

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

Case No. 447 of 2019

In the matter of :-

**St. Francis of Assissi Convent High School, Lunsikui Road,
Navasari, Gujarat-396445**

..... Petitioner

V/s

**The Commissioner of Schools, Block No. 9-1, Dr. Jivraj Mehta
Bhavan, Gandhinagar, Gujarat**

..... Respondent

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

ORDER

DATED 25.07.2023

Justice Narendra Kumar Jain, Chairman, NCMEI

1. This petition has been received on 04.06.2019 by hand through Mr. Jose Abraham, Advocate of the petitioner institution for grant of Minority Status Certificate (in short 'MSC') to St. Francis of Assissi Convent High School, Lunsikui Road, Navasari, Gujarat-396445.
2. Learned counsel for the petitioner filed an affidavit of Sr. Marjorie Carmel Caldeira, President of The Society of the Franciscan (Hospitaller) Sisters 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 notarized copy of Unique ID No. : MH/2017/0172282 of the petitioner's Society as given by the Niti Aayog Portal NGO Darpan, photocopy of application dated 08.12.2018 sent to the State Competent Authority i.e. Commissioner of Schools, Government of Gujarat alongwith postal receipt and its acknowledgement card, certified copy of Certificate of Registration of The Society of the

Franciscan (Hospitaller) Sisters, certified copy of Memorandum of Association alongwith list of founding members of the Society, certified copy of Amended Memorandum of Association dated 30.11.2018 alongwith list of present members of the Society, notarized copy of letter dated 25.04.2023 issued by the Superintendent, Public Trust Registration Office, Mumbai stated that the objects of the petitioner's society was duly registered with this office on 30.11.2018, notarized copy of Permission Order dated 12.03.1994 issued by the Secretary, Primary Education, Gandhinagar to the partly aided petitioner institution for 3rd, 5th, 6th 7th Std. in Gujarati language alongwith its English translation, notarized copy of Affiliation Order dated 22.02.2022 issued by the Secretary, Gujarat Secondary and Higher Secondary Education Board, Gandhinagar for Sr. Secondary Level in Gujarati language alongwith its English translation and resolution of the General Body of the Society in favour of Sr. Marjorie Carmel Caldeira, President of The Society of the Franciscan (Hospitaller) Sisters for obtaining MSC from this Commission. Learned Counsel for the petitioner has also filed the affidavit of Sr. Marjorie Carmel Caldeira, President of The Society of the Franciscan (Hospitaller) Sisters stating 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.

4. As per the information supplied by the partly aided petitioner institution with regard to students strength as on 01.01.2019, it is mentioned that out of the total 1748 students, 49 students are from the Christian minority community, 241 student are from Muslim minority community, 2 students are from Sikh minority community, 67 students are from the Jain minority community, 34 students are from the Parsee minority community and 1355 students are Hindus. It is relevant to mention here that as on 01.01.2019, it is mentioned that out of the total 46 teachers, 18 teachers are from Christian Minority community.

5. It is stated in the petition that on dated 08.12.2018, the petitioner institution has applied to the State Competent Authority for grant of NOC which was received by the State Competent Authority on 12.12.2018 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 petition 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 / email dated 08.08.2019, respondent has sent letter dated 05.12.2019 which was received in the Commission's Office on dated 09.12.2019 which is taken on record wherein they have informed that the petitioner institution had sent application dated 08.12.2018 directly to this office to grant NOC under NCMEI Act, 2004 without enclosing any necessary evidences / documents. So they had sent back their original application and instructed to follow above due procedure with consultation of their concern District Education Officer through the letter dated 26.12.2018. So the request / application for grant NOC dated 08.12.2018 was not pending at this office and request the Commission to take note of this submission and direct the applicant to follow due procedure.
7. As per the procedure of NCMEI Act, 2004, application for grant of NOC should be sent to the State Competent Authority, not to the Concerned District Education Officer and State Competent Authority should have to decide the application for grant of NOC under section 10 of NCMEI Act, 2004 within 90 days and also the same should be communicated to the person who has applied for grant of NOC. It is proved that within 90 days, State Competent Authority has not rejected the said application and also not communicated to the petitioner.

8. Thereafter in the facts and circumstances of the case, Commission deemed fit and proper that physical inspection report alongwith recommendation may be obtained from the Committee constituted by this Commission for issuance of MSC to the petitioner institution vide order dated 01.06.2022. After service of letters, reminder / emails to the physical inspection committee dated 16.06.2022 and 24.08.2022, Physical Inspection Committee, Navsari has sent physical inspection report dated August, 2022, 21.09.2022 and 08.08.2022 which were received in the Commission's Office on dated 17.08.2022, 27.09.2022 and 03.10.2022 and in the report said committee members wherein they have recommended to grant MSC to the petitioner institution.
9. Heard the Learned Counsel for the petitioner, perused the pleading of the petitioner, the documents filed by the petitioner and affidavit of Sr. Marjorie Carmel Caldeira, President of The Society of the Franciscan (Hospitaller) Sisters.
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 Franciscan (Hospitaller) Sisters 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. Marjorie Carmel Caldeira, President of The Society of the Franciscan (Hospitaller) Sisters.
11. 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 the 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. This Commission has also decided that there must be reasonable

strength of students of particular minority community in a minority educational institution. The percentage could be determined based on the actual proportion of specific minority community in the State population as per prevailing census. Population of Christian minority community in the State of Gujarat as per the census of 2011 is 0.52%.

12. We have perused the Amended Memorandum of Association of the petitioner institution which was registered before the Superintendent, Public Trust Registration Office, Mumbai on dated 30.11.2018 which is before the filing of NOC applications U/s 10 of the NCMEI Act, 2004 dated 08.12.2018 and petition for grant of MSC on dated 04.06.2019. So it is clear that the amendment has been done before the application filed before the State Competent Authority U/s 10 of the NCMEI Act, 2004 and also petition for grant of MSC before this Commission.
13. The Amended Memorandum of Association dated 30.11.2018 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.
14. Relying on the said unrebutted evidence produced on behalf of the petitioner, we find and hold that St. Francis of Assissi Convent High School, Lunsikui Road, Navasari, Gujarat-396445 run by The Society of the Franciscan (Hospitaller) Sisters 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.
15. Consequently, St. Francis of Assissi Convent High School, Lunsikui Road, Navasari, Gujarat-396445, which is upto Senior Secondary Level, is declared as a partly aided 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

16. A minority status certificate be issued accordingly.
17. In view of the above, the present petition is disposed of in accordance with this order.

Signed, pronounced and published on **Tuesday, 25th Day of July, 2023.**

**JUSTICE NARENDRA KUMAR JAIN
CHAIRMAN**

**DR. SHAHID AKHTER
MEMBER**

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