

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

Case No. 163 of 2019

In the matter of :-

**Ram Nagina Shikshak Prashikshan Mahavidyala, Village
Paharpur Kalan, Post Paharpur Kalan, Tehsil Saidpur, District
Ghazipur, Uttar Pradesh-233306**

..... **Petitioner**

V/s

**Principal Secretary, Higher Education, Department of
Education, Govt. of Uttar Pradesh, 11, Naveen Bhawan
Secretariat, Lucknow, Uttar Pradesh**

..... **Respondent**

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

ORDER

DATED 25.05.2022

Justice Narendra Kumar Jain, Chairman, NCMEI

1. This petition has been received on 03.04.2019 by hand through Mr. Junais P., Advocate of the petitioner institution for grant of Minority Status Certificate (in short 'MSC') to Ram Nagina Shikshak Prashikshan Mahavidyala, Village Paharpur Kalan, Post Paharpur Kalan, Tehsil Saidpur, District Ghazipur, Uttar Pradesh-233306.
2. Learned Counsel for the petitioner filed an affidavit of Mr. Akhilesh Jain, Manager cum Chairman of Ma Prema Devi Janseva Nyas in support of the averments made in the petition and also to prove that the beneficiaries of the petitioner institution are members of the Jain minority community.
3. Learned counsel for the petitioner has filed notarized copy of Unique ID No. : UP/2017/0168831 of the petitioner's Society as given by the Niti Aayog Portal NGO Darpan, copy of NOC application dated 28.11.2018 sent to the State Competent Authority i.e. Principal Secretary, Higher Education, Department of Education, Govt. of Uttar Pradesh alongwith postal receipt and its

tracking report, notarized copy of Certificate of Registration of Ma Prema Devi Janseva Nyas, 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 Recognition Order dated 01.03.2013 issued by Regional Director, National Council for Teacher Education issued to the unaided petitioner from the academic session 2013-14 for D.El.Ed. Programme.

4. As per the information supplied by the unaided petitioner institution with regard to students strength, it is mentioned that out of the total 159 students, 35 students are from the Jain minority community and 124 students are Hindus. It is relevant to mention here that out of total 14 teachers, 4 teachers are from the Jain 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 the 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 28.11.2018, the petitioner institution has applied to the State Competent Authority for grant of NOC which was received by the State Competent Authority on 03.12.2018 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 20.05.2019 and 14.01.2021, respondent has sent reply dated 11.10.2019 which was received in the Commission's Office on 15.10.2019. In the reply filed by the respondent it is mentioned that the NOC application dated 28.11.2018 submitted by the petitioner institution is not received by the respondent. After receiving of NOC application, suitable action will be taken by the respondent.
7. Learned Counsel for the petitioner filed subsequent pleadings and contended that the reply filed by the respondent is not maintainable as per the provisions of NCMEI Act, 2004, which are incorrect and contrary to truth and petitioner institution is denying all the meritless and frivolous averments made by the respondent in their counter affidavit as the contents therein are wrong, malafide, baseless and contrary to truth. The petitioner institution is established and administered by the Jain minority community under the registered Society namely Ma Prema Devi Janseva Nyas and institution is managed by the Jain minority community, the Trust desired to get its declaration as a minority educational institution, in order to avail the rights and privileges guaranteed under Article 30(1) of the Constitution of India. As per the mandate of Hon'ble Commission, the petitioner institution approached the respondent Competent Authority on dated 28.11.2018 to grant NOC under Section 10 of the NCMEI Act, 2004 and to seek MSC from this Commission. The said application is still pending with the competent authority of the State of Uttar Pradesh. Petitioner has waited for more than 90 days to get any response from the respondent, but the competent authority did not grant the NOC under section 10 of the NCMEI Act, 2004, nor rejected the said application within the statutory period of 90 days. Therefore, after the completion of 90 days, petitioner institution on dated

03.04.2019 filed application for grant of MSC in favour of petitioner institution.

8. All the averments made in counter affidavit filed by the respondent are pertaining to the rules and guidelines laid down by the Govt. of Uttar Pradesh to grant MSC and not for grant of NOC under section 10 of the NCMEI Act, 2004 and the present objections raised by the respondent is not maintainable as per the NCMEI Act, 2004.
9. Petitioner has further submitted that they fulfill all the indicia prescribed by this Commission for grant of MSC as the petitioner institution is established and administered by the Jain minority community and primarily for the benefits of Jain minority community and prayed that the counter affidavit filed by the respondent being devoid of any merits, disallowed, and petition filed by the petitioner for grant of MSC may be allowed and accordingly grant MSC to the petitioner institution.
10. Heard the Learned Counsel for the petitioner, perused the pleading of parties, the documents filed by the petitioner and affidavit of Mr. Akhilesh Jain, Manager cum Chairman of Ma Prema Devi Janseva Nyas.
11. 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 Jain minority community and is being administered by Ma Prema Devi Janseva Nyas which is managed and run by the members of the Jain 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. Akhilesh Jain, Manager cum Chairman of Ma Prema Devi Janseva Nyas.
12. The respondent has not replied properly to the application submitted by the petitioner institution. Respondent has also failed to appreciate the provisions of NCMEI Act, 2004 especially under

section 10 of the said Act and filed reply wrongly before this Commission. The Petitioner has not applied for grant of MSC before the State Competent Authority. Petitioner has applied for grant of NOC under section 10 of the NCMEI Act, 2004 before the State competent authority. So the guidelines of the Government of Uttar Pradesh have is not applied to the present petitioner institution. In the facts and circumstances of the present case the stand taken by the respondent is not tenable in the eye of law and deserves to be ignored.

13. The petitioner institution has fulfilled all the criteria for grant of MSC. 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 administered by the members of the Muslim minority community. The reply filed by the respondent 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), which reads as follows :-

“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.”

14. As per the provisions of Section 10, Section 12A and Section 12B of the NCMEI Act, 2004, the person who desires to establish minority institution, is to apply to the State Competent Authority 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 the orders of the competent authority of the State to the NCMEI under Section 12A as well as over the authorities that were established by the Central Government or State Government which reject the application for grant of MSC to an educational institution under section 12B of the NCMEI Act, 2004.
15. 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.

16. 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.
17. 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 members of the Jain 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.
18. Relying on the said unrebutted evidence produced on behalf of the petitioner, we find and hold that Ram Nagina Shikshak Prashikshan Mahavidyala, Village Paharpur Kalan, Post Paharpur Kalan, Tehsil Saidpur, District Ghazipur, Uttar Pradesh-233306 run by Ma Prema Devi Janseva Nyas 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 Jain minority community.
19. Consequently, Ram Nagina Shikshak Prashikshan Mahavidyala, Village Paharpur Kalan, Post Paharpur Kalan, Tehsil Saidpur, District Ghazipur, Uttar Pradesh-233306, which is for D.El.Ed. Course, 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 Jain minority community subject to the eligibility of the students and availability of the accommodation in the petitioner institution, updated recognition / affiliation order issued by the concerned University to the unaided petitioner institution and resolution of the General Body of the Society in favour of Mr. Akhilesh Jain, Manager cum Chairman of Ma Prema Devi Janseva Nyas for obtaining MSC from this Commission and clarification about the designation of the petitioner institution and original/certified copy of the NOC application dated 28.11.2018 submitted before the State Competent Authority. 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.

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

Signed, pronounced and published on **Wednesday, 25th Day of May, 2022.**

**JUSTICE NARENDRA KUMAR JAIN
CHAIRMAN**

**DR. JASPAL SINGH
MEMBER**

**DR. SHAHID AKHTER
MEMBER**

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