

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

Case No. 173 of 2021

In the matter of :-

**Child Jesus Nursery and Primary School, No. 53, Susaipuram,
Nungambakkam, Chennai, Tamil Nadu-600034**

..... **Petitioner**

V/s

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

..... **Respondent**

**Present: Mr. Jose Abraham, Advocate for the petitioner
None for the respondent**

ORDER

DATED 13.12.2022

Justice Narendra Kumar Jain, Chairman, NCMEI

1. This petition has been received on 22.07.2021 by hand through Mr. Jose Abraham, Advocate of the petitioner institution for grant of Minority Status Certificate (in short 'MSC') to Child Jesus Nursery and Primary School, No. 53, Susaipuram, Nungambakkam, Chennai, Tamil Nadu-600034.
2. Learned counsel for the petitioner filed an affidavit of Sr. Josephine Prema Mary, President of The Society of the Congregation of Mother of Sorrows, Servants of Mary 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 minority community.
3. Learned counsel for the petitioner has filed copy of Unique ID No. : TN/2017/0156518 of the petitioner's Society as given by the Niti Aayog Portal NGO Darpan, photocopy of application dated 05.07.2019 sent to the State Competent Authority i.e. Principal Secretary, School Education Department, Govt. of Tamil Nadu alongwith postal receipt and its tracking report, notarized copy of Certificate of Registration of The Society of the Congregation of Mother of Sorrows, Servants of Mary, 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 no. Moo-5509/A3/2019 dated 14.01.2020 issued by the District Educational Officer, South Chennai to the unaided petitioner institution from 01.12.2019 to 30.11.2022 for Nursery and Primary Level in Tamil language alongwith its English translation and resolution of the General Body of the Society in favour of Sr. Josephine Prema Mary, President of The Society of the Congregation of Mother of Sorrows, Servants of Mary for obtaining MSC from this Commission.

4. As per the information supplied by the unaided petitioner institution with regard to students strength as on 01.07.2021, it is mentioned that out of the total 277 students, 37 students are from the Christian minority community, 13 students are from the Muslim minority community and 227 students are Hindus. It is relevant to mention here that out of total 7 teachers, 3 teachers are from Christian 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 this 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 05.07.2019, the petitioner institution has applied to the State Competent Authority for grant of NOC which was received by the State Competent Authority on 11.07.2019 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 16.08.2021 and 13.09.2022, respondent has sent reply dated 24.11.2021 by post which was received by the Commission on 02.12.2021. In the reply filed by the respondent i.e. Director of Elementary Education denied all the contentions of the

petitioner institution except those which are specifically admitted in this reply. Petitioner school is a self finance school 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.

7. 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.
8. Learned Counsel for the petitioner filed subsequent pleadings and contended that the petitioner institution is a religious minority institution and run by The Society of the Congregation of Mother of Sorrows, Servants of Mary which is a registered Society constituted by the members of the Christian minority community primarily for the benefit of Christian minority community. On dated 05.07.2019, the petitioner institution had submitted an application for grant of NOC under section 10

of the NCMEI Act, 2004 before the respondent. After the completion of 90 days from the date of receipt of the said application the petitioner institution applied for MSC before this Commission and this case is a fit case of intervention by this Commission. This Commission is functioning as per the NCMEI Act, 2004 read with the judicial pronouncements of the Apex Court for the purpose of declaration of MSC. Petitioner institution had applied for grant of NOC whereas the reply filed by the respondent does not even murmured a single word with regard to the receipt and further process of the said application for NOC, which is duly received by the respondent. In its reply, respondent has referred a couple of GOs like 375 dated 12.10.1998, 648 dated 03.08.1994. 270 dated 17.06.1998, and 214 dated 03.11.2018 and 144 dated 18.09.2014 with regard to the issuance of MSC by the State of Tamil Nadu. None of Govt. orders are dealing with the issuance of NOC under section 10 of the NCMEI Act, 2004, so instant case is a fit case for interference by this Commission. 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 of the NCMEI Act, 2004 and in view of the said pronouncement of the Hon'ble Supreme Court the stand taken by the respondent will not survive in the eye of law and, therefore, prayed that this Commission may issue MSC to the petitioner institution in the interest of justice and equity.

9. Heard the Learned Counsel for the petitioner, perused the pleading of the parties, the documents filed by the petitioner and affidavit of Sr. Josephine Prema Mary, President of The Society of the Congregation of Mother of Sorrows, Servants of Mary.
10. 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 Christian minority community and is being administered by The Society of the Congregation of Mother of Sorrows, Servants of Mary which is managed and run by the members of the Christian 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 Sr.

Josephine Prema Mary, President of The Society of the Congregation of Mother of Sorrows, Servants of Mary.

11. 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 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.
12. 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 Christian 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 statue. 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.”

13. 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.

14. 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, the institution 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 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.
15. 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.

16. 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 the members of the Christian minority community. In addition, the said facts 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.
17. Relying on the said unrebutted evidence produced on behalf of the petitioner, we find and hold that Child Jesus Nursery and Primary School, No. 53, Susaipuram, Nungambakkam, Chennai, Tamil Nadu-600034 run by The Society of the Congregation of Mother of Sorrows, Servants of Mary 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 Christian minority community.
18. Consequently, Child Jesus Nursery and Primary School, No. 53, Susaipuram, Nungambakkam, Chennai, Tamil Nadu-600034, which is a Nursery and Primary School, 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 Christian minority community subject to the eligibility of the students and availability of the accommodation in the petitioner institution and updated recognition order issued by the concerned State authority to the unaided petitioner institution . 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.
19. After compliance of the above order, a minority status certificate be issued accordingly.
20. In view of the above, the present petition is disposed of in accordance with this order.

Signed, pronounced and published on **Tuesday, 13th Day of December, 2022.**

**JUSTICE NARENDRA KUMAR JAIN
CHAIRMAN**

**DR. JASPAL SINGH
MEMBER**

**DR. SHAHID AKHTER
MEMBER**

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