

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

Appeal No. 05 of 2020

In the matter of :-

**Abhinav Bharti Trust (Sheth Shree A.S. Kothari Abhinav Bharti
Uttar Buniyadi Vidhyalaya), Terabada-Village, Tal-Kankrej,
District Banaskantha, Gujarat**

..... Appellant

V/s

- 1. The Commissioner / Director of Schools, 9/1, Dr. Jivraj Mehta
Bhavan, Gandhinagar, Gujarat**
- 2. Deputy Director, Directors of School Old Sachivalaya Block
9/1, Gandhinagar, Gujarat**

..... Respondents

Present: Mr. Akash Garg, Advocate on behalf of Mr. Shubham
Singh, Advocate for the appellant

None for the respondents

PETITION UNDER SECTION 12B OF
NCMEI ACT, 2004

ORDER

DATED 30.05.2023

Justice Narendra Kumar Jain, Chairman, NCMEI

1. In this appeal, filed by appellant on dated 17.11.2020 under section 12B of the National Commission for Minority Educational Institutions Act, 2004 (in short NCMEI Act, 2004). The appellant has challenged the impugned order dated 13.11.2019 passed by the Commissioner / Director of Schools, State of Gujarat whereby the Competent Authority has rejected the application preferred by the appellant for grant of Minority Status Certificate (hereinafter referred as MSC) to the appellant's institution.
2. The Learned State authority of the Gujarat passed the impugned order dated 13.11.2019 which reads as follows:-

“it is hereby informed in view of the above mentioned subject and reference that the office here has received a proposal on 08.11.2019 from the reference letter regarding declaring school “Sheth Shree A.S. Kothari Abhinav Bharti Uttar

Buniyadi Vidhyalaya, Terabada-Village, Tal-Kankrej, District Banaskantha” managed by Abhinav Bharti in Banaskantha District as a religious minority school. On the basis of the prevent resolutions, the said proposal was scrutinized and hence the said proposal is rejected from the following reason.

Reason : Not all members of the Trust at the time of its establishment belong to the respective (Jain) religious minorities. So that the terms and condition -1 of the resolution of the Education Department dated 07.10.2006 and the condition of the guideline of NCMEI are not fulfilled.

If you are aggrieved by the abovementioned decision, you can make an appeal under section 12B of the NCMEI Act, 2004 to the National Commission for Minority Educational Institutions, Gate No. 4, First Floor, Jeevan Tara Building, 5, Sansad Marg, New Delhi-110001 within 30 days of receiving this letter.

The approval of respected Director has been received on the note.”

3. Background facts in a nutshell are that appellant has applied to the respondent for grant of MSC that appellant is a registered Trust under the Bombay Public Trust Act and the officer bearers of the Trust are citizens of India, Trust is established having its registered office at Vada, District Banaskantha, Gujarat with an objective to impart education to the minority community. Initially at the time of establishment of Trust, 7 members are from minority community out of eleven 11 members. Copy of the Trust Deed is also filed by the appellant. Due to death of members there were change in the trustees and news trustees are elected which is approved by the Charity Commissioner. The aims and objects was also amended by the Trust and same was also approved by the Charity Commissioner. Copies of amended Trust Deed was also filed by the appellant. The Trust has also sought permission for opening Secondary School in the name of Sheth Shree A.S. Kothari Abhinav Bharti Uttar Buniyadi Vidhyalaya, Terabada-Village, Tal-Kankrej, District Banaskantha and permission was also granted by the Gujarat Secondary Education Board, Gandhinagar, Gujarat and also grant-in-aid facilities. This institution is giving quality education to the Children of poor and needy families of minority communities. Copy of School Registration Certificate is also filed by the appellant. In the area where the school situated is the populated area of Jain community. Since all the trustees of the Trust are from minority community and institution is established and administered by the members of Jain minority community and also fulfilled all the criteria prescribed under the Act for getting MSC after passing resolution and application submitted to the respondent. Affidavits are also submitted by the Trustees, the application was not decided by the State Competent Authority thereafter the appellant has submitted the proposal on 07.11.2019 with all information and documents.

Appellant is facing many problems and difficulties in absence of MSC, thereafter appellant request to grant MSC to the appellant institution but respondent has not considered the application for grant of MSC but without perusing the record the respondent has mechanically denied to grant MSC to the appellant. Appellant has also filed the application for condonation of delay under section 5 of the Limitation Act.

4. Appellant has submitted that impugned order of the respondent is bad in law and against the NCMEI Act, 2004 and guidelines also. Respondent has not followed the mandatory provisions of NCMEI Act, 2004 without applying mind and perusing the records and evidence available on file, passed the order in arbitrary manner. Appellant has fulfilled all the criteria prescribed by the law to get MSC. By perusal of Trust Deed and the PTR, it is crystal clear that the appellant Trust aims and objects belonging to minority community as well as all the members are from Jain minority community. So prayed to quash the impugned order dated 13.11.2019 passed by the respondent and to issue MSC to the appellant. Appellant has also filed the affidavits of Trustees and other documents.
5. Notice of this appeal was served to the respondent and respondent has filed their reply and submitted that the appellant proposal to get MSC dated 04.10.2017 and 12.07.2018 was rejected because appellant had not fulfilled the criteria laid down by the Government resolution of Education Department, Govt. of Gujarat dated 07.10.2006. Aggrieved by the above decision, appellant has filed SCA 14921-25/2019 in the High Court of Gujarat and Hon'ble High Court has issued the order to stand clear on the decision to be taken in their application on or before 13.11.2019. Consequently, the said institution / school has submitted its fresh proposal for grant of MSC, then Officer of the Government had not recommended those proposal stating that the trustees of that Trust were not from Jain minority at the time of establishment of Trust. The formed committee comprising three Joint Directors scrutinized the proposal and it was found that all the founding members of the Trust i.e. Abhinav Bharti Trust - Vada were not from Jain minority community which does not fulfill the guiding norms laid down in GR 07.10.2006 and after considering the facts they have rejected the above proposal and informed the concern through the letter of this office dated 13.11.2019.
6. Firstly, we have heard Learned Counsel for the appellant on application under section 5 of the Limitation Act for condonation of delay in filing appeal read with Rule 9 of the NCMEI (Procedure for Appeal) Rules 2006. Appellant has filed present appeal against the impugned order dated 13.11.2019 passed by the respondent before this Commission on dated 17.11.2020. Appellant had to file the

present appeal within the period of 30 days from the date of order dated 13.11.2019.

7. Learned Counsel for the appellant submitted that said matter was filed before the respondent for grant of MSC but respondent authority has rejected the application of the appellant on dated 13.11.2019 stating that the appellant had not fulfilling the criteria and all the members of the Trust are not from Jain minority community. Aggrieved by the impugned order dated 13.11.2019 this appeal was filed by the appellant. Learned Counsel for the appellant submitted that in the year 2017, the appellant institution has sent proposal to the respondent for grant of MSC but since long time the authority has not decided the said proposal. Then appellant consulted Advocate and challenged the action of the authority for not deciding the proposal for grant of MSC before the High Court of Gujarat and therefore appellant Trust has filed the petition before the High Court of Gujarat. Thereafter respondent has passed its impugned order dated 13.11.2019 and rejected the application of the appellant for grant of MSC. Thereafter, Advocate has advised to file appeal before this Commission under section 12B of NCMEI Act, 2004. One of the Trustee of Trust Shri Vinod Chandra Hargovidas Shah was severely ill from February 2020 and hospitalized and thereafter he was died on 03.03.2020. Thereafter, trustees could not approach to this Hon'ble Commission within time. Thereafter, there is global pandemic of Corona 2019 and entire nation was lock down, their delay in filing appeal is not intentionally and delay is bonafied under the advice of advocate they have approach to the High Court of Gujarat and thereafter to the Commission. The Appellant had a good prima facie case and are optimistic to succeed, balance of convenience and prima facie case is also required for condonation of delay and if delay is not condoned then appellant will suffer irreparable loss. So, appellant prayed to condone the delay, in the interest of justice, Appellant has filed Affidavit of Shah Dinesh Kumar, S/o Shri Kantilal Shah, Trustee of the Trust in support of the application for condonation of delay.
8. Respondent has not filed any reply or affidavit of this application.
9. 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 was caused due to global pandemic of Corona 2019 and entire nation was lock down, their delay in filing appeal is not intentionally and delay is bonafied under the advice of advocate they have approach to the High Court of Gujarat and thereafter to the Commission. Looking to the facts and circumstances of the case and uncontroverted affidavit of Shah Dinesh Kumar, S/o Shri Kantilal Shah, Trustee, the delay caused in filing appeal by the appellant deserves to be condoned on

the ground stated in the application, in the facts of this case, and also the application was not objected by the respondent state.

10. Accordingly and in view of the aforesaid discussion, the application for condonation of delay in filing the present appeal is allowed . The delay in filing the present appeal, in the interest of justice, is hereby condoned.
11. Heard the Learned Counsel for the appellant, perused the pleading of the parties, the documents filed by the petitioner and affidavit of Shah Dinesh Kumar, S/o Shri Kantilal Shah, Trustee of the Trust.
12. We have gone through the entire file, Trust Deed, copy of PTR, amended Trust Deed, report of Charity Commissioner, School Registration Certificate issued by the Gujarat Secondary Education Board, application / proposal, Certificate of Talati-cum mantra, Affidavits of members / trustees, Govt. resolution dated 07.10.2006, Death Certificate of Shri Vinod Chandra Hargovidas Shah, resolution passed by the Trustees and all other relevant documents which is available on record as well as impugned order.
13. As per the decision of Hon'ble Supreme Court passed in SK Patro V/s State of Bihar, (AIR 1970 SC 259) if the minority educational institution concerned is being run by a trust or a registered society, then majority of the trustees of the trust or members of the society, as the case may be, must be from the minority community and the trust deed/ Articles of Association or any other document duly executed in this regard must reflect the objective of sub-serving the interest of the minority community. In the absence of any documentary evidence some clear or cogent evidence must be produced to prove the aforesaid facts. There is no bar to the members of other communities to extend their help to the member of a minority community to establish an educational institution of its choice.
14. So as per the above judgement passed by Hon'ble Supreme Court, majority members should be from the minority community and as per the contention and documents filed by the appellant, majority of the members are Jain minority community in the appellant Trust.
15. There is no impediment in the application being granted. Contention of the respondent that "it was found that all the founding members of the Trust (Abhinav Bharti Trust - Vada) were not from the Jain minority community" is prima facie wrong as per the judgement of Hon'ble Supreme Court because majority of the minority community members required and fulfilling the criteria for grant of MSC to the minority educational institution.
16. In the light of above observation, the impugned order dated 13.11.2019 does not reveal any rationale for rejecting the application

for grant of MSC, therefore, the impugned order dated 13.11.2019 is hereby set aside. The matter is remanded to the respondent state competent authority of Gujarat for deliberating on the application for grant of minority status to the appellant institution after perusal of all the documents and hearing after giving opportunity to the appellant.

17. The State competent authority of Gujarat is to deliberate on the application on its merits for grant of MSC to the appellant at the earliest, expeditiously.
18. 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 of Gujarat immediately for compliance of this order.
19. In view of the above, the present appeal is disposed of in accordance with this order.

Signed, pronounced and published on **Tuesday, 30th day of May, 2023.**

**JUSTICE NARENDRA KUMAR JAIN
CHAIRMAN**

**DR. JASPAL SINGH
MEMBER**

**DR. SHAHID AKHTER
MEMBER**

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