

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

Case No. 407 of 2020

In the matter of :-

**My Child Modern Madarsa, 313/76B, Main Road, Near Bilal
Masjid, Tulsī Nagar, Delhi-110035**

..... Petitioner

V/s

**Assistant Director of Education (Act), Directorate of
Education, Govt. of NCT of Delhi, Room No. 214-A, Old
Secretariat, Delhi-110054**

..... Respondent

**Present : Mr. Junais P, Advocate for the petitioner
Ms. Babli Kala, Advocate and Mr. V.K. Dahiya,
Legal Assistant for the respondent**

ORDER

DATED 31.01.2024

Dr. Shahid Akhter, Member, NCMEI

1. This petition has been received on 21.10.2020 by hand through Mohd. Nooruzzama Ansari, President of The Incredible Care for Mother and Child for grant of Minority Status Certificate (in short 'MSC') to My Child Modern Madarsa, 313/76B, Main Road, Near Bilal Masjid, Tulsī Nagar, Delhi-110035 alongwith Affidavit of Mohd. Nooruzzama Ansari, President of The Incredible Care for Mother and Child 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.
2. Learned Counsel for the petitioner has filed notarized copy of Unique ID No. : DL/2020/0254071 of the petitioner's Society as given by the Niti Aayog Portal NGO Darpan, photocopy of application dated 17.07.2020 sent to the State Competent Authority i.e. The Assistant Director, Education (Act), Directorate of Education, notarized copy of Certificate of Registration of The Incredible Care for Mother and Child,

notarized copy of Memorandum of Association alongwith list of founding members of the Society, notarized copy of Amended Memorandum of Association dated 17.09.2019 alongwith list of present members of the Society, notarized copy of recognition order dated 16.08.2021 issued by the Joint Director (SSS), National Institute of Open Schooling to the unaided petitioner institution for OBE Programme for the age group 6-14 years and resolution of the General Body of the Society in favour of Mohd. Nooruzzama Ansari, President of The Incredible Care for Mother and Child for obtaining MSC from this Commission.

3. As per the information supplied by the unaided petitioner institution with regard to students strength in academic year 2019-22, it is mentioned that out of the total 113 students, 111 students are from the Muslim minority community and 2 students are Hindus. It is relevant to mention here that in academic years 2019-22, out of the total 16 teachers, 13 teachers are from the Muslim Minority community.
4. It is stated in the petition that on dated 17.07.2020, the petitioner institution has applied to the State Competent Authority for grant of NOC which was received by the State Competent Authority on 17.07.2020 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.
5. After service of registered notice dated 17.06.2022, Dy. Director of Education (Zone-VIII) on behalf of the respondent sent reply dated 16.11.2022 through email wherein they stated that the

Directorate of Education, GNCT of Delhi is not a competent authority for issuance of NOC in respect of Madarsa and the matter has already taken up with the Revenue Department for appointment of the Competent Authority under Section 10 and 12B of the NCMEI Act and the reply of the same is awaited.

6. Learned Counsel for the petitioner filed subsequent pleadings and contended that petitioner is denying all the meritless and frivolous averments made by the respondent in their counter affidavit as the contents therein are wrong, malafide, baseless and contrary to truth. With malafide intention respondent has suppressed many material facts in their reply to drag the proceedings of this Commission. The petitioner institution is established and administered by the Muslim minority community under the registered Society namely The Incredible Care for Mother and Child and institution is managed by the Muslim minority community, the Society desired to get its declaration as a minority educational institution, in order to avail the rights and privileges guaranteed under Article 30(1) of the Constitution of India. As per the mandate of Hon'ble Commission, the petitioner institution approached the respondent Competent Authority on dated 17.07.2020 to grant NOC under Section 10 of the NCMEI Act, 2004 and to seek MSC from this Commission. In reply of the NOC letter dated 17.07.2020, respondent vide their letter dated 08.09.2020 stated that the Directorate of Education, GNCT of Delhi is not a competent authority to issue NOC and MSC to Educational Institutions. Petitioner has further submitted that they fulfill all the indicia prescribed by this Commission for grant of MSC as the petitioner institution is established and administered by the Muslim minority community and primarily for the benefits of Muslim minority community and prayed that the reply of the

respondent may be rejected and dismissed and the petition for grant of MSC filed by the petitioner may be allowed for the interest of justice in favour of the petitioner institution.

7. Heard the Learned Counsel for the petitioner, perused the pleading of the parties, the documents filed by the petitioner and affidavit of Mohd. Nooruzzama Ansari, President of The Incredible Care for Mother and Child.
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 The Incredible Care for Mother and Child 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 Mohd. Nooruzzama Ansari, President of The Incredible Care for Mother and Child.
9. 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.
10. 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 Muslim 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.”

11. 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.
12. 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.

13. 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.
14. 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 Muslim minority community in the State of Delhi as per the census of 2011 is 12.86%.

15. I have perused the Amended Memorandum of Association of the petitioner institution which was registered before the Registrar of Societies, Govt, of NCT of Delhi on dated 17.09.2019 which is before the filing of NOC application U/s 10 of the NCMEI Act, 2004 dated 17.07.2020 and petition for grant of MSC on dated 21.10.2020. 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.
16. The Amended Memorandum of Association dated 17.09.2019 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.
17. Relying on the said unrebutted evidence produced on behalf of the petitioner, we find and hold that My Child Modern Madarsa, 313/76B, Main Road, Near Bilal Masjid, Tulsi Nagar, Delhi-110035 run by The Incredible Care for Mother and Child 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.

18. Consequently, My Child Modern Madarsa, 313/76B, Main Road, Near Bilal Masjid, Tulsi Nagar, Delhi-110035 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.
19. After compliance of the above order, a minority status certificate be issued accordingly.
20. In view of the above, the present petition is disposed of in accordance with this order.

Signed, pronounced and published on **Wednesday, 31st Day of January, 2024.**

**DR. SHAHID AKHTER
MEMBER**

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