

GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR MINORITY
EDUCATIONAL INSTITUTIONS

CASE NO. 544 OF 2015

In the matter of :-

Syndesmos Public School, Gregorian Nagar, Thickapuzha,
Parumala P.O., District Pathanamthitta, Kerala-689626
..... Petitioner

Vs.

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

Present: Ms. Anju Joseph, Advocate for the petitioner
None for the respondent

O R D E R

Dated : 27.07.2021

Justice Narendra Kumar Jain, Chairman

1. Prof. V.I. Joseph, s/o Late Mr. P.K. Iype, Chairman of Mar Gregorios Educational and Charitable Society, Gregorian Nagar, Thickapuzha, Parumala P.O., District Pathanamthitta, Kerala-689626 has filed an application on dated 12.03.2015 for grant of Minority Status Certificate (in short 'MSC') to Syndesmos Public School, Gregorian Nagar, Thickapuzha, Parumala P.O., District Pathanamthitta, Kerala-689626.
2. The petitioner has filed affidavit of Prof. V.I. Joseph, Chairman of Mar Gregorios Educational and Charitable Society and Mr. John Kuruvilla, Manager of

Syndesmos Public School, Gregorian Nagar, Thikapuzha, Parumala P.O., District Pathanamthitta, Kerala-689626 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. Petitioner has also filed order no. 14729/F3/13/G. Edn dated 16.03.2013 by which State Govt. of Kerala has returned the application to the petitioner for retransmission through proper channel (Educational Officers). Petitioner has also filed Certificate of Registration of Society, Memorandum of Association, List of founding members, Articles of Association, Application for amendment of the Bye-Laws of Mar Gregorios Educational and Charitable Society, Affiliation order dated 28.09.2012 for a period of three years w.e.f. 01.04.2012 to 31.03.2015 issued by Central Board of Secondary Education (in short 'CBSE'), Affiliation order dated 06.01.2015 for a period of three years w.e.f. 01.04.2015 to 31.03.2018 issued by CBSE and Unique ID No. KL/2017/0158019 of the petitioner's society as given by the Niti Aayog Portal NGO Darpan.

3. The background facts of the case are that the petitioner has filed application on dated 07.03.2013

but copy of above application has not filed by the petitioner till date. Above application was returned by the Under Secretary, General Education (F) Department, State of Kerala vide letter no. 14729/F3/13/G. Edn dated 16.03.2013 to the petitioner for retransmission through proper channel (Educational Officers). Thereafter this application was filed by the petitioner for grant of MSC to the petitioner institution. In these circumstances, this application has been filed by the petitioner. It is argued by the Learned Counsel for the petitioner that the competent authority of the State of Kerala has failed to appreciate the provisions of National Commission for Minority Educational Institutions (in short 'NCMEI') Act, 2004 and wrongly returned the application for grant of MSC to the petitioner. So petitioner has filed this application before the Commission straightaway for grant of MSC. Learned Counsel for the petitioner also submitted that this Commission has original jurisdiction to grant MSC under section 11(f) of the NCMEI Act, 2004 and the written submissions filed by the State of Kerala is devoid of merits because this Commission has both the jurisdiction original as well as appellate. Section 11(f) is not only to decide all questions relating to the

minority status but also to declare the said status of the applicant institution. The word “decide” referred to in Section 11(f) of the NCMEI Act, 2004 denote the function and the word “declare” denote the powers of the Commission to grant MSC. The interpretation given by the High Court of Calcutta referred to by the respondent will render Section 11(f) redundant, the said interpretation cannot be accepted. In the facts and circumstances of the case, learned counsel for the petitioner has submitted to allow the applicant for grant of MSC to the petitioner institution.

4. To obtain MSC is a constitutional right of minority educational institution. The petitioner institution is established and administered by the members of the Christian minority community. The submission of the respondent 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).
5. The petitioner institution is established and administered by the members of the Christian minority community. The memorandum of association of the petitioner’s society clearly reflects that the petitioner

institution has been established primarily for the benefit of Christian minority community.

6. After hearing the learned counsel for the petitioner, we have perused the entire records of the petitioner institution i.e. affidavit of Prof. V.I. Joseph and Mr. John Kuruvilla, order no. 14729/F3/13/G. Edn dated 16.03.2013 of State of Kerala, Certificate of Registration of Society, Memorandum of Association, List of founding members, Articles of Association, Affiliation order dated 28.09.2012 and dated 06.01.2015 issued by CBSE and Unique ID of the petitioner's society as given by the Niti Aayog Portal NGO Darpan.
7. By the impugned order dated 16.03.2013, the respondent has returned the application for grant of MSC to the petitioner for retransmission through proper channel (Educational Officers). So, it is clear that the State Govt. has not rejected and also not granted MSC to the petitioner and returned to the petitioner for filing through proper channel.
8. It is an admitted fact that the State Govt. cannot deny without any legal ground for grant of minority status to any educational institution because this is a

constitutional right of a minority institution. As per 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 dated 16.03.2013 that State has not decided application of the petitioner for

grant of MSC on merits.

9. 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 this to give protection to minorities to run educational institutions of their choice.
10. 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 Section 10, Section 12A and Section 12B of the NCMEI Act, 2004,
11. As per the above provisions and sections, 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 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.

12. 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, Hon'ble Supreme Court has made clear that this Commission has both jurisdiction original as well as appellate.
13. 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 NOC 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.

14. 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 MSC to the State Competent Authority but instead of deciding the application on merits State authority has returned the application to the applicant for retransmission through proper channel.
15. In view of above facts and observations, it is an admitted fact that the petitioner institution had applied to the Kerala State Authority for grant of MSC and said application was returned for retransmission through proper channel and not decided on merits with the provisions of NCMEI Act, 2004. So in the interest of justice, we are of the considered opinion

without going on merits of the case, it is just, proper and fit case to send the matter back to the State competent authority of Kerala State to decide the application of the petitioner for grant of MSC on merits after considering the documents produced by the petitioner institution before the authority at the earliest expeditiously.

16. Office is directed to send copy of this order to Kerala State Competent Authority and in the interest of justice, in addition the petitioner institution is also directed to produce all the relevant documents and application for grant of MSC alongwith certified copy of this order before the State competent authority immediately for compliance of this order.

In view of the above, the present case is disposed of in accordance with this order.

Signed, pronounced and published on **Tuesday, 27th day of July, 2021.**

**JUSTICE NARENDRA KUMAR JAIN
CHAIRMAN**

**DR. JASPAL SINGH
MEMBER**

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