

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

Case No. 52 of 2023

In the matter of :-

**Muhyiddeen Matriculation Higher Secondary School, 141,
Keela Nainar Street, Kayalpatnam, District Thoothukudi,
Tamil Nadu-628204**

..... Petitioner

V/s

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

..... Respondent

Present: Mr. Junais P, Advocate for the petitioner
None for the respondent

ORDER

DATED 14.05.2024

Dr. Shahid Akhter, Member, NCMEI

1. This petition has been received on 01.02.2023 by hand through Mr. Junais P, Advocate of the petitioner institution for grant of Minority Status Certificate (in short 'MSC') to Muhyiddeen Matriculation Higher Secondary School, 141, Keela Nainar Street, Kayalpatnam, District Thoothukudi, Tamil Nadu-628204.
2. Learned counsel for the petitioner filed an affidavit of Mr. A.L. Shamsuddeen, Secretary of the Sayyidna Muhammad Education Society 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 copy of Unique ID No. : TN/2021/0298415 of the petitioner's Society as given by the Niti Aayog Portal NGO Darpan, copy of application dated 03.01.2020 sent to State Competent Authority i.e. Principal Secretary, School Education Department, Government of Tamil Nadu for grant of No Objection Certificate (in short 'NOC') alongwith postal receipt and its tracking report, notarized copy of Certificate of Registration of

Sayyidna Muhammad Education Society, notarized copy of Memorandum of Association alongwith list of founding members of the Society, notarized copy of Amended Memorandum of Association dated 14.06.2019 alongwith list of present members of the Society, notarized copy of Recognition Order dated 26.09.2023 issued by the Joint Director, Directorate of Private Schools, Chennai to the unaided petitioner institution from 01.06.2022 to 31.05.2025 from LKG to 12th Std. and Resolution of the General Body of the Society in favour of Mr. A.L. Shamsuddeen, Secretary of the Sayyidna Muhammad Education Society for obtaining MSC from this Commission.

4. As per the information supplied by the petitioner unaided institution with regard to students strength as on 2020-21, it is mentioned that out of total 652 students, 627 students were from the Muslim minority community, 2 students were from Christian minority community and 23 students were Hindus, as on 2021-22, it is mentioned that out of total 559 students, 540 students were from the Muslim minority community, 3 students were from Christian minority community and 16 students were Hindus and as on 2022-23, it is mentioned that out of total 605 students, 578 students are from the Muslim minority community, 4 student are from Christian minority community and 23 students are Hindus . It is relevant to mention here that as on 2020-21, out of the total 33 teachers, 10 teachers were from the Muslim Minority community, as on 2021-22, out of the total 39 teachers, 12 teachers were from the Muslim Minority community and as on 2022-23, out of the total 38 teachers, 13 teachers were from the Muslim Minority community
5. It is stated in the petition that on dated 03.01.2020, the petitioner institution has applied to the State Competent Authority for grant of NOC which was received by the State Competent Authority on 06.01.2020 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.

6. After service of registered notice dated 02.03.2023 and 24.11.2023, Director of Private Schools, Chennai on behalf of the respondent has sent replies dated 10.04.2023 and 09.01.2024 by post which were received by this Commission on 24.04.2023 and 16.01.2024 respectively. In the replies filed by the respondent i.e. Director of Private Schools submitted that petitioner institution has filed application for grant of MSC. Minority Status is being granted by the State Government as per the guidelines stipulated in GO (MS) No. 375 School Education (X2) Department dated 12.10.98 and GO (MS) No. 214 School Education (X2) Department dated 03.11.2008. It is stated that the management of the petitioner's school failed to produce the certificate issued by the Tahsildars concerned to ascertain that the educational institution satisfy additional guidelines including the guidelines prescribed in GO (MS) No. 375 School Education (X2) Department dated 12.10.98 and GO (MS) No. 214 School Education (X2) Department dated 03.11.2008 and the claim of the petitioner is not maintainable either in law and the same is liable to be dismissed as devoid of merit. In these circumstances, it is prayed that the Commission may be pleased to take into account the objections of the respondent and suitable orders may be pleased as per the Government orders.
7. Learned Counsel for the petitioner filed subsequent pleadings and contended that the reply/counter affidavit filed by the respondent by misunderstanding and misconstruing the provisions of NCMEI Act only. As per the mandate of Hon'ble Commission, the petitioner institution approached the respondent Competent Authority to grant NOC under Section 10 of the NCMEI Act, 2004

and to seek MSC from this Commission. Therefore the respondent Govt. cannot say that the petitioner institution has not followed the mandatory requirements laid down by the State Govt. for conferring Minority Status Certificate while filing the application for NOC as per Section 10 of the NCMEI Act and prayed that the reply/counter affidavit filed by the respondent may be ignored as being devoid of merit and the same may kindly be disallowed and the minority status may be granted to the petitioner institution.

8. Heard the Learned Counsel for the petitioner, perused the pleading of the parties, the documents filed by the petitioner and affidavit of Mr. A.L. Shamsuddeen, Secretary of the Sayyidna Muhammad Education Society.
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 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 Tamil Nadu as per the census of 2011 is 5.86%.
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 Muslim minority community and is being administered by Sayyidna Muhammad Education Society 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. A.L. Shamsuddeen, Secretary of the Sayyidna Muhammad Education Society.

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 Tamil Nadu have is 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 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."

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 individual institution who desires to establish minority educational institution has two options. Firstly, he 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 authorities 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 my 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. I have perused the Amended Memorandum of Association of the petitioner institution which was registered before the office of the Registrar of Societies, Chennai North on dated 14.06.2019 which is before the filing of NOC applications U/s 10 of the NCMEI Act, 2004 dated 03.01.2020 and petition for grant of MSC on dated 01.02.2023. 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 14.06.2019 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.
18. Relying on the said unrebutted evidence produced on behalf of the petitioner, we find and hold that Muhyiddeen Matriculation Higher Secondary School, 141, Keela Nainar Street, Kayalpatnam, District Thoothukudi, Tamil Nadu-628204 run by Sayyidna Muhammad Education Society 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.

19. Consequently, Muhyiddeen Matriculation Higher Secondary School, 141, Keela Nainar Street, Kayalpatnam, District Thoothukudi, Tamil Nadu-628204 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.
20. After compliance of the above order, 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, 14th Day of May, 2024.**

**DR. SHAHID AKHTER
MEMBER**

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