

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

Case No. 238 of 2019

In the matter of :-

**Unity Nursery and Primary School, 824, Peria Arisikara Street,
Gandarvakottai, Pudukkottai District, Tamil Nadu-613301**

..... **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 31.08.2021

Justice Narendra Kumar Jain, Chairman, NCMEI

1. An application has been received on 22.04.2019 by hand through Mr. Junais P, Advocate of the petitioner institution for grant of Minority Status Certificate (in short 'MSC') to Unity Nursery and Primary School, 824, Peria Arisikara Street, Gandarvakottai, Pudukkottai District, Tamil Nadu-613301.
2. Learned counsel for the petitioner filed affidavit of Shri M. Sheikh Alauddin, Chairman, Abdullah Educational and Charitable Trust (in short 'Trust') of the applicant institution i.e. Unity Nursery and Primary School, 824, Peria Arisikara Street, Gandarvakottai, Pudukkottai District, Tamil Nadu-613301 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 notarized copy of Unique ID No. : TN/2018/0192862 of the petitioner's trust as given by the Niti Aayog Portal NGO Darpan, certified copy of application on dated 14.12.2018 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 Trust Deed alongwith list of founding and present trustees of the trust, notarized copy of recognition order alongwith its English

translated copy issued by the District Education Officer, Pudukottai District for the period from 01.12.2019 to 30.11.2022 to the petitioner institution.

4. It is stated in the petition that on dated 14.12.2018, the petitioner institution has applied to the State Competent Authority for grant of NOC which was delivered on 19.12.2018 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.
5. After service of registered notice, respondent has sent reply by post which was received by the Commission on 28.08.2019. In the reply filed by the respondent i.e. Director, Elementary Education submitted and denied all the contentions of the petitioner institution except those which are specifically admitted in this reply. Petitioner school is a self finance school and not receiving any grant from the Government and is not accorded with minority status so far by the State Government. Petitioner has filed application for grant of MSC directly to the Commission. Government GO Ms. No. 648 dated 03.08.1994 says that they would verify and determine as to whether an educational institution is a minority institution within the meaning of Article 26 of the Constitution of India and all directions of above GO apply to all schools, colleges, teachers training institute and technical institutions both aided and un-aided in the State of Tamil Nadu. All institutions claiming minority status shall approach the Government for declaration of minority status. Hon'ble Supreme Court has held that the Government is the competent authority to verify and determine the minority status of the educational institution for the purpose of Article 30(1) of the Constitution of India. In reliance of decision of the Hon'ble Supreme Court, Government has issued GO Ms. No. 375, School Education dated 12.10.1998 and G.O. Ms. No. 214, School Education dated 03.11.2008 that all educational institutions seeking minority status has to satisfy the mandatory requirements specified in the above GO and institutions have to apply to the State Government with all requisite details till date. The petitioner has not submitted any proposal requesting minority status to their institution as specified in

the said GOs either to Government or to Director of Elementary Education. Since there is no application seeking minority status the respondent could not take any action in this regard.

6. On receipt of such application with all particulars through proper channel it would be processed and sent to Government for passing appropriate orders. In above circumstances, prayed that Commission may be pleased to dismiss the petition as devoid of merits.
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 counter affidavit as the contents therein are wrong, malafide, baseless and contrary to truth. With malafide intention 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 muslim minority community under the registered trust and institution is managed by the muslim 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 on dated 14.12.2018 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 Tamil Nadu. 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 22.04.2019 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 Tamil Nadu 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 and also judgement of Hon'ble Supreme Court in Sisters of St. Joseph of Cluny Vs. The State of West Bengal (Civil Appeal No. 3945 of 2018) decision dated 18.04.2018 in which Hon'ble Supreme Court has settled the law with regard to the

applicability of Section 10 and 11(f) of the NCMEI Act, 2004 and in view of the above the stand taken by the respondent will not survive in the eye of law.

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 muslim minority community and primarily for the benefits of muslim 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 on 26.10.2020 by post counter affidavit which is taken on record. In counter affidavit respondent has again submitted same reply as respondent has earlier filed before this Commission.
11. Having heard the Learned Counsel for the petitioner we have perused the documents, pleadings of the parties and affidavit of Shri M. Sheikh Alauddin, Chairman, Abdullah Educational and Charitable Trust.
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 muslim minority community and is being administered by the Abdullah Educational and Charitable 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 M. Sheikh Alauddin, Chairman, Abdullah Educational and Charitable Trust.
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 Tamil Nadu 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.

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 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.”

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 GO's as mentioned in the reply of 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 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.
19. Relying on the said unrebutted evidence produced on behalf of the petitioner, we find and hold that Unity Nursery and Primary School, 824, Peria Arisikara Street, Gandarvakottai, Pudukkottai District, Tamil Nadu-613301 run by Abdullah Educational and Charitable 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 sub-serving the interests of the muslim minority community.
20. Consequently, Unity Nursery and Primary School, 824, Peria Arisikara Street, Gandarvakottai, Pudukkottai District, Tamil Nadu-613301 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 resolution of the General Body of the Trust to authorize Shri M. Sheikh Alauddin, Chairman, Abdullah Educational and Charitable Trust for obtaining MSC from this Commission

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

Signed, pronounced and published on **Tuesday, 31st Day of August, 2021.**

**JUSTICE NARENDRA KUMAR JAIN
CHAIRMAN**

**DR. JASPAL SINGH
MEMBER**

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