

**GOVERNMENT OF INDIA  
NATIONAL COMMISSION FOR MINORITY  
EDUCATIONAL INSTITUTIONS**

**APPEAL NO. 17 OF 2019**

**In the matter of :-**

**Royale Secondary School, Aradi Band, Sailem Bhat,  
Taleigao, Goa**

**..... Petitioner**

**Vs.**

**Secretary (Home), Secretariat, Porvorim, Goa**

**..... Respondent**

**Appeal U/s 12(a) of the NCMEI Act, 2004 against  
the impugned order no. 27/3/2014-HD(G)/197  
dated 11.01.2019**

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

**O R D E R**

**Dated: 15<sup>th</sup> April, 2021**

**Justice Narendra Kumar Jain, Chairman**

1. In this appeal filed by the appellant on dated 07.05.2019 U/s 12A of the National Commission for Minority Educational Institutions Act, 2004 (in short 'NCMEI'). The appellant has challenged the impugned order dated 11.01.2019 passed by the Competent Authority of the State of Goa. The impugned order read as follows :-

*Subject : Application U/s 10 of the NCMEI Act for grant of No Objection Certificate (NOC) in favor of Xavier Afonso Memorial Institute*

Sir,

*I am directed to refer to your letter no. 460/18 dated 28.11.2018 on the subject cited above and to inform you that this Department issues NOC only for establishment of minority educational institutions in Goa under Section 2(a) of the National Commission for Minority Educational Institutions Act, 2004. However, your institution has already been established and is in operation.*

2. The background facts of this case that the appellant filed an application under Section 10 of the NCMEI Act, 2004 to the respondent on dated 28.11.2018 for grant of No Objection Certificate (in short 'NOC') which was disposed of vide impugned order dated 11.01.2019. In these circumstances, this appeal has been filed by the appellant against the above impugned order.
3. Notice of this appeal was issued to respondent. Despite notice, none appeared on behalf of the respondent.
4. It is argued by the learned counsel for the appellant on merits of the appeal that the concerned authority of

the State of Goa has failed to appreciate the provisions of NCMEI Act, 2004 and wrongly disposed of the application with the said observations given in the impugned order. Learned counsel for the appellant submitted that the appellant institution i.e. Royale Secondary School, Aradi Band, Sailem Bhat, Taleigao, Goa is established and administered by the Xavier Afonso Memorial Institute a Registered Society vide registration no. 237/GOA/2004). All the founding and present members of the said society are belonging to Christian minority community. It is worthwhile that the said society was formed by the members of the Christian minority community in the year 2004 in the name of "Little Lambs Primary School" and subsequently in the year 2013 the members of the said society has changed the name of the society from "Little Lambs Primary School" to "Xavier Afonso Memorial Institute". The said change of name of the society was duly approved by the competent authority i.e. Inspector General of Societies, Govt. of Goa.

5. Learned Counsel for the appellant further submitted that the appellant institution is being established by

the members of the Christian minority community under Society "Xavier Afonso Memorial Institute", the appellant institution has approached by way of application dated 28.11.2018 to the competent authority of the State Government of Goa for grant of NOC to the appellant institution as per Section 10 of the NCMEI Act, 2004 to establish the appellant institution as a minority educational institution. The respondent without considering the facts that the appellant institution fulfilled all the indica for grant of NOC to establish the appellant institution as a minority educational institution dismissed / rejected the application under section 10 of the NCMEI Act, 2004 of appellant institution by way of impugned order dated 11.01.2019.

6. Learned counsel for the appellant further submitted that the stand taken by respondent to deny NOC to the appellant institution on the ground that since the appellant institution has already been established and is in operation, is nothing but it 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 & Others (Civil Appeal No. 3945/2018) judgement dated

18.04.2018. Establishment of an institution and establishment of such institution as a minority institution are entirely different and, therefore, only the appellant institution approached the respondent to grant NOC to the appellant institution to establish the appellant institution as a minority educational institution as per Section 10 of NCMEI Act, 2004. But the respondent without considering the facts and law settled by the Hon'ble Apex Court dismissed / rejected the said application of the appellant by simply stating that the appellant institution is already been established and is in operation.

7. Impugned order was passed by the respondent on 11.01.2019 but the appellant was received copy of the said order on 18.01.2019 only. Delay in filing appeal has been has been occurred and separate application for condonation of delay is filed. After preparing the appeal sent the same to the appellant for necessary signature and attestation but the signing authority of the appellant institution was out of station, the appellant institution was unable to file the appeal before this Commission within the stipulated time. There is no malefide on the part of the appellant for

not preferring an appeal before this Commission within the limitation. The delay caused in filing appeal is not deliberate and intentional but because of the facts and above reasons. So learned counsel for the appellant prayed to condone the delay of 80 days in filing the appeal.

8. Learned counsel for the appellant submitted that the appellant institution is fulfilling all the criteria for grant of MSC as per NCMEI Act, 2004. The appellant institution is established and administered by the members of the Christian minority community under Xavier Afonso Memorial Institute and the Memorandum of Association of said society clearly reflects that the appellant institution has been established primarily for the benefits of Christian minority community. All the founding and present members of the society are belonging to Christian minority community and the institution is properly recognized by the Directorate of Education, Government of Goa. So he prayed to grant MSC to the appellant institution.

9. Appellant has filed affidavit of Mr. Christopher Po, Chairman and the authorized representative of the Xavier Afonso Memorial Institute, impugned order dated 11.01.2019, copy of application dated 28.11.2018, Certificate of Registration, Certificate of change of a society registered under No. 237/Goa/2004 dated 11.07.2013, Memorandum of Association, Rules and Regulations, Recognition Certificate, Unique ID of the petitioner's society as given by the Niti Aayog Portal NGO Darpan. Appellant has not filed the list of present members of the society.
  
10. After hearing the Learned Counsel for the appellant we have perused the above mentioned records.
  
11. We have gone through the cause stated in the application Under Section 5 of Limitation Act and in our considered opinion it constitutes a sufficient cause for the purpose of condonation of delay. The condonation of delay advances cause of justice rather than to defeat. According to the appellant, the delay is of 80 days in filing this appeal. There is no deliberate delay on the part of the appellant in filing the present

appeal. Looking to the facts and circumstances of the case and the impugned order passed by the respondent, the delay caused in filing appeal by the appellant deserves to be condoned on the ground stated in the application. Accordingly and in view of the aforesaid discussion, the application for condonation of delay is allowed. The delay in filing the present appeal, in the interest of justice, is hereby condoned.

12. By the impugned order respondent has disposed of the application under section 10 of the NCMEI Act, 2004 and stated that this department issues NOC only for establishment of minority educational institutions in Goa under section 2(a) of the NCMEI Act, 2004. However your institution already been established and is in operation.
  
13. The NCMEI Act, 2004 was amended twice in order to further broad based and expand the functions as well as the quasi judicial powers of the NCMEI. The sections relevant for just decision of this case are set out here below:



**“Section 10 :- Right to establish a Minority Educational Institution :-**

*(1) Subject to the provisions contained in any other law for the time being in force, any person, who desires to establish a Minority Educational Institution may apply to the competent authority for the grant of no objection certificate for the said purpose.”*

*(2) The Competent authority shall,—*

*(a) on perusal of documents, affidavits or other evidence, if any; and*

*(b) after giving an opportunity of being heard to the applicant, decide every application filed under sub-section (1) as expeditiously as possible and grant or reject the application, as the case may be: Provided that where an application is rejected, the Competent authority shall communicate the same to the applicant.*

*(3) Where within a period of ninety days from the receipt of the application under sub-section (1) for the grant of no objection certificate,—*

*(a) the Competent authority does not grant such certificate; or*

*(b) where an 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 a no objection certificate to the applicant.*

*(4) The applicant shall, on the grant of a no objection certificate or where the Competent authority has deemed to have granted the no objection certificate, be entitled to commence and*

*proceed with the establishment of a Minority Educational Institution in accordance with the rules and regulations, as the case may be, laid down by or under any law for the time being in force.*

*Explanation —*

*For the purposes of this section —*

*(a) “applicant” means any person who makes an application under sub-section (1) for establishment of a Minority Educational Institution;*

*(b) “no objection certificate” means a certificate stating therein, that the Competent authority has no objection for the establishment of a Minority Educational Institution”.*

**Section 12 A:-**

- (1) Any person aggrieved by the order of refusal to grant no objection certificate under sub-section (2) of section 10 by the Competent Authority for establishing a Minority Educational Institution, may prefer an appeal against such order to the Commission.*
- (2) An appeal under sub-section (1) shall be filed within thirty days from the date of the order referred to in sub-section (1) communicated to the applicant: Provided that the Commission may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period.*
- (3) An appeal to the Commission shall be made in such form as may be prescribed and shall be accompanied by a copy of the order against which the appeal has been filed.*
- (4) The Commission, after hearing the parties, shall pass an order as soon as may be practicable, and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to*

*secure the ends of justice.*

*(5) An order made by the Commission under sub-section (4) shall be executable by the Commission as a decree of a civil court and the provisions of the Code of Civil Procedure, 1908 (5 of 1908), so far as may be, shall apply as they apply in respect of a decree of a civil court.*

**Section 12B:- Power of Commission to decide on the minority status of an educational institution.**

*(1) Without prejudice to the provisions contained in the National Commission for Minorities Act, 1992 (19 of 1992), where an authority established by the Central Government or any State Government, as the case may be, for grant of minority status to any educational institution rejects the application for the grant of such status, the aggrieved person may appeal against such order of the authority to the Commission.*

*(2) An appeal under sub-section (1) shall be preferred within thirty days from the date of the order communicated to the applicant: Provided that the Commission may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period.*

*(3) An appeal to the Commission shall be made in such form as may be prescribed and shall be accompanied by a copy of the order against which the appeal has been filed.*

*(4) On receipt of the appeal under sub-section (3), the Commission may, after giving the parties to the appeal an opportunity of being heard, decide on the minority status of the educational institution and shall proceed to give such direction as it may deem fit and, all such directions shall be binding on the parties.”*

14. As per the above provisions, the person who desires to establish minority institution is to apply to the competent authority of the State Government 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.

15. 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 has also held that:-

*“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."*

16. Looking to the provisions of NCMEI Act, 2004 and the judgement of Hon'ble Apex Court in the matter of Sisters of St. Joseph of Cluny (Supra), 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 authority 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 appellant it shall be deemed that NOC has granted and the appellant can file application for grant of NOC straightaway to this Commission. Any person aggrieved by the order of refusal to grant NOC by the competent authority may prefer an appeal to 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 appellant has applied for grant of NOC to the State Competent Authority but instead of deciding the NOC application competent authority of the State has passed impugned order which is under challenged in this appeal.

18. In view of the above facts and observations, it is an admitted fact that the appellant institution had applied to competent authority of the State of Goa for grant of NOC under section 10 of NCMEI Act, 2004 and the said application was not decided in accordance with the provisions of NCMEI Act, 2004 and verdict of the Hon'ble Apex Court by the State competent authority and passed the impugned order dated 11.01.2019. So in the interest of justice, we are of the considered opinion, without going on the merits of the case, the appeal is allowed, set aside the impugned order dated 11.01.2019 and it is just, proper and fit case to send the matter back to the state competent authority with the request to decide the application of the appellant institution for grant of NOC under Section 10 of the NCMEI Act, 2004 on merits after considering all the documents produced by the appellant institution at the earliest, expeditiously.

19. In addition to the rules and in the interest of justice, appellant is also directed to produce certified copy of the order of this Commission before the State Competent Authority immediately for compliance of this order.

In view of the above, the present appeal is disposed of in accordance with this order.

Signed, pronounced and published on **Thursday, 15<sup>th</sup>**  
**day of April, 2021.**

**JUSTICE NARENDRA KUMAR JAIN  
CHAIRMAN**

**DR. JASPAL SINGH  
MEMBER**

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