

**wGOVERNMENT OF BHARAT
NATIONAL COMMISSION FOR MINORITY
EDUCATIONAL INSTITUTIONS (NCMEI)**

Case No. 311 of 2020

In the matter of :-

**St. Joseph's Primary School, North Street, Thiruvaiyaru,
District Thanjavur, Tamil Nadu-613204**

..... **Petitioner**

V/s

**Principal Secretary, School Education Department, Govt.
of Tamil Nadu, Rina Road, Fort St. George, Secretariat,
Chennai, Tamil Nadu**

..... **Respondent**

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

ORDER

DATED 17.01.2024

Dr. Shahid Akhter, Member, NCMEI

1. This petition has been received on 11.03.2020 by hand through Mr. Jose Abraham, Advocate of the petitioner institution for grant of Minority Status Certificate (in short 'MSC') to St. Joseph's Primary School, North Street, Thiruvaiyaru, District Thanjavur, Tamil Nadu-613204.
2. Learned counsel for the petitioner filed an affidavit of Sr. Kanikai Mary, Secretary of The Immaculate Heart of Mary Society, Society No. 4, Thiruvaiyaru 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 copy of Unique ID No. : TN/2017/0159914 of the petitioner's Society as given by the Niti Aayog Portal NGO Darpan, photocopy of application dated 27.02.2019 sent to the State Competent Authority i.e.

Principal Secretary, School Education Department, Govt. of Tamil Nadu alongwith postal receipt and its acknowledgement receipt, notarized copy of Certificate of Registration of The Immaculate Heart of Mary Society, Society No. 4, Thiruvaiyaru, notarized copy of Memorandum of Association alongwith list of founding members of the Society, notarized copy of Amended Memorandum of Association dated 23.09.2016 alongwith list of present members of the Society, original Recognition Certificate issued by the Assistant Elementary Education Officer, Thiruvaiyaru to the unaided petitioner institution stating that the petitioner institution is a recognized school and resolution of the General Body of the Society in favour of Sr. Kanikai Mary, Secretary of The Immaculate Heart of Mary Society, Society No. 4, Thiruvaiyaru for obtaining MSC from this Commission. Learned Counsel for the petitioner has also filed the last two pages of Amended Memorandum of Association in Tamil language alongwith its notarized English translation and an clarification affidavit of Sr. Kanikai Mary, Secretary of The Immaculate Heart of Mary Society, Society No. 4, Thiruvaiyaru stating that the petitioner institution is a Primary School from 1st to 5th Std. and also 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 petitioner unaided institution with regard to students strength as on 01.06.2019, it is mentioned that out of total 512 students, 76 students are from the Christian minority community, 14 students are from Muslim minority community and 422 students are Hindus. It is relevant to mention here that as on 01.06.2016, out of the

total 15 teachers, 13 teachers are from the Christian Minority community.

5. It is stated in the petition that on dated 27.02.2019, the petitioner institution has applied to the State Competent Authority for grant of NOC which was received by the State Competent Authority on 28.02.2019 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. After service of registered notice to the respondent dated 07.03.2022 and 16.11.2022, Director Elementary Education and Director of Matriculation Schools on behalf of the respondent has sent replies dated 06.05.2022, 25.05.2022 and 11.01.2023 by post which were received by the Commission on dated 17.05.2022, 06.06.2022 and 17.01.2023 respectively. In the replies filed on behalf of respondent i.e. Director of Elementary Education and Director of Matriculation Schools denied all the contentions of the petitioner institution except those which are specifically admitted in this reply. Petitioner school is an aided school receiving grant from the Government and is not accorded with minority status so far by the State Government. Petitioner has filed application for grant of MSC directly to the Commission. Government GO Ms. No. 648 dated 03.08.1994 says that they would verify and determine as to whether an educational institution is a minority institution within the meaning of Article

26 of the Constitution of India and all directions of above GO apply to all schools, colleges, teachers training institute and technical institutions both aided and un-aided in the State of Tamil Nadu. All institutions claiming minority status shall approach the Government for declaration of minority status. Hon'ble Supreme Court has held that the Government is the competent authority to verify and determine the minority status of the educational institution for the purpose of Article 30(1) of the Constitution of India. In reliance of decision of the Hon'ble Supreme Court, Government has issued GO Ms. No. 375, School Education dated 12.10.1998 and G.O. Ms. No. 214, School Education dated 03.11.2008 that all educational institutions seeking minority status has to satisfy the mandatory requirements specified in the above GO and institutions have to apply to the State Government with all requisite details till date. The petitioner has not submitted any proposal requesting minority status to their institution as specified in the said GOs either to Government or to Director of Elementary Education. Since there is no application seeking minority status the respondent could not take any action in this regard.

7. On receipt of such application with all particulars through proper channel it would be processed and sent to Government for passing appropriate orders. In above circumstances, prayed that Commission may be pleased to dismiss the petition as devoid of merits.
8. Learned Counsel for the petitioner filed subsequent pleadings and contended that the petitioner institution is a religious minority institution and run by The Immaculate Heart of Mary Society, Society No. 4, Thiruvaiyaru which is a registered Society constituted by the members of the Christian minority community primarily for the benefit of Christian minority

community. On dated 27.02.2019, 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. In its reply, respondent has referred a couple of GOs like 375 dated 12.10.1998, 648 dated 03.08.1994. 270 dated 17.06.1998, and 214 dated 03.11.2018 and 144 dated 18.09.2014 with regard to the issuance of MSC by the State of Tamil Nadu. None of Govt. orders are dealing with the issuance of NOC under section 10 of the NCMEI Act, 2004, so instant case is a fit case for interference by this Commission. Hon'ble Supreme Court in Sisters of St. Joseph of Cluny Vs. The State of West Bengal (Civil Appeal No. 3945 of 2018) decision dated 18.04.2018 in which Hon'ble Supreme Court has settled the law with regard to the applicability of Section 10 and 11 of the NCMEI Act, 2004 and in view of the said pronouncement of the Hon'ble Supreme Court the stand taken by the respondent will not survive in the eye of law and, therefore, prayed that this Commission may issue MSC to the petitioner institution in the interest of justice and equity.

9. 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 12.05.2022. After service of letters/emails to the physical inspection committee dated 17.05.2022 and 19.09.2022, Physical Inspection Committee, Thanjavur has sent physical inspection report dated 26.09.2022 which was received in the Commission's Office on dated 20.10.2022 wherein they have recommended to grant MSC to the petitioner institution.

10. Heard the Learned Counsel for the petitioner, perused the pleading of the parties, the documents filed by the petitioner and affidavit of Sr. Kanikai Mary, Secretary of The Immaculate Heart of Mary Society, Society No. 4, Thiruvaiyaru.
11. 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 Immaculate Heart of Mary Society, Society No. 4, Thiruvaiyaru 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. Kanikai Mary, Secretary of The Immaculate Heart of Mary Society, Society No. 4, Thiruvaiyaru.
12. 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 Tamil Nadu as per the census of 2011 is 6.12%.

13. I have perused the Amended Memorandum of Association of the petitioner institution which was registered before the office of the Registrar of Societies, Thanjavur on dated 23.09.2016 which is before the filing of NOC applications U/s 10 of the NCMEI Act, 2004 dated 27.02.2019 and petition for grant of MSC on dated 11.03.2020. 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.
14. The Amended Memorandum of Association dated 23.09.2016 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.
15. Relying on the said unrebutted evidence produced on behalf of the petitioner, we find and hold that St. Joseph's Primary School, North Street, Thiruvaiyaru, District Thanjavur, Tamil Nadu-613204 run by The Immaculate Heart of Mary Society, Society No. 4, Thiruvaiyaru 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.

16. Consequently, St. Joseph's Primary School, North Street, Thiruvaiyaru, District Thanjavur, Tamil Nadu-613204 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.
17. A minority status certificate be issued accordingly.
18. In view of the above, the present petition is disposed of in accordance with this order.

Signed, pronounced and published on **Wednesday, 17th Day of January, 2024.**

**DR. SHAHID AKHTER
MEMBER**

VB