

GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR MINORITY
EDUCATIONAL INSTITUTIONS

In the matter of :-

Case No. 410 of 2019

**Kammukutty Memorial Higher Secondary School, Cheekode P.O.,
Malappuram District, Kerala- 673 645.**

..... Petitioner
V/s

The Secretary, General Education Department, Government of Kerala.
..... Respondent

Present: Mr. Junais P., Advocate for the petitioner.
None for the respondent.

ORDER

DATED: 28th September, 2021

Justice Narendra Kumar Jain, Chairman, NCMEI

1. An application has been received on 17.5.2019 by hand from Mr. Junais P., Advocate of the petitioner for grant of minority status certificate to Kammukutty Memorial Higher Secondary School, Cheekode P.O., Malappuram District, Kerala- 673 645 on the ground that the same has been established and is being administered by the individual Muslim management.
2. Learned counsel for the petitioner has filed affidavit of Mr. K. Beeran Haji, Manager of the petitioner institution in support of the averments made in the petition and also to prove that the beneficiaries of the petitioner institution are members of the Muslim community.
3. Learned counsel for the petitioner has also filed copy of application dated 22.11.2018 for grant of No Objection Certificate (in short "NOC") sent to the competent authority of the State Government along with proof of service and copy of the letter No. GEDN-F2/438/2018-G.EDN dated 8.3.2019 issued by the Under Secretary, General Education (F) Department, Kerala.
4. The background facts of the case are that the petitioner institution has filed application under section 10 of the NCMEI Act, 2004 to the respondent on 22.11.2018 for grant of NOC which was disposed of vide order dated 8.3.2019. The impugned order passed by the authority of the State of Kerala reads as follows:

“I am to invite your attention to the reference cited. At present State Government is not granting minority status to the educational institutions in the State. As per Section 11 (f) of the National Minority Educational Institutions Act, 2004, the National Commission for Minority Educational Institutions, New Delhi (NCMEI) constituted under Section 3 of the Act, can decide all questions relating to the minority status of an educational institution and to declare it as a minority educational institution. Hence the applicant is free to approach the Commission for obtaining minority status.”

5. In these circumstances, this petition has been filed by the petitioner for grant of minority status certificate.
6. Notice of the petition was served to the respondent. Despite service of registered notices, none appeared on behalf of the respondent. Hence, we proceed ex-parte against the respondent.
7. The competent authority of the State of Kerala has failed to appreciate the provisions of NCMEI Act, 2004 and wrongly disposed of the application with the observation that the State Government is not granting minority status certificate to educational institutions in the State and as per Section 11(f) of the National Commission for Minority Educational Institutions Act, 2004, this Commission constituted under Section 3 of the Act, can decide all questions relating to the minority status of an educational institution and to declare it as a minority educational institution. Hence the applicant is free to approach the Commission for obtaining minority status.
8. The competent authority has given liberty to the petitioner to file application for grant of minority status certificate before this Commission. The petitioner institution is fulfilling all the criteria for grant of NOC as per NCMEI Act, 2004. 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 is being administered by the individual Muslim management. The impugned order 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).
9. The petitioner institution was established and is being administered by the individual Muslim management. It is stated in the affidavit of Mr. K. Beeran Haji that the beneficiaries of the petitioner institution are members of the Muslim community.
10. In the facts and circumstances of the case, learned counsel for the petitioner prayed for grant of minority status certificate in favour of the petitioner institution.
11. Heard the learned counsel for the petitioner and perused the entire record produced by the petitioner institution.

12. By the impugned order dated 8.3.2019, the respondent has disposed of application under Section 10 of the NCMEI Act, 2004 and stated that at present State Government is not granting minority status certificate to the educational institutions in Kerala State and also ordered that this Commission has power to decided minority status certificate application.
13. Any State Government cannot deny grant of minority status certificate because this is constitutional right of a minority institution. As per the Article 30 (1) of the Indian Constitution “all minorities whether based on religion or language shall have the right to establish and administer educational institutions of their choice.” These rights are protected by a prohibition against their violation. The prohibition is contained in Article 13 of the Constitution which declares that any law in breach of the fundamental rights would be void to the extent of such violation. It is well settled that Article 30(1) cannot be read in a narrow and pedantic sense and being a fundamental rights, it should be given its widest amplitude. The width of Article 30 (1) cannot be cut down by introducing in it considerations which are destructive to the substance of the right enshrined therein. As per the Constitution of India and the provisions of NCMEI Act, 2004 eligibility criteria for grant of Minority Status Certificate is that the educational institution is established by a member/ members of the religious community, and is being administered by the minority community and is established primarily for the benefit of the minority community. It is also reflected by the order of the competent authority that State Government is not granting minority status to any educational institution. The petitioner institution has filed application before the State competent authority for grant of NOC under Section 10 of the NCMEI Act, 2004 and has not filed any application for grant of minority status certificate.
14. It is relevant to mention here that Article 30 (1) of the Constitution gives linguistic and religious minorities a fundamental right to establish and administer educational institution of their choice. The rationale behind Article 30 (1) of the Constitution is to give protection to minorities to run educational institutions of their choice. In the Kerala Education Bill 1957 (AIR 1958 SC 959), Hon’ble Supreme Court observed as under: -

“The key to the understanding of the true meaning and implication of the Article under consideration are the words "of their choice". It is said that the dominant word is "choice" and the content of that Article is as wide as the choice of the particular minority community may make it.”

So, the stand taken by the State of Kerala is virtually in negation of the constitutional protection afforded to the minorities for establishment of educational institutions of their choice.
15. The NCMEI Act, 2004 was amended twice in order to further broad base 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 (3), 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.”

16. As per the above provisions, the person who desires to establish minority institution has 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 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.
17. 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.”
18. Looking to the 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 jurisdictions original as well as appellate, any educational institution which 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 rejects the application for grant of MSC, the aggrieved person may appeal against such an 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 a minority educational institution has to apply to the Competent Authority of the State Government for grant of NOC. Where within a period of 90 days from the receipt of the application, if the competent authority does not grant NOC or application has been rejected but not communicated to the applicant, it shall be deemed that NOC has been granted and the applicant 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 to this Commission under section 12A of NCMEI Act, 2004.

19. 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 but instead of deciding the NOC application competent authority of the State has passed the above order dated 8.3.2019.
20. In view of the above facts and observations, it is an admitted fact that the petitioner institution had applied to competent authority of the State of Kerala for grant of NOC under Section 10 of NCMEI Act, 2004 and the said application was not decided in accordance with the provisions of NCMEI Act, 2004 and verdict of the Hon'ble Apex Court by the State competent authority and passed the impugned order 8.3.2019. So in the interest of justice, we are of the considered opinion, without going on the merits of the case, it is just proper and fit case to send the matter back to the state competent authority to decide the application of the petitioner institution for grant of NOC under Section 10 of the NCMEI Act, 2004 on merits after considering all the documents produced by the petitioner institution at the earliest, expeditiously.
21. Office is directed to send copy of this order to the State Competent Authority and in the interest of justice, in addition the petitioner institution is also directed to produce certified copy of this order before the State Competent Authority immediately for compliance of this order.
22. In view of above, the present petition is disposed of in accordance with this order.

Signed, pronounced and published on **Tuesday, 28th Day of September 2021.**

**JUSTICE NARENDRA KUMAR JAIN
CHAIRMAN**

**DR. JASPAL SINGH
MEMBER**

**DR. SHAHID AKHTER
MEMBER**

MD