

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

Case No. 57 of 2023

In the matter of :-

**Al-Karim University, Katihar-Purnea Road, Sirsa,
Karim Bagh, Katihar, Bihar-854106**

..... **Petitioner**

V/s

**1) Director, Secondary & Senior Secondary
Education, Ground Floor, Vikas Bhawan, New
Secretariat, Daily Road, Patna, Bihar-800015**

**2) Secretary, HRD, Govt. of Bihar, Secretariat, Patna,
Bihar**

..... **Respondents**

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

ORDER

DATED: 05.04.2023

Justice Narendra Kumar Jain, Chairman, NCMEI

1. Al-Karim University, Katihar-Purnea Road, Sirsa, Karim Bagh, Katihar, Bihar (hereinafter referred to as University) has applied for grant of Minority Status Certificate (MSC) on dated 10.08.2022 on the ground that the same has been founded/established by Al-Karim Educational Trust, Flat No. 304, Kamini's Sanjay Mansion, Opp. VAUs Automobile, Ashiana Road, Patna-800014 registered under Societies Registration Act 21, 1860 vide registration no. 91/1987-88 dated 26.05.1987, constituted by members of the Muslim minority community and incorporated under the Bihar Private University Act, 2013 and is empowered to award degrees as specified under

Section 12 and Section 22 of the UGC Act. It is also alleged by the petitioner that the Al-Karim University is being administered by the members of the Muslim minority community and especially meant for the benefit of the Muslim minority community boys and girls and as such it is entitled to be declared as minority educational institution within the meaning of Section 2(g) of the National Commission for Minority Educational Institutions (NCMEI) Act, 2004.

2. Dr. Ahmad Ashfaque Karim, Chairman of Al-Karim Educational Trust has filed this petition on behalf of the University before this Commission on dated 10.08.2022 for conferment of minority status to the Al-Karim University, Katihar-Purnea Road, Sirsa, Karim Bagh, Katihar, Bihar-854106. Thereafter Mr. Junais P., Learned Counsel for the petitioner has filed notarized copy of Unique ID No. BR/2019/0231641 of the petitioner Society as given by the Niti Aayog Portal NGO Darpan, notarized copy of application filed before the State Competent Authority for grant of NOC on dated 21.01.2019, notarized copy of NOC application rejection letter dated 18.04.2019, notarized copy of the proof of receipt of certified copy of NCMEI order passed in Appeal No. 20 of 2018 submitted before the State Competent Authority, notarized copy of UGC letter dated 07.09.2021, notarized copy of notification by the Govt. of Bihar dated 15.06.2018 for establishment of Al-Karim University, notarized copy of the Bihar Gazette No. 26 dated 27.06.2018 notifying establishment of Al-Karim University, certified copy of Society registration certificate, certified

copy of the MOA and rules and regulations along with list of founding members of the Society, notarized copy of the Al-Karim University first statutes published in Bihar Gazette No. 626 Patna dated 23.05.2019, notarized copy of the Al-Karim University first ordinance published in Bihar Gazette No. 627 dated 23.05.2019. original Governing Body resolution of the society in favour of Dr. Ahmad Ashfaque Karim, Chairman of Al-Karim Educational Trust for obtaining MSC from this Commission, affidavit of Dr. Ahmad Ashfaque Karim, Chairman of Al-Karim Educational Trust in support of the averments made in the petition and also to prove that primarily the beneficiaries of the petitioner institution are members of the Muslim minority community.

3. Petitioner has pointed out in the petition that the application for grant of NOC was rejected vide letter no. 15/M 1-07/2019-926 dated 18.04.2019 by the State Competent Authority of Bihar on the phony plea that appellant University is already established. The appellant, thereafter, preferred an Appeal before this Commission which was registered as Appeal No. 20 of 2019 under Section 12(A) (1) and 12 (B) (1) of the NCMEI Act, 2004 . Thereafter, this Commission after hearing the parties set aside the order passed by the State Competent Authority of Bihar and remand back the matter to the State Competent Authority for deliberating on the application for grant of NOC to the appellant Al-Karim University, Katihar within 90 days from the receipt of the copy of this Order dated 16.03.2022 and appeal was disposed of by this Commission.

4. Learned Counsel for the petitioner submitted that certified copy of order of this Commission dated 16.03.2022 was served upon the competent authority, the Government of Bihar by the appellant on dated 28.03.2022. Commission has also sent copy of order to the State Competent Authority but despite service of the certified copies of order of this Commission, respondent has not passed any order as per the direction of this Commission even after lapse of 90 days time and have not communicated to the appellant any order for grant or refusal to grant NOC under section 10 of the NCMEI Act, 2004. Under these circumstances, petitioner has filed this petition with the contention that State of Bihar has no objection for grant of MSC to the appellant University as expressly provided under section 10(3)(b) of the NCMEI Act, 2004.
5. We have heard Learned Counsel for the petitioner at length on the admission stage of this petition and thereafter looking to the provisions of NCMEI Act, 2004 which provides that “decide all questions relating to the status of any institution as minority educational institution and declare its status as such.” Thereafter, we have registered the case and issued notice to the respondents but despite service of registered notice and email, none appeared on behalf of the respondent even in second round. So we proceeded the case ex-parte against the respondent.
6. We have heard Learned Counsel for the petitioner and perused the documents filed by the petitioner and affidavit of Dr. Ahmad Ashfaque Karim, Chairman of Al-Karim Educational Trust. The facts of this case are that the

petitioner has filed the application for grant of NOC to the State Competent Authority on dated 21.01.2019 and that application was disposed of vide letter dated 18.04.2019 on the ground that the petitioner University is already established. Thereafter, appellant preferred appeal before this Commission under Section 12(A) of the NCMEI Act, 2004. This Commission after hearing the appeal vide order dated 16.03.2022 passed the order which reads as under :-

“So in the interest of justice, we find no impediment in the petitioner being granted the NOC by the State competent authority. The impugned order does not reveal any rationale for rejecting the appellant’s NOC application. Therefore, the impugned order passed by the competent authority of State of Bihar is hereby set aside. Without going on the merit of the case the matter is remanded to the State competent authority for deliberating on the application for grant of NOC to the appellant Al-Karim University, Katihar.

The competent authority of the State of Bihar is requested to deliberate on application for grant of NOC to the petitioner institution at the earliest but not later than 90 days from the receipt of the copy of this order.”

7. Thereafter, as per the Learned Counsel for the petitioner, the petitioner has submitted certified copies of order of this Commission to the State Competent Authority of Bihar on dated 28.03.2022 and petitioner has also filed receipt / acknowledgement before this Commission. This Commission has also sent copy of order of this Commission to the State Competent Authority but even after lapse of 90 days, the State Competent Authority has not passed any order in this matter.

8. In the facts and under above circumstances, petitioner has filed application for grant of MSC to the petitioner and submitted that it shall be deemed that the Competent Authority of State of Bihar has no objection to grant MSC to the petitioner as per the Section 10 of the NCMEI Act, 2004.
9. In the whole circumstances of the case, we have perused the Section 10 and 11(f) of the NCMEI Act, 2004, we have registered this case and issued the notices to the respondents but respondents has failed to reply the petition and nobody appeared on behalf of the respondents. Hence the case was proceeded ex-parte against the respondent. Pendency of the said application for such a disproportionately long period clearly indicates the State Government's disinclination to grant NOC to the petitioner institution. Petitioner's right to get minority status certificate cannot be kept under suspended animation. As per the provisions of Section 10 and 11(f) of the NCMEI Act, 2004 where within a period of 90 days from the receipt of the application for grant of NOC, the State Competent Authority does not grant such certificate or application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate, it shall be deemed that the Competent Authority has granted NOC to the applicant institution. It is admitted fact that this Commission has remanded the case to the State Competent Authority of Bihar but the Competent authority has failed to deliberate on the application of the petitioner university. So in exercise of powers conferred to this Commission under

Section 11(f), we have considered the petition filed by the petitioner.

10. The first main question which arises for consideration is that, who has founded / established the University? The answer to this question lies in the provisions of the Bihar Private University Act, 2013 and vide notification number 15/M-1-44/2015 dated 15.06.2018 published in Bihar Gazette Notification No. 26 dated 27.06.2018, the notification issued by the Govt. of Bihar, Education Department reads as under :-

fcgkj ljdkj

f'k{kk foHkkx

iVuk] fnukad &&&&@2018

vf/klwpuk

la[;k 15@,e 1&44@2015 ----- @ fcgkj] jkT; ds dfVgkj esa futh {ks=- esa vy&djhe fo'ofokjy;} dfVgkj dh LFkkiuk gsrq izk;kstd fudk; vy&djhe ,tqds'kuy V^aLV Is izklr izLrko@ifj;kstuk izfrosnu dh fcgkj futh fo'ofokjy; vf/kfu;e] 2013 dh /kkjk 4 ds v/khu leh{kksijkar ,oa jkT; ljdkj ds Lrj Is fo'ofokjy; LFkkiuk gsrq fuxZr fd, x, vk'k; i= esa fufgr 'krksa ds vuqikyu dh IE;d~ tkapksijkar fcgkj futh fo'ofokjy; vf/kfu;e] 2013 dh /kkjk 6 ds rgr vy&djhe ,tqds'kuy V^aLV dks fcgkj jkT; ds dfVgkj esa futh {ks= esa vy&djhe fo'ofokjy;} dfVgkj ds uke Is fo'ofokjy; dh LFkkiuk ,oa blds dk;Z lapkyu ds vuqefr iznku dh tkrh gSaA bl

fo'ofokya; dk {ks=kf/kdkj IEiw.kZ fcgkj jkT; esa gksaxkA

;g fo'ofokya; vy&djhe fo'ofokya;] dfVgkj ds uke ls ,d fuxfer fudk; gksxk vkSj bldk 'kk'or mUkjkf/kdkjh ,oa lkekU; eqgj ¼lhy½ gksxhA bls py vkSj vpy nksuksa izdkj dh IEifr vftZr djus rFkk /kkj.k djus vkSj lafonk djus dh 'kfDr gksxh rFkk ;g mDr uke ls okn yk ldsxk ,oa bl ij okn py;k;k tk ldsxkA

;g fo'ofokya; Lofor iksf"kr gksxk vkSj jkT; ljdkj ds fdlh rjg ds vuqnku vFkok vkfFkZd lgk;rk izklr djus dk gdnkj ugha gksxkA

bl fo'ofokya; dk lapkyu iw.kZr% fcgkj futh fo'ofokya; vf/kfu;e] 2013 esa of.kZr izko/kkuksa dk vuqiky djsr gq, fd;k tk,xkA

fcgkj jkT;iky ds vkns'k ls

g0@&

¼eukst dqekj½

Lkjdkj ds vij lfpo

11. A bare reading of provisions of the Al-Karim Educational Trust makes it clear that University was founded/ established to promote, advance and faster education and culture and to sponsor, establish, promote vary educational institutions, providing special facilities for Muslim Boys and Girls in such manner as to safeguard, preserve, promote and advance their district language,

culture and religion and to be conducive to the advancement, promotion and progress of the same.

12. Learned counsel for the appellant also submitted that the appellant institution is fulfilling all the criteria for grant of MSC as per NCMEI Act, 2004. The appellant institution was established and is being administered by the members of the Muslim minority community and the Memorandum of Association of said society clearly reflects that the appellant institution has been established primarily for the benefits of Muslim minority community. The said society constituted under Article 30(1) of the Constitution of India. Hence, the appellant institution is established by sponsoring body Al-Karim Educational Trust established under Bihar Private Universities Act, 2013 will also be minority institution and properly recognized by the State of Bihar.
13. Learned Counsel for the petitioner also submitted that the Katihar Medical College, Karim Bagh, Katihar established and being administered by the Al-Karim Educational Trust has already been declared a minority educational institution within the meaning of Section 2(g) of the NCMEI Act, 2004 and as such covered under Article 30 (1) of the Constitution of India, by this Commission vide order dated 26.11.2008 passed in Case No. 952 of 2008.
14. We have perused the order of University Grants Commission (UGC) dated 07.09.2021 in which it is mentioned that Al-Karim University, Katihar has been established by an Act of the State Legislature of Bihar as a Private University and is empowered to award degrees as specified under Section 22 of the UGC Act through its

main campus in regular mode with the approval of Statutory Bodies of the University and the Statutory Council(s) wherever it is required and after creating required academic and physical infrastructure facilities including library, laboratories and appointment of teaching and supporting staff as per the norms and standards laid down by the UGC and other relevant Statutory Council(s). The name of the University has been included in the list of Universities established as per Section 2(f) of the UGC Act, 1956.

15. In the Memorandum of Association of Al-Karim Educational Trust, it is also specifically mentioned that this society shall be of Muslim minority institutions and there will be no change or alteration.
16. In the Bihar Gazette Extraordinary, it is also mentioned that under provisions of Bihar Private Universities Act, 2013, the State Government has been pleased to approve the following first statute for Al-Karim University, Katihar established vide State Government notification no. 1065 dated 15.06.2018 and in definition 1.2.c. mentioned that "Sponsoring Authority" means Al-Karim Educational Trust, a Society registered under the Societies Registration Act, 1860 of the members of Muslim minority community. In 1.2.d. "University" means Al-Karim University, Katihar established and incorporated under the Bihar Private Universities Act, 2013 in exercise of right under Article 30(1) of the Constitution of India. So it is clear that this University was established primarily for the benefits of Muslim minority community. In the Extra Ordinary Bihar Gazette dated 23.05.2019 (No. Patna

627), it is specifically mentioned that principles/rules as applicable to the unaided minority institutions as per rights guaranteed under Article 30 of the Constitution of India shall always be followed.

17. It is also undisputed fact that the members of the petitioner society are from the Muslim minority community, who established the above University. The University Act clearly shows that University is also being administered by members of the Muslim community.
18. Thus the State Government has clearly admitted that the University has been established and is being administered by the Muslim minority community. Even the Governor and University Grants Commission has given permission to start functioning of the University. It is relevant to mention that from the language of Article 30(1) of the Constitution of India, it is clear that it enshrines a fundamental right of the minority educational institution to manage and administer their institutions which is completely in consonance with the secular nature of our constitution itself. Consequently, we find and hold that the Al-Karim University, Katihar has been established and is being administered by the Muslim minority community.
19. The other issue which arises for consideration is “whether the beneficiaries of the petitioner institution are members of the Muslim minority community?”
20. Needless to add here that an educational institution is established to sub-serve the purpose of its establishment whereas the minorities have the right to establish and administer educational institutions of their choice with the desire that their children should be brought up properly

and be eligible for higher education and to go all over the world fully equipped with such intellectual attainments as it will make them fit for entering the public services, surely then there must be an implicit in such a fundamental right the corresponding duty to cater to the needs of children of their own community. The beneficiaries of such a fundamental right should be allowed to enjoy it in the fullest measure. Therefore, the educational institutions of their choice will necessarily cater to the needs of the minority community which had established the institution.

21. Memorandum of Association of the Al-Karim Educational Trust clearly reflects that the beneficiaries of the Society are primarily members of the Muslim minority community and character of the institution shall be a minority institution. State Government has also recognized the University as a Muslim Minority University. The main purpose of the reservation is to raise the standard of education of Muslims. In addition, Government of Bihar has also admitted that the beneficiaries of the University are members of the Muslim minority community.
22. Reservation of seats in any minority educational institution is an inevitable corollary of the fundamental right enshrined in Article 30(1) of the Constitution. It has been held by the Supreme Court in Ahmedabad St. Xavier's College Society Versus State of Gujarat, AIR 1974 SC 1389 that the minorities are given the constitutional protection under Article 30(1) of the Constitution in order to preserve and strengthen the integrity and unity of the country. Thus Article 30(1) is an article of faith and the whole object of conferring the right

on the minorities under this article is to ensure that there will be equality between the minority and majority. If the minority do not have such constitutional protection, there will be denied equality. For a progressive and enlightened democracy, it is necessary that all sections and classes of people are well equipped to shoulder the responsibility of a free nation. It appears that the Al-Karim University, Katihar has provided reservation for the Muslim minority community in order to achieve the said object. Needless to add here that the sphere to general and secular education is intended to develop the commonness the boys and girls of our country. This is the true spirit of liberty, equality and fraternity through the memorandum of education.

23. Thus the conspectus of the provisions of the University Act clearly indicates that the University is a minority educational institution within the meaning of Article 30(1) of the Constitution. Muslim minority community had striven for, and obtained, the establishment of the University primarily for the benefit of its community and endowed with considerable property and money. Consequently, we find and hold that primarily the beneficiaries of the University are members of the Muslim minority community.
24. It is also relevant to mention here that the State of Bihar has passed the extra ordinary gazette (No. Patna 626 and 627) dated 23.05.2018 and intention of State Govt. to accept the Al-Karim University, Katihar as a minority educational institution is very much clear by passing the above gazette. Hence in our considered opinion,

petitioner institution was established and administered by the Muslim minority community and also primarily for the benefits of the Muslim minority community boys and girls. So petitioner institution is entitled for grant of MSC from this Commission in the facts and circumstances of the case.

25. For the aforesaid reasons, we find and hold that the Al-Karim University, Katihar-Purnea Road, Sirsa, Karim Bagh, Katihar, Bihar is 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. 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.
26. After compliance of the above order, a minority status certificate be issued accordingly.

In view of the above, the present petition is disposed of accordingly.

Signed, pronounced and published on **Wednesday, 5th Day of April, 2023.**

**JUSTICE NARENDRA KUMAR JAIN
CHAIRMAN**

**DR. JASPAL SINGH
MEMBER**

**DR. SHAHID AKHTER
MEMBER**

VB