

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

Case No. 260 of 2019

In the matter of :-

**St. Theresa's Arts and Science College for Women,
Tharangambadi P.O., Tharangambadi Taluk, District
Nagapattinam, Tamil Nadu-609313**

.....Petitioner

V/s

**Principal Secretary, Higher Education Department, Govt. of
Tamil Nadu, Fort St. George, Secretariat, Chennai, Tamil Nadu**

..... Respondent

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

ORDER

DATED 02.06.2022

Justice Narendra Kumar Jain, Chairman, NCMEI

1. This petition has been received on 23.04.2019 by hand through Mr. Jose Abraham, Advocate of the petitioner institution for grant of Minority Status Certificate (in short 'MSC') to St. Theresa's Arts and Science College for Women, Tharangambadi P.O., Tharangambadi Taluk, District Nagapattinam, Tamil Nadu-609313.
2. Learned counsel for the petitioner filed an affidavit of Sr. Maria, President of The Society of Mary Immaculate (Tamil Nadu) 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. : TN/2017/0170812 of the petitioner's Society as given by the Niti Aayog Portal NGO Darpan, copy of application dated 09.01.2019 sent to the State Competent Authority i.e. Principal Secretary, Higher Education Department, Govt. of Tamil Nadu alongwith postal receipt and its tracking report, notarized copy of Certificate of Registration of The Society of Mary Immaculate (Tamil Nadu),

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, notarized copy of Affiliation order dated 09.07.2021 issued by Registrar, Bharathidasan University, Tiruchirappalli, Kerala to the unaided petitioner institution for the Academic Year 2021-22 and 2022-23 for Bachelor and Master Courses and resolution of the General Body of the Society in favour of Sr. Maria, President of The Society of Mary Immaculate (Tamil Nadu) for obtaining MSC from this Commission.

4. As per the information supplied by the unaided petitioner institution with regard to students strength, it is mentioned that out of the total 129 students, 17 students are from the Christian minority community, 6 students are from the Muslim Minority Community and 106 students are Hindus. It is relevant to mention here that out of total 11 teachers, 7 teachers are from Christian Minority community. 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 this 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 09.01.2019, the petitioner institution has applied to the State Competent Authority for grant of NOC which was received by the State Competent Authority on 11.01.2019 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. After service of registered notice dated 29.05.2019 and 30.03.2022, respondent has sent reply dated Sept. 2019 by post which was received by the Commission on 28.10.2019. In the reply filed on behalf of the respondent i.e. Deputy Secretary to Government, Higher Education Department submitted and denied all the averments of the petitioner institution except those which are specifically admitted in the reply. The NOC application dated 09.01.2019 under section 10 of the NCMEI Act, 2004 submitted before the State Competent Authority has not received by the respondent and the petitioner institution has approached the NCMEI directly without applying for grant of NOC under section 10 of the NCMEI Act, 2004 and falsely alleged that an application is still pending with the Higher Education Department, Govt. of Tamil Nadu and prayed that the petition filed by the petitioner institution is unsustainable and is liable to be dismissed. Therefore, the Hon'ble Commission may be pleased to dismiss the application as devoid of merits and thus render justice.
7. Learned Counsel for the petitioner filed subsequent pleadings and contended that the petitioner institution is a religious minority institution and run by The Society of Mary Immaculate (Tamil Nadu) which is a registered Society constituted by the members of the Christian minority community primarily for the benefit of Christian minority community. On dated 09.01.2019, 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 of 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 couple of GOs like 375 dated 12.10.1998, 648 dated 03.08.1994, 270 dated 17.06.1998, and 214 dated 03.11.2018 and 144 dated 18.09.2014 with regard to the issuance of MSC by the State of Tamil Nadu. None of Govt. orders are 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. 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 in which Hon'ble Supreme Court 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.

8. Heard the Learned Counsel for the petitioner, perused the pleading of the parties, the documents filed by the petitioner and affidavit of Sr. Maria, President of The Society of Mary Immaculate (Tamil Nadu).
9. 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 Society of Mary Immaculate (Tamil Nadu) 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. Maria, President of The Society of Mary Immaculate (Tamil Nadu).

10. 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 individual 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 rejects 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 been granted and the petitioner can file an 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.
11. In our considered opinion educational institution can opt one course, either to file an application for grant of MSC before the State Competent Authority or to file an application for 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 GO's as mentioned in the reply of the respondent have no relevance in the present case.
12. Looking to the facts that the petitioner institution has filed copy of application dated 09.01.2019 for grant of NOC alongwith post office receipt and its tracking report. It is proved that the NOC application

has been delivered to the respondent but not decided within the prescribed period of 90 days.

13. 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 the members of the Christian minority community. In addition, the said facts 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.
14. Relying on the said unrebutted evidence produced on behalf of the petitioner, we find and hold that St. Theresa's Arts and Science College for Women, Tharangambadi P.O., Tharangambadi Taluk, District Nagapattinam, Tamil Nadu-609313 run by The Society of Mary Immaculate (Tamil Nadu) 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.
15. Consequently, St. Theresa's Arts and Science College for Women, Tharangambadi P.O., Tharangambadi Taluk, District Nagapattinam, Tamil Nadu-609313, which is for Bachelor and Master Courses, is declared as an unaided 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. If the petitioner institution failed to comply the above order of this Commission within a period of three months from the date of order passed by this Commission then the petition

filed by the petitioner for grant of MSC will be automatically deemed to be dismissed.

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

Signed, pronounced and published on **Thursday, 2nd Day of June, 2022.**

**JUSTICE NARENDRA KUMAR JAIN
CHAIRMAN**

**DR. JASPAL SINGH
MEMBER**

**DR. SHAHID AKHTER
MEMBER**

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