

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

Case No. 204 of 2019

In the matter of :-

S.B.S. Kanya Shala, Shivaji Chowk, Bhaji Market, Nipani, Tal. Chikodi, Belgaum District, Karnataka-591237

..... **Petitioner**

V/s

Principal Secretary, Higher Education Department, Government of Karnataka

..... **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 09.04.2019 by hand through Mr. Junais P., Advocate of the petitioner institution for grant of Minority Status Certificate (in short 'MSC') to S.B.S. Kanya Shala, Shivaji Chowk, Bhaji Market, Nipani, Tal. Chikodi, Belgaum District, Karnataka-591237.
2. Learned counsel for the petitioner filed affidavit of Shri Vardhaman Chandulal Shah, Secretary of The Female Education Society, Trust, Nipani and the authorized representative of the applicant i.e. S.B.S. Kanya Shala, Shivaji Chowk, Bhaji Market, Nipani, Tal. Chikodi, Belgaum District, Karnataka-591237 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. : KA/2018/0187948 of the petitioner's trust as given by the Niti Aayog Portal NGO Darpan, copy of application dated 26.11.2018 sent to State Competent Authority i.e. Principal Secretary, Higher Education Department, Government of Karnataka for grant of No Objection Certificate (in short 'NOC') alongwith postal receipt and its tracking report, notarized copy of Trust Registration Certificate of The Female Education Society, Trust, Nipani, notarized copy of Trust Deed alongwith list of founding trustees of the Trust, notarized copy of Recognition Order in Kannada alongwith its English Translation bearing no.

AN3/MN/SBSK/School/Nipani/2014-15/90 dated 01.04.2015 issued by Joint Director (Committee), Society Education Department Chikodi to the aided petitioner institution for the year 2014-15 to 2018-19, notarized copy of Recognition Order in Kannada alongwith its English Translation bearing no. ANU3/Khasa/Unit/SBSK/Nipani/19-20/4572 dated 20.11.2019 issued by Deputy Director (Administration), Public Education Department Chikodi to the petitioner institution for the year 2019-20 to 2023-24 and notarized copy of receipt of Rs. 1,000/- towards the Registration Certificate issued by the Karnataka State Education Board in Kannada language alongwith its true English Translation. Learned Counsel for the petitioner also submitted the online Census reports of Karnataka State as well as Belgaum District (Karnataka) and board resolution authorizing Shri Vardhaman Chandulal Shah, Secretary of The Female Education Society, Trust, Nipani to obtain MSC from this Commission.

4. As per the information supplied by the petitioner institution is that out of total 505 students, 73 students are from the Jain minority community, 49 are from Muslim minority community and 383 are Hindus. Population of Jain minority community in the State of Karnataka as per the census of 2011 is only 0.72%. 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 26.11.2018, the petitioner institution has applied to the State Competent Authority which was delivered on 29.11.2018 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.

6. After service of registered notice dated 23.05.2019, Additional Commissioner for Public Instructions, Dharwad has sent reply dated 01.08.2019 by post which was received in Commission's office on dated 09.08.2019 wherein it was informed that the Principal Secretary, Education Department (Primary & Secondary), Govt. of Karnataka is not the competent authority by Govt. of Karnataka. The competent authority is a committee consisting of (1) Commissioner for Public Instructions, (2) Director for Public Instructions and (3) Joint Director for Public Instructions vide DO No. ED 27/INFORMATION (Part-1), Bangalore dated 18.06.2014 and the petition is filed without exercising the available remedies in the State. Hence the petition is not maintainable. In their reply, they stated that the application for NOC dated 26.11.2018 is not made before appropriate authority i.e. Commissioner for Public Instructions Dharwad. The Authority before whom the application is stated to have been filed (Government of Karnataka) is not the competent or appropriate authority to grant the relief sought by the applicant institution. However the authority before whom the application filed ought to have been rejected stating either to apply before correct forum /authority or stating laxity of jurisdiction to grant the relief. Under the circumstances nothing is pending before the competent authority so authorized by the Government of Karnataka. Petitioner institution is affiliated to Education Department, Govt. of Karnataka. In final remarks of the reply they stated that the institution is required to approach appropriate authority i.e. Commissioner for Public Instructions, Dharwad, prescribed by the Government of Karnataka vide GO No. ED 27/Information (Part-1), Bangalore dated 18.06.2014. The authority is committee headed by Commissioner for Public Instruction, Dharwad. Hence the institution may be directed to approach appropriate authority by Karnataka Government before knocking the doors of Commissioner forum.
7. Learned Counsel for the petitioner filed subsequent pleadings and contended that petitioner is denying all the meritless and frivolous averments made by the respondent in their reply as the contents therein are wrong, malafide, baseless and contrary to truth. With malafide intentions respondent has suppressed many material facts in their reply to

drag the proceedings of this Commission. The petitioner institution is established and administered by the Jain minority community under the registered trust 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 competent authority of the State Government notified by NCMEI through its website i.e. Principal Secretary to Govt. (Higher Education), Govt. of Karnataka on dated 26.11.2018 to grant NOC under section 10 of the NCMEI Act, 2004 and to seek minority status certificate from this Commission. The said application is still pending with the competent authority of the State of Karnataka. 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 09.04.2019 filed application for grant of MSC in favour of petitioner institution.

8. All the averments made in reply filed by the respondent are pertaining to competent authority appointed by the State Govt. to issue MSC to educational institutions and not for grant of NOC under 10 of the NCMEI Act, 2004. Therefore, the objection raised by the respondent that the petition is filed without exercising the available remedies in the State Govt. is not maintainable as the GO No. ED 27/Information (Part-1), Bangalore dated 18.06.2014 is pertaining to grant of MSC by the State Govt. The respondent in their reply admitted that they have received the NOC application dated 26.11.2018 but they have not issued a deficiency / clarification letter to the petitioner institution. The said act of respondent is malafide and suspicious, which shows the clear intention of the respondent to delay the proceedings in getting MSC to the petitioner institution.
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. After giving notice of above subsequent pleadings respondent has again sent reply dated 22.06.2020 by post which was received in the Commission's office on 13.08.2020. The respondent in their reply stated that the NOC application dated 26.11.2018 did not receive by the respondent. They wrongly admitted in their earlier reply that the same has been received by the respondent. Thereafter, the said NOC application sent by the petitioner to the Govt. was communicated to the respondent authority on 15.06.2019. They further stated that the application filed by the petitioner before the present authority is not maintainable as said authority has no jurisdiction to entertain the application filed by the petitioner, on the ground that unless and until the petitioner legally submits to the competent authority and the authority either by rejecting or accepting the application then only the petitioner has to approach the present authority. Since, the competent authority has not passed any order, the petitioner in a hurry burry manner has approached this authority which has no jurisdiction to entertain the said application and the application filed by the petitioner may be liable to be dismissed being devoid on merits in the interest of justice and equity.
11. Having heard the Learned Counsel for the petitioner we have perused the documents, pleadings of the parties and affidavit of Shri Vardhaman Chandulal Shah, Secretary of The Female Education Society, Trust, Nipani.
12. 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 The Female Education Society, Trust, Nipani 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 Shri Vardhaman Chandulal Shah, Secretary of The Female Education Society, Trust, Nipani.
13. 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 Karnataka have 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. It is proved by the copy of application dated 26.11.2018, post office receipt and its tracking report that petitioner institution applied to the State Competent Authority for grant of NOC in favour of the petitioner institution.

14. 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 Jain 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.”

15. 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 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. 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 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.
17. 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 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 reply filed by the respondent have no relevance to the present case.
18. The Trust Deed 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.

19. Relying on the said un rebutted evidence produced on behalf of the petitioner, we find and hold that S.B.S. Kanya Shala, Shivaji Chowk, Bhaji Market, Nipani, Tal. Chikodi, Belgaum District, Karnataka-591237 run by The Female Education Society, Trust, Nipani 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.
20. Consequently, S.B.S. Kanya Shala, Shivaji Chowk, Bhaji Market, Nipani, Tal. Chikodi, Belgaum District, Karnataka-591237 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 Jain minority community subject to the eligibility of the students and availability of the accommodation in the petitioner institution.
21. After compliance of the above order, a minority status certificate be issued accordingly.
22. In view of the above, the present petition is disposed of in accordance with this order.

Signed, pronounced and published on **Wednesday, 17th Day of November, 2021.**

**JUSTICE NARENDRA KUMAR JAIN
CHAIRMAN**

**DR. JASPAL SINGH
MEMBER**

**DR. SHAHID AKHTER
MEMBER**