

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

**Case No. 84 of 2019**

**In the matter of :-**

**Taibee English Medium Higher Secondary School, 102 Kamri Marg,  
Ujjain, District Ujjain, Madhya Pradesh-456006**

..... **Petitioner**

**V/s**

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

..... **Respondent**

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

**ORDER**

**DATED 17.11.2021**

**Justice Narendra Kumar Jain, Chairman, NCMEI**

1. This application has been received on 12.03.2019 by hand through Mr. Junais P, Advocate of the petitioner institution for grant of Minority Status Certificate (in short 'MSC') to Taibee English Medium Higher Secondary School, 102 Kamri Marg, Ujjain, District Ujjain, Madhya Pradesh-456006.
2. Learned counsel for the petitioner filed affidavit of Mr. Abutalib Akkadwala, S/o Mr. Hakimuddin Akkadwala, Secretary of Taiyebi School Society, 102, Kamri Marg, Ujjain, Madhya Pradesh-456006 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 Muslim minority community.
3. Learned counsel for the petitioner has filed notarized copy of Unique ID No. : MP/2019/0228532 of the petitioner's Society as given by the Niti Aayog Portal NGO Darpan, notarized copy of application dated 01.11.2018 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 its tracking report, notarized copy of Society Registration Certificate of Taiyebi School Society, Ujjain notarized copy of Memorandum of Association alongwith list of founding members and List of members from 30.05.2016 to 29.05.2018 of the society and

the notarized copy of recognition letter dated 20.05.2018 issued by the office of Sambhagiya Sanyukt Sanchalak, Lok Shikshad Sambhag, Ujjain (MP) for the Academic Year 2018-19. Learned Counsel for the petitioner also submitted that out of total 684 students, 492 students are from Muslim minority community.

4. It is stated in the petition that on dated 01.11.2018, the petitioner institution has applied to the State Competent Authority for grant of NOC which was delivered on 05.11.2018 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. After service of registered notice dated 07.05.2019, 24.01.2020 and 18.02.2021, Secretary / Commissioner, Backward Classes and Minority Welfare Department, Bhopal, MP has informed by letter dated 17.08.2021 by post and also through email which was received in the Commission's Office on dated 24.08.2021 wherein it was informed that respondent has not received the application dated 01.11.2018 sent by the petitioner institution and also that the petitioner institution has been established in the year 1965, so respondent could not grant NOC to the petitioner institution.
6. 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 given in the impugned order dated 17.08.2021. Learned Counsel for the petitioner submitted that the petitioner institution is being established and administered by the Taiyebi School Society, Ujjain, which is the registered society having Registration No. 138 of 1955 dated 13.06.1955. All the founding and present members of the Society are belonging from Muslim minority community. It is worthwhile that the said Society is formed by the members of the Muslim minority community

in the year 1955 in the name of Taiyebi School Society, 102, Kamri Marg, Ujjain, Madhya Pradesh-456006 .

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 Muslim 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 Mr. Abutalib Akkadwala, Secretary of Taiyebi School Society, Ujjain and perused the file, petitioner has filed copy of application dated 01.11.2018 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 05.11.2018, so the contention of the respondent is not reliable and acceptable. It is proved that the said application dated 01.11.2018 has been successfully delivered to the respondent.
9. The petitioner institution sent NOC application dated 01.11.2018 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. It is true 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 1965, 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 1965 and is in operation, impugned order passed by the respondent on application dated 01.11.2018, 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. It is also proved that the respondent has not decided NOC application within 90 days as per Section 10 of the NCMEI Act, 2004.

10. As per the provisions of Section 10 & 12 of the NCMEI Act, 2004, 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.
11. 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.”*

12. 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 as an minority educational institution has to apply the Competent Authority of the State Government for grant of NOC and 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.
- 13 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 Muslim minority community and is being administered by the Taiyebi School Society, Ujjain which is managed and run by the members of the Muslim 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 Mr. Abutalib Akkadwala, Secretary of Taiyebi School Society, Ujjain.
14. The 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 Muslim 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.

15. Relying on the said un rebutted evidence produced on behalf of the petitioner, we find and hold that Taibee English Medium Higher Secondary School, 102 Kamri Marg, Ujjain, District Ujjain, Madhya Pradesh-456006 run by Taiyebi School Society, Ujjain 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 Muslim minority community.
16. Consequently, Taibee English Medium Higher Secondary School, 102 Kamri Marg, Ujjain, District Ujjain, Madhya Pradesh-456006 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 Muslim minority community subject to the eligibility of the students and availability of the accommodation in the petitioner institution, updated recognition / affiliation order of the petitioner institution and also file resolution of the General Body of the Society to authorize Mr. Abutalib Akkadwala, Secretary of Taiyebi School Society, Ujjain for obtaining MSC from this Commission
17. After compliance of the above order, a minority status certificate be issued accordingly.
18. In view of the above, the present petition is disposed of in accordance with this order.

Signed, pronounced and published on **Wednesday, 17<sup>th</sup> Day of November, 2021.**

**JUSTICE NARENDRA KUMAR JAIN  
CHAIRMAN**

**DR. JASPAL SINGH  
MEMBER**

**DR. SHAHID AKHTER  
MEMBER**