

GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR MINORITY
EDUCATIONAL INSTITUTIONS

In the matter of :-

Case No. 116 of 2019

Mar Basil Hr. Sec. School, Kothamangalam, Ernakulam, Kerala.

Case No. 126 of 2019

Mar Kauma Higher Secondary School, Vengoor P.O.,
Kothamangalam, Ernakulam, Kerala.

Case No. 132 of 2019

St. John's Higher Secondary School, Kavalangad, Nellimattam P.O.,
Kothamangalam, Ernakular Distt., Kerala.

..... **Petitioners**

V/s

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

..... **Respondent**

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

ORDER

DATED: 22nd July 2021

Justice Narendra Kumar Jain, Chairman, NCMEI

1. These cases were filed by the educational institutions mentioned above on dated 26th March 2019 for grant of minority status certificate on the ground that they have been established and are being administered by the members of the Christian minority community. Since a common question of law and fact is involved in all these cases, they are being disposed of by this common order.

2. In Case No. 116 of 2019, learned counsel for the petitioner filed affidavit of Mr. K.P. George 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 community. Petitioner has also filed copy of application dated 24.10.2018 for grant of minority status certificate (in short 'MSC') sent to the competent authority of the State Government, original letter No. GEDN-F3/7/2019-G.EDN dated 28.1.2019 issued by the Additional Secretary, General Education (F) Department, Kerala, G.O. (MS) No. 162/98/G.Edn. dated 13.5.98 issued by the Secretary, General Education Department, copy of the order No. A1/20164/H.P.E./2001 dated 17.4.02 of the Director, Higher Secondary Education, Kerala and Order No. B2/13550/RDD/HSE/ EKM/2014 dated 31.3.2015 of the Regional Deputy Director, Higher Secondary Education, Ernakulam (No. 116 of 2019).
3. In Case No. 126 of 2019, learned counsel for the petitioner filed affidavit of Mr. M.J. Mathai Kunju 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 community. Petitioner has also filed copy of application dated 14.12.2018 for grant of MSC sent to the competent authority of the State Government (In Col. No. 6 (a) of the application for grant of MSC, the petitioner has wrongly mentioned the date as 14.11.2018), G.O. (MS) 247/2000/G.Edn. dated 26.7.2000 issued by the Secretary, General Education (T) Department,

Kerala, Order No. Acd. A1/16051/HSE/2001 dated 5.1.02 of the Director, Higher Secondary Education, Kerala, Order No. A2/6298/RDD/HSE/EKM/2015 dated 3.8.2015 issued by the Regional Deputy Director, Higher Secondary Education, Ernakulam and copy of the letter No. GEDN-F3/24/2019-G.EDN dated 8.3.2019 issued by the Under Secretary, Government of Kerala.

4. In Case No. 132 of 2019, learned counsel for the petitioner filed affidavit of Mr. George Varghese 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 community. Petitioner has also filed copy of application dated 15.11.2018 for grant of MSC sent to the competent authority of the State Government, G.O. (Ms) No. 209/2000/G.Edn. dated 24.6.2000, G.O. (RT) 2261/2000/G.Edn. dated 11.8.2000 copy of the letter No. GEDN-F3/360/2018-G.EDN. dated 11.3.2019 issued by the Under Secretary, Government of Kerala, G.O. (RT) 3361/2000/G.Edn. dated 11.8.2000 issued by the Secretary, General Education (T) Department (Case No. 132 of 2019).
5. The background facts of the cases are that the petitioners have filed application for grant of MSC which were disposed of vide orders dated 28.1.2019, 8.3.2019, 11.3.2019. The impugned orders passed by the authority of the State of Kerala reads as follows:

“Attention is invited 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.”

In these circumstances, these petitions have been filed by the petitioners for grant of MSC.

6. Notices of these petitions were served to the respondent. Despite service of registered notice, none appeared on behalf of the respondent. Hence, we proceed ex-parte against the respondent.

7. It is argued by the learned counsel for the petitioners that the competent authority of the State of Kerala has failed to appreciate the provisions of NCMEI Act, 2004 and wrongly disposed of the applications 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. Learned counsel for the petitioners submitted that the competent authority has given liberty to the petitioners to file application for grant of minority status certificate before this Commission. The petitioner institutions are fulfilling all the criteria for grant of MSC as per NCMEI Act, 2004. The competent authority has failed to consider their application for grant of MSC. To obtain minority status certificate is a constitutional right of minority educational institution. The petitioner institutions are established and administered by the members of the Christian minority community. The impugned orders are 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). The petitioner institutions are established and administered by the members of the Christian minority community.
9. In the facts and circumstances of the case, learned counsel for the petitioners prayed for grant of MSC in favour of the petitioner institutions.
10. After hearing the learned counsel for the petitioners, we have perused the entire record produced by the petitioner institutions.
11. By the impugned orders dated 28.1.2019, 8.3.2019, 11.3.2019, the respondent has disposed of applications 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.

12. Any State Government cannot deny for 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 MSC 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 institutions have filed application before the State competent

authority for grant of MSC.

13. 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.

14. 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 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.”

15. As per the above provisions, 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.

16. 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."

17. 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 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 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 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 refusal to grant NOC by the competent authority may prefer an appeal to this Commission under section 12A of NCMEI Act, 2004.

18. 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 appellant has applied for grant of MSC to the State Competent Authority but instead of deciding the MSC application competent authority of the State has passed the above orders dated 28.1.2019, 8.3.2019, 11.3.2019.

19. In view of the above facts and observations, it is an admitted fact that the petitioner institutions had applied to competent authority of the State of Kerala for grant of MSC and the said applications were 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 orders dated 28.1.2019, 8.3.2019, 11.3.2019. 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 institutions for grant of MSC on merits after considering all the documents produced by the petitioner institutions at the earliest, expeditiously.

20. Office is directed to send copy of this order to the State Competent Authority and in the interest of justice, in addition the petitioner institutions are also directed to produce all the relevant documents and certified copy of this order before the State Competent Authority immediately for compliance of this order.

21. Let copy of the order be kept in the record of Case No. 126 of 2019 and 132 of 2019.

22. In view of above, the present petitions are disposed of in accordance with this order.

Signed, pronounced and published on **Thursday, 22nd Day of July 2021.**

**JUSTICE NARENDRA KUMAR JAIN
CHAIRMAN**

**DR. JASPAL SINGH
MEMBER**

MD