

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

Case No. 179 of 2019

In the matter of :-

**Elite Public School, Puliyankulam P.O., Silaiman (Via), Madurai
Rameswaram By Pass Road, Madurai, Tamil Nadu-625201**

..... **Petitioner**

V/s

**The Principal Secretary, School Education Department, Government of
Tamil Nadu, Fort St. George, Secretariat, Chennai, Tamil Nadu**

..... **Respondent**

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

ORDER

DATED 12.08.2021

Justice Narendra Kumar Jain, Chairman, NCMEI

1. An application has been received on 29.03.2019 by hand through Mr. Junais P, Advocate of the petitioner institution for grant of Minority Status Certificate (in short 'MSC') to Elite Public School, Puliyankulam P.O., Silaiman (Via), Madurai Rameswaram By Pass Road, Madurai, Tamil Nadu-625201.
2. Learned counsel for the petitioner filed affidavit of Shri S.Kaja Mydeen, Managing Trustee, Triluminous Educational Trust (in short 'Trust') and the authorized representative of the applicant institution i.e. Elite Public

School, Puliyankulam P.O., Silaiman (Via), Madurai Rameswaram By Pass Road, Madurai, Tamil Nadu-625201 in support of the averments made in the petition and also to prove that the beneficiaries of the petitioner institution are members of the Muslim minority community.

3. Learned counsel for the petitioner has filed certified copy of application on dated 01.11.2018 sent to State Competent Authority i.e. Principal Secretary, School Education Department, Government of Tamil Nadu for grant of No Objection Certificate (in short 'NOC') alongwith its tracking report, certified copy of Unique ID No. : TN/2018/0189185 of the petitioner's trust as given by the Niti Aayog Portal NGO Darpan, certified copy of Trust Deed alongwith list of founding trustees of the trust, certified copy of Amended Trust Deed alongwith list of present trustees of the trust and certified copy of recognition order of the petitioner institution.
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 of National Commission for Minority Educational Institutions (in short 'NCMEI') Act, 2004.
5. After service of registered notice, respondent has sent reply by post which was received by the Commission on 13.08.2019. In the reply filed by the respondent submitted that minority status is being granted by the State Government as per the guidelines and revised guidelines of the department to the recognized Government aided and unaided educational institutions under the control of the Director of School Education. He has also mentioned in the reply that Education Department has issued

amendment in the guidelines for issuance of certificate of recognition to schools affiliated boards other than that of Tamil Nadu. As per the amendment if the petitioner school submit the recognition proposals through proper channel to Directorate of School Education and after obtaining certificate of recognition, the request of the petitioner will be considered as per the Government Order dated 12.10.1998 and pray to dismiss the application of the petitioner institution.

6. Learned Counsel for the petitioner filed subsequent pleadings and contended that all the contentions of counter affidavit filed by the respondent are wrong, malafide, baseless and contrary to truth. The respondent with malafide intentions has suppressed many material facts in their counter affidavit to drag the proceedings of this Commission. The petitioner institution is established and administered by the members of the muslim minority community under the registered trust deed namely Triluminous Educational Trust and since the petitioner institution is being maintained by the muslim minority community, the institution has right to declare as an educational institution under the Article 30(1) of the Constitution of India. Petitioner institution has filed application for grant of NOC under Section 10 of the NCMEI Act, 2004 and not for MSC before the State Competent Authority. The petitioner has waited period of 90 days to get any response of the NOC application, then petitioner has filed the application before this Commission as per the provisions of Section 10 of the NCMEI Act, 2004. Petitioner institution fulfills all the indicia prescribed by this Hon'ble Commission to grant MSC. Petitioner institution is established and administered by the members of the muslim minority community. He has also mentioned in the subsequent pleading that the Hon'ble Supreme Court in SISTERS OF ST. JOSEPH OF CLUNY V/S THE STATE OF WEST BENGAL & ORS (Civil Appeal No. 3945/2018) has settled the law with regard to the applicability of Section 10 and 11 of NCMEI Act, 2004 and in view of the said authoritative pronouncement of Hon'ble Supreme Court the stand taken by the respondent herein will not survive in the eye of law. It is also submitted that said GO's have no relevance to the present case because

petitioner has applied for grant of NOC to the State Competent Authority under Section 10 of the NCMEI Act, 2004. He has also denied all the averments of the reply of the respondent and prayed to grant MSC in favour of the petitioner institution.

7. Having heard learned counsel for the petitioner, we have perused the documents, pleadings of the parties and affidavit of Shri S.Kaja Mydeen, Managing Trustee of the Trust.
8. 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 Triluminous Educational Trust 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 Shri S.Kaja Mydeen, Managing Trustee of the Trust.
9. 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 and filed reply wrongly before this Commission. The Petitioner has not applied for grant of MSC before the State Competent Authority. Office of the Directorate of School Education has also grant NOC for recognition of petitioner institution by the letter dated 30.09.2019 and thereafter Central Board of Secondary Education (in short 'CBSE') has also granted affiliation to the petitioner institution from 01.04.2021 to 31.03.2024. So the guidelines and amended guidelines of the respondent has also complied with by the petitioner institution. In the facts and circumstances of the case the stand taken by the respondent is not tenable and deserved to be ignored.
10. 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).

11. 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.
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 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.

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 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 to the present case.
15. The Amended 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 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.
16. Relying on the said un rebutted evidence produced on behalf of the petitioner, we find and hold that Elite Public School, Puliyankulam P.O., Silaiman (Via), Madurai Rameswaram By Pass Road, Madurai, Tamil Nadu-625201run by Triluminous Educational Trust 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 subserving the interests of the muslim minority community.
17. Consequently, Elite Public School, Puliyankulam P.O., Silaiman (Via), Madurai Rameswaram By Pass Road, Madurai, Tamil Nadu-625201 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 and also file Governing Body resolution to authorize Shri S.Kaja Mydeen, Managing Trustee of the Trust for obtaining MSC from this Commission

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

Signed, pronounced and published on Thursday, 12th day of August, 2021.

JUSTICE NARENDRA KUMAR JAIN
CHAIRMAN

DR. JASPAL SINGH
MEMBER

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