

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

Case No. 449 of 2019

In the matter of :-

**St. Joseph English Teaching School, Nr. DSP Office,
Dharampur Road, Valsad, Gujarat-396001**

..... **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. Joseph English Teaching School, Nr. DSP Office, Dharampur Road, Valsad, Gujarat-396001.
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, 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 Registration Certificate dated 20.06.1997 issued by the Secretary, Gujarat Secondary and Higher Secondary Education Board, Gandhinagar stating that the petitioner institution is registered on 01.06.1936 in Gujarat Secondary Education Act, 1974 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 2393 students, 136 students are from the Christian minority community, 366 student are from Muslim minority community, 4 students are from Sikh minority community, 50 students are from the Jain minority community, 2 students are from the Budhist minority community, 3 students are from the Parsee minority community and 1832 students are Hindus. It is relevant to mention here that as on 01.01.2019, it is mentioned that out of the total 56 teachers, 21 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 11.12.2019 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. 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 Franciscan (Hospitaller) Sisters which is a registered Society constituted by the members of the Christian minority community primarily for the benefit of Christian minority community. On dated 08.12.2018, 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. The reply dated

05.12.2019 send by the Joint Director (Secondary), Commissionerate of Schools, Gandhinagar is only talking about the authority vested with the Competent Authority on granting of minority status and not on issuance of NOC for MSC mentioned under section 10 of the NCMEI Act, 2004 and in the first para of reply dated 15.09.2021 stated that “as per the prevailing rule’s procedure, the institution has to submit application for MSC to the Concerned District Education Office.” It is further clarified that as per the rules and guidelines for MSC followed by this Commission, the application for NOC must be submitted to the competent authority and not before the Concerned District Education Office. The reply from the respondent clearly shows the disinclination of the competent authority to grant NOC for MSC despite having all the relevant documents, did not state anything on merit especially on the minority character of the petitioner institution. In view of the facts and circumstances, it is prayed that this Commission may issue MSC to the petitioner institution in the interest of justice and equity.

8. 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.
9. 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.
10. 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%.

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 Gujarat have 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 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."

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. 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.
17. 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.
18. Relying on the said un rebutted evidence produced on behalf of the petitioner, we find and hold that St. Joseph English Teaching School, Nr. DSP Office, Dharampur Road, Valsad, Gujarat-396001

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.

19. Consequently, St. Joseph English Teaching School, Nr. DSP Office, Dharampur Road, Valsad, Gujarat-396001, 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.
20. A minority status certificate be issued accordingly.
21. 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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