snehdhara Welfare Society. By the letter no. 3536 dated 17.08.2021, respondent has passed the order on application under section 10 of the NCMEI Act, 2004 filed by the petitioner institution and stated that respondent has not received the application dated 23.01.2019 and also the petitioner institution has been established in the year 2016

so the petitioner institution has already been established and respondent could not grant NOC to the petitioner institution.

9. We have perused the file, petitioner has filed copy of application dated 23.01.2019 alongwith post office receipt and its tracking report and it is proved by the documents that the said application was delivered to the respondent i.e. Secretary, Backward Classes and Minority Welfare Department, Government of Madhya Pradesh on 24.01.2019, so the contention of the respondent is not reliable and acceptable. It is proved that the said application dated 23.01.2019 has been successfully delivered to the respondent.
10. It transpires from the record that out of total 1500 students, 398 are from Christian minority community. Learned Counsel for the petitioner Mr. Jose Abraham, reiterated their contention 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. Learned Counsel for the petitioner 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). Learned Counsel for the petitioner 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 Christian minority community in the State of Madhya Pradesh as per the census of 2011 is only 0.29%.
11. At the outset, we made it clear that this 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.

12. It is pertinent to mention here that this Commission has decided cases in favour of the minority institutions, 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 also discussed by this Commission in the matter 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).
13. The NCMEI Act, 2004 was amended twice in order to further broad based and expand the functions as well as the quasi judicial powers of the NCMEI. The sections relevant for just decision of this case are set out here below :

“Section 10 :- Right to establish a Minority Educational Institution :-

(1) Subject to the provisions contained in any other law for the time being in force, any person, who desires to establish a Minority Educational Institution may apply to the competent authority for the grant of no objection certificate for the said purpose.”

(2) The Competent authority shall,—

(a) on perusal of documents, affidavits or other evidence, if any; and

(b) after giving an opportunity of being heard to the applicant, decide every application filed under sub-section (1) as expeditiously as possible and grant or reject the application, as the case may be: Provided that where an application is rejected, the Competent authority shall communicate the same to the applicant.

(3) Where within a period of ninety days from the receipt of the application under sub-section (1) for the grant of no objection certificate,—

(a) the Competent authority does not grant such certificate; or

(b) where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate, it shall be deemed that the

Competent authority has granted a no objection certificate to the applicant.

(4) The applicant shall, on the grant of a no objection certificate or where the Competent authority has deemed to have granted the no objection certificate, be entitled to commence and proceed with the establishment of a Minority Educational Institution in accordance with the rules and regulations, as the case may be, laid down by or under any law for the time being in force.

Explanation —

For the purposes of this section —

(a) “applicant” means any person who makes an application under sub-section (1) for establishment of a Minority Educational Institution;

(b) “no objection certificate” means a certificate stating therein, that the Competent authority has no objection for the establishment of a Minority Educational Institution.

Section 12 A :-

(1) Any person aggrieved by the order of refusal to grant no objection certificate under sub-section (2) of section 10 by the Competent Authority for establishing a Minority Educational Institution, may prefer an appeal against such order to the Commission.

(2) An appeal under sub-section (1) shall be filed within thirty days from the date of the order referred to in sub-section (1) communicated to the applicant: Provided that the Commission may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period.

(3) An appeal to the Commission shall be made in such form as may be prescribed and shall be accompanied by a copy of the order against which the appeal has been filed.

(4) The Commission, after hearing the parties, shall pass an order as soon as may be practicable, and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

(5) An order made by the Commission under sub-section (4) shall be executable by the Commission as a decree of a civil court and the provisions of the Code of Civil Procedure, 1908 (5 of 1908), so far as may be, shall apply as they apply in respect of a decree of a civil court.

Section 12B :- Power of Commission to decide on the minority status of an educational institution.

(1) Without prejudice to the provisions contained in the National Commission for Minorities Act, 1992 (19 of 1992), where an authority established by the Central Government or any State Government, as the case may be, for grant of minority status to any educational institution rejects the application for the grant of such status, the aggrieved person may appeal against such order of the authority to the Commission.

(2) An appeal under sub-section (1) shall be preferred within thirty days from the date of the order communicated to the

applicant: Provided that the Commission may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period.

(3) An appeal to the Commission shall be made in such form as may be prescribed and shall be accompanied by a copy of the order against which the appeal has been filed.

(4) On receipt of the appeal under sub-section (5), the Commission may, after giving the parties to the appeal an opportunity of being heard, decide on the minority status of the educational institution and shall proceed to give such direction as it may deem fit and, all such directions shall be binding on the parties.”

14. As per the above provisions, the person who desires to establish minority institution is to apply to the competent authority of the State Government for grant of NOC for the said purpose under section 10 of the NCMEI Act, 2004. The Act of 2004 also conferred powers of appeal against orders of the competent authority of State to this Commission under section 12A as well as over authorities that were established by the Central Government or State Government who rejected application for grant of MSC to an educational institution under Section 12B of the NCMEI Act, 2004.

15. The Hon'ble Supreme Court in Civil Appeal No. 3945 of 2018 in the matter of Sisters of St. Joseph of Cluny V/s. The State of West Bengal and Ors. (2018) 6 SCC 772 vide order dated 18.4.2018 has also held that:

“However, Section 10(1), which was introduced at the same time as Section 11(f) by the Amendment Act of 2006, carves out one facet of the aforesaid power contained in Section 11(f), namely the grant of a no objection certificate to a minority educational institution at its inception. Thus, any person who desires to establish a minority educational institution after the Amendment Act of 2006 came into force, must apply only to the competent authority for the grant of a no objection certificate for the said purpose. It is a little difficult to subscribe to Shri Hedge's argument that the said powers are concurrent. Harmoniously read, all applications, for the establishment of a minority educational institution after the Amendment Act of 2006 must go only to the competent authority set up under the statute. On the other hand, for the declaration of its status a minority educational institution at any state post establishment, the NCMEI would have the power to decide the question and declare such institution's minority status.”

16. Looking to the above provisions of NCMEI Act, 2004 and the judgement of Hon'ble Apex Court in the matter of Sisters of St. Joseph of Cluny (Supra), this Commission has both jurisdiction original as well as appellate, any educational institution who desires to establish minority

educational institution has two options. Firstly, he can apply before an authority established by the Central Government or any State Government, Union Territory as the case may be for grant of MSC to any educational institution and if above authority rejected the application for grant of MSC, the aggrieved person may appeal against such order of the authority to this Commission under section 12B of NCMEI Act, 2004. Secondly, under Section 10 of NCMEI Act, 2004 whosoever desires to establish an minority educational institution has to apply the Competent Authority of the State Government for grant of NOC within a period of 90 days from the receipt of the application, if competent authority does not grant NOC or application has been rejected but not communicated to the appellant it shall be deemed that NOC has granted and the appellant can file application for grant of NOC straightaway to this Commission. Any person aggrieved by the order of refused to grant NOC by the competent authority may prefer an appeal to this Commission under Section 12A of NCMEI Act, 2004.

- 17 The petitioner institution has applied for grant of minority status certificate on the ground that the same has been established primarily for the benefit of the members of the Christian minority community and is being administered by the Snehdhara Welfare Society which is managed and run by the members of the Christian minority community. The aforesaid averments made in the petition find ample corroboration from the documentary evidence produced on behalf of the petitioner institution and the affidavit of Sr. Prabha Malayil, President of Snehdhara Welfare Society.
18. The Amended Memorandum of Association and all the documents produced by the petitioner institution clearly reflects that the beneficiaries of the petitioner institution are primarily members of the Christian minority community. In addition, the said facts are also stands proved from the documents and affidavit filed by the petitioner. There is no document on record to rebut the documentary evidence produced on behalf of the petitioner institution.
19. Relying on the said unrebutted evidence produced on behalf of the petitioner, we find and hold that St. Joseph's Convent Higher Secondary School, Civil Lines, Khandwa District, Madhya Pradesh-450001 run by Snehdhara Welfare Society is eligible for grant of minority status on

religious basis. The evidence also proves that the said educational institution was established with the main objective of sub-serving the interests of the Christian minority community.

20. Consequently, St. Joseph's Convent Higher Secondary School, Civil Lines, Khandwa District, Madhya Pradesh-450001 is declared as a minority educational institution covered under Article 30 of the Constitution of India within the meaning of Section 2(g) of the National Commission for Minority Educational Institutions Act, 2004 subject to the condition that the petitioner would file an affidavit or undertaking to the fact that the petitioner institution shall not deny admission of eligible candidate of the Christian minority community subject to the eligibility of the students and availability of the accommodation in the petitioner institution, file resolution of the General Body of the Society to authorize Sr. Prabha Malayil, President of Snehdhara Welfare Society for obtaining MSC from this Commission.
21. After compliance of the above order, a minority status certificate be issued accordingly.
22. In view of the above, the present petition is disposed of in accordance with this order.

Signed, pronounced and published on **Thursday, 7th Day of October, 2021.**

**JUSTICE NARENDRA KUMAR JAIN
CHAIRMAN**

**DR. JASPAL SINGH
MEMBER**

**DR. SHAHID AKHTER
MEMBER**

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