

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

Case No. 198 of 2019

In the matter of :-

**St. Treasa English Medium School, Halejedikatte, Kavalagundi
Post, Bhadravathi, Shimoga, Karnataka-577229**

..... **Petitioner**

V/s

**Principal Secretary to Government, Higher Education
Department, Government of Karnataka**

..... **Respondent**

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

ORDER

DATED 01.12.2021

Justice Narendra Kumar Jain, Chairman, NCMEI

1. This application has been received on 11.04.2019 by hand through Mr. Jose Abraham, Advocate of the petitioner institution for grant of Minority Status Certificate (in short 'MSC') to St. Treasa English Medium School, Halejedikatte, Kavalagundi Post, Bhadravathi, Shimoga, Karnataka-577229.
2. Learned counsel for the petitioner filed an affidavit of Sr. Beena KD, D/o Mr. Devasia KP, Secretary of the Carmel Education Society in support of the averments made in the petition and also to prove that the beneficiaries of the petitioner institution are members of the Christian minority community.
3. Learned counsel for the petitioner has filed copy of Unique ID No. : KA/2017/0118569 of the petitioner's Society as given by the Niti Aayog Portal NGO Darpan, copy of application dated 15.11.2018 sent to State Competent Authority i.e. Principal Secretary to Govt., Education Department, Government of Karnataka for grant of No Objection Certificate (in short 'NOC') alongwith postal receipt and its tracking report, notarized copy of Registration Certificate of The Carmel Education Society in Kannad language alongwith its English

translation, notarized copy of Memorandum of Association alongwith list of founding members of the Society, notarized copy of Amended Memorandum of Association alongwith list of present members of the Society for the year 2018-19, 2019-20 and 2020-21, notarized copy of Recognition Order no. G2/RECGN/213/2017-18 dated 16.07.2018 issued by Deputy Director (Administration), Department of Education, Shivmoga from the Academic Year 2017-18 to 2021-2022 for 6th and 7th class to the unaided petitioner institution in Kannada language alongwith its English Translation. Learned Counsel for the petitioner filed resolution of the General Body of the Society to authorize Sr. Beena KD, Secretary of the Carmel Education Society for obtaining MSC from this Commission and also affidavit alongwith census report of Karnataka State and Chokamagaluru District, Karnataka.

4. As per the information supplied by the petitioner institution is that out of total 559 students, 16 students are from the Christian minority community, 48 students are from Muslim minority community, 2 students are from Sikh minority community and 494 students are Hindus. Population of Christian minority community in the State of Karnataka as per the census of 2011 is only 1.87%. Hon'ble Apex Court, various High Courts as well as this Commission in 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) 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.
5. It is stated in the petition that on dated 15.11.2018, the petitioner institution has applied to the State Competent Authority for grant of NOC which was received by the State Competent Authority on 18.11.2018 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.

6. Pendency of the said application for grant of NOC for such a disproportionately long period clearly indicates Government's disinclination to grant NOC to the petitioner institution. Petitioner's rights to get MSC cannot be kept under suspended animation. In this view of the matter, it is a fit case for intervention by this Commission.
7. After service of registered notice dated 23.05.2019 and 27.02.2020, Director, Directorate of Urdu and Other Minority Language Schools (Department of Education), Govt. of Karnataka has sent replies dated 30.09.2019 and 28.07.2020 on behalf of the respondent by post which were received by the Commission on 09.10.2019 and 07.08.2020. In the replies filed by the Director, Directorate of Urdu and Other Minority Language Schools (Department of Education) informed that the petitioner institution has submitted application for seeking MSC before the NCMEI without approaching the Competent Authority, a review committee has been constituted to grant minority status to Primary and Secondary Educational Institutions within the State under State Government Order No. Ed. 27 Mahithi 2012 dated 18.06.2014. In the said order, Commissioners of the respective regions and departments are appointed as Competent Authorities for grant minority status. They further informed that the petitioner institution was submitted their application to either the Principal Secretary, Education Department or NCMEI, New Delhi directly without approaching the competent authority mentioned above. They stated that neither of these authorities are the competent authority to grant minority status in accordance with the State Government Order. The NCMEI is an appellate body that grants minority status only in pursuance to the Competent Authority's rejection of the applications under section 12A & 12B. Therefore any application made before NCMEI without approaching the competent authority must be rejected

only on the ground that these applications have not been made in accordance with Section 10 of the Act. Thus these schools must be redirected to make fresh applications through the Competent Authority before approaching NCMEI. In view of the aforesaid information, request to dismiss the above application and to follow the same method with respect to future applications which are similar in nature.

8. Learned Counsel for the petitioner filed subsequent pleadings and contended that the petitioner institution is a religious minority institution and run by Carmel Education Society which is a registered society constituted by the members of the Christian minority community primarily for the benefit of Christian minority community. On dated 15.11.2018, the petitioner institution had submitted an application for grant of NOC under section 10 of the NCMEI Act, 2004 before the respondent. After the completion of 90 days from the date of receipt of the said application the petitioner institution applied for MSC before this Commission and this case is a fit case of intervention by this Commission. This Commission is functioning as per the NCMEI Act, 2004 read with the judicial pronouncements of the Apex Court for the purpose of declaration of MSC. Petitioner institution had applied for grant NOC whereas the reply filed by the respondent does not even murmured a single word with regard to the receipt and further process of the said application for NOC which is duly received by the respondent. In its reply, respondent has referred a State Government Order No. Ed. 27 Mahithi 2012 dated 18.06.2014 with regard to the issuance of MSC by the State of Karnataka. The same Govt. order is not dealing with the issuance of NOC under section 10 of the NCMEI Act, 2004, so instant case is a fit case for interference by this Commission. The respondent has not raised any objection on merit to award minority status to the petitioner institution with regard to the establishment, administration and for the beneficiaries of the petitioner institution which are the main indicia to be considered for issuance of minority status certificate. The

respondent herein does not raise any valid objection on merits with regard to conferment of minority status to the petitioner institution. Technical objections raised in the instant reply itself shows the State Government disinclination to grant minority status to the petitioner institution. The State Government is trying to take shelter under technical objections in its reply even without stating whether the institution is entitled for minority status or not and thereby avoiding its duty to decide the issue of awarding minority status to the petitioner institution. The respondent herein stated about Section 12A and 12B of the NCMEI Act, 2004 and petitioner can approach NCMEI only after a rejection by the competent authority of the State Government. But it is pertinent to mention herein that as per Section 11(f) of the NCMEI Act, NCMEI is empowered to decide all questions with regard to the conferment of minority status. Hon'ble Supreme Court in Sisters of St. Joseph of Cluny Vs. The State of West Bengal (Civil Appeal No. 3945 of 2018) decision dated 18.04.2018 has settled the law with regard to the applicability of Section 10 and 11 of the NCMEI Act, 2004 and in view of the said pronouncement of the Hon'ble Supreme Court the stand taken by the respondent will not survive in the eye of law and, therefore, prayed that this Commission may issue MSC to the petitioner institution in the interest of justice and equity.

9. Heard the Learned Counsel for the petitioner, perused the pleading of the petitioner institution, the documents filed by the petitioner and affidavit of Sr. Beena KD, Secretary of the Carmel Education Society.
10. 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 Carmel Education 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. Beena KD, Secretary of the Carmel Education Society.

11. The respondent has not replied properly to the application submitted by the petitioner institution. Respondent has also failed to appreciate the provisions of NCMEI Act, 2004 especially under section 10 of the said Act and filed reply wrongly before this Commission. The Petitioner has not applied for grant of MSC before the State Competent Authority. Petitioner has applied for grant of NOC under section 10 of the NCMEI Act, 2004 before the State competent authority. So the guidelines of the Government of Karnataka have not applied to the present petitioner institution. In the facts and circumstances of the present case the stand taken by the respondent is not tenable in the eye of law and deserves to be ignored.
12. The petitioner institution has fulfilled all the criteria for grant of MSC. The Competent Authority has failed to consider their application for grant of NOC. To obtain minority status certificate is a constitutional right of minority educational institution. The petitioner institution is established and administered by the members of the Christian minority community. The reply filed by the respondent is clearly against the verdict of 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), which reads as follows :-

“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."

13. As per the provisions of Section 10, Section 12A and Section 12B of the NCMEI Act, 2004, the person who desires to establish minority institution is to apply to the State Competent Authority 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 the NCMEI 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.
14. Looking to the provisions of the NCMEI Act, 2004 and verdict of the Hon'ble Supreme Court, 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 authorities 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 petitioner it shall be deemed that NOC has granted and the petitioner can file application for grant of MSC straightaway to this Commission. Any person aggrieved by the order of refusal to grant NOC by the competent authority may prefer an appeal before this Commission under section 12A of NCMEI Act, 2004.

15. In our considered opinion educational institution can opt one course either to file application for grant of MSC before the State Competent Authority or to file grant of NOC. In the present case petitioner has applied for grant of NOC to the State Competent Authority and the said application is still pending as per the contention of the petitioner institution. The petitioner has not filed any application for grant of MSC before the State Competent Authority, so the reply filed by the respondent have no relevance to the present case.
16. 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.
17. Relying on the said unrebutted evidence produced on behalf of the petitioner, we find and hold that St. Treasa English Medium School, Halejedikatte, Kavalagundi Post, Bhadravathi, Shimoga, Karnataka-577229 run by the Carmel Education 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.
18. Consequently, St. Treasa English Medium School, Halejedikatte, Kavalagundi Post, Bhadravathi, Shimoga, Karnataka-577229 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.

19. After compliance of the above order, a minority status certificate be issued accordingly.
20. In view of the above, the present petition is disposed of in accordance with this order.

Signed, pronounced and published on **Wednesday, 1st Day of December, 2021.**

**JUSTICE NARENDRA KUMAR JAIN
CHAIRMAN**

**DR. JASPAL SINGH
MEMBER**

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