

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

Case No. 121 of 2021

In the matter of :-

**Azad Public School, Azad Nagar, Hungund Taluk, Hungundu,
District Bagalkot, Karnataka**

.....Petitioner

V/s

**Additional Chief Secretary, Education Department (Higher
Education), Govt. of Karnataka, 6th Floor, Multi-Storeyed
Building, Bengaluru-560001**

..... Respondent

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

ORDER

DATED 27.07.2023

Justice Narendra Kumar Jain, Chairman, NCMEI

1. This petition has been received on 30.03.2021 by hand through Mr. Jose Abraham, Advocate of the petitioner institution for grant of Minority Status Certificate (in short 'MSC') to Azad Public School, Azad Nagar, Hungund Taluk, Hungundu, District Bagalkot, Karnataka.
2. Learned counsel for the petitioner filed an affidavit of Mr. Abduljabbar A Kalburgi, President of Maulana Abdul Kalam Azad Association in support of the averments made in the petition and also to prove that the beneficiaries of the petitioner institution are members of the Muslim minority community.
3. Learned counsel for the petitioner has filed notarized copy of Unique ID No. : KA/2019/0236425 of the petitioner's Society as given by the Niti Aayog Portal NGO Darpan, photocopy of application dated 22.07.2019 / 29.07.2019 sent to the State Competent Authority i.e. Additional Chief Secretary, Education Department (Higher Education), Govt. of Karnataka alongwith postal receipt and its acknowledgement slip, notarized copy of Certificate of Registration of Maulana Abdul Kalam Azad

Association, notarized copy of Memorandum of Association alongwith list of founding members of the Society, notarized copy of Amended Memorandum of Association dated 07.06.2019 alongwith list of present members of the Society, notarized copy of recognition certificate dated 30.06.2023 issued by the Deputy Director (Adm) of Public Instructions Department, Bagalkot District to the unaided petitioner institution from 01.06.2023 to 31.05.2024 for Higher Primary 1st to 7th Std. in Kannad language alongwith its English translation and resolution of the General Body of the Society in favour of Mr. Abduljabbar A Kalburgi, President of Maulana Abdul Kalam Azad Association for obtaining MSC from this Commission.

4. As per the information supplied by the unaided petitioner institution with regard to students strength as on 01.07.2021, it is mentioned that out of the total 87 students, 49 students are from the Muslim minority community and 38 students are Hindus. It is relevant to mention here that as on 01.07.2021, it is mentioned that out of the total 6 teachers, 3 teachers are from the Muslim minority community.
5. It is stated in the petition that on dated 22.07.2019, the petitioner institution has applied to the State Competent Authority for grant of NOC which was received by the State Competent Authority on 31.07.2019 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. Despite service of registered notice/email dated 12.04.2021, no reply has been received from the respondent. 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 17.11.2022. After service of letters / emails to the physical inspection committee dated 19.12.2022 and 22.02.2023, Physical Inspection Committee, Bagalkot has sent physical inspection report dated 06.02.2023 which was received in the Commission's Office on dated 22.02.2023 wherein they have recommended to grant MSC to the petitioner institution.

7. Heard the Learned Counsel for the petitioner, perused the pleading of the petitioner, the documents filed by the petitioner and affidavit of Mr. Abduljabbar A Kalburgi, President of Maulana Abdul Kalam Azad Association.
8. 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 Muslim minority community and is being administered by Maulana Abdul Kalam Azad Association which is managed and run by the members of the Muslim 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 Mr. Abduljabbar A Kalburgi, President of Maulana Abdul Kalam Azad Association.
9. 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 this 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 in many cases as per the judgement of Hon'ble Apex Court in T.M.A. Pai Foundation Vs The State of Karnataka (2002) 8 SCC 481, a minority whether linguistic or religious is determinable only by reference to

demography of the State and not by taking into consideration the population of the country as a whole. We are aware of the Buckley Judgement passed by this Commission but there must be reasonable strength of students of minority community in a minority institution and in our considered opinion the percentage could be determined based on the actual proportion of specific minority community in the State population as per prevailing census. Population of Muslim minority community in the State of Karnataka as per the census of 2011 is 12.92%.

10. We have perused the Amended Memorandum of Association of the petitioner institution which was registered before the District Registrar of Societies, Bagalkot on 07.06.2019 which is before the filing of NOC applications U/s 10 of the NCMEI Act, 2004 dated 22.07.2019 and petition for grant of MSC on dated 30.03.2021. 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.
11. The Amended Memorandum of Association dated 07.06.2019 and all the documents produced by the petitioner institution clearly reflects that the beneficiaries of the petitioner institution are primarily the members of the Muslim 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.
12. Relying on the said unrebutted evidence produced on behalf of the petitioner, we find and hold that Azad Public School, Azad Nagar, Hungund Taluk, Hungundu, District Bagalkot, Karnataka run by Maulana Abdul Kalam Azad Association 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 Muslim minority community.

13. Consequently, Azad Public School, Azad Nagar, Hungund Taluk, Hungundu, District Bagalkot, Karnataka, which is for Higher Primary 1st to 7th Std., is declared as an unaided 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.
14. After compliance of the above order, a minority status certificate be issued accordingly.
15. In view of the above, the present petition is disposed of in accordance with this order.

Signed, pronounced and published on **Thursday, 27th Day of July, 2023.**

**JUSTICE NARENDRA KUMAR JAIN
CHAIRMAN**

**DR. SHAHID AKHTER
MEMBER**

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