

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

Case No. 172 of 2023

In the matter of :-

**St. Mary's EM UP School Dr. No. 14/113, Denduluru,
Denduluru (M), West Godavari District, Andhra Pradesh-
534432**

..... Petitioner

V/s

**Secretary to Govt., Government of Andhra Pradesh,
Minorities Welfare Department, 3rd Floor, A.P. Secretariat,
Velagapudi, Amaravati, Andhra Pradesh**

..... Respondent

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

ORDER

DATED 22.05.2024

Dr. Shahid Akhter, Member, NCMEI

1. This petition has been received on 06.07.2023 by hand through Mr. Jose Abraham, Advocate of the petitioner institution for grant of Minority Status Certificate (in short 'MSC') to St. Mary's EM UP School Dr. No. 14/113, Denduluru, Denduluru (M), West Godavari District, Andhra Pradesh-534432.
2. Learned counsel for the petitioner filed an affidavit of Sr. Elsamma Sebastian, President of Jyothi Niketan Charitable Society, Janampet 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 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.
3. Learned counsel for the petitioner has filed copy of Unique ID No. : AP/2020/0262242 of the petitioner's Society as given by the Niti Aayog Portal NGO Darpan, copy of application dated 13.03.2023

sent to the State Competent Authority i.e. Secretary to Govt., Government of Andhra Pradesh, Minorities Welfare Department alongwith postal receipt and its tracking report, notarized copy of Certificate of Registration of Jyothi Niketan Charitable Society, Janampet, notarized copy of Memorandum of Association alongwith list of founding members of the Society, notarized copy of Amended Memorandum of Association dated 24.07.2020 alongwith list of present members of the Society, notarized copy of Recognition Order dated 07.09.2018 issued by the District Educational Officer, West Godavari, Eluru to the unaided petitioner institution from 2018-19 to 2027-28 for class 1st to 7th Std. and resolution of the General Body of the Society in favour of Sr. Elsamma Sebastian, President of Jyothi Niketan Charitable Society, Janampet for obtaining MSC from this Commission.

4. As per the information supplied by the unaided petitioner institution with regard to students strength in the year 2020-21, it is mentioned that out of the total 150 students, 6 students were from the Christian minority community and 144 students were Hindus, in the year 2021-22, it is mentioned that out of the total 165 students, 7 students were from the Christian minority community and 158 students were Hindus and in the year 2022-23, it is mentioned that out of the total 220 students, 12 students are from the Christian minority community and 208 students are Hindus. It is relevant to mention here that in the year 2020-21 and 2021-22, out of total 9 teachers, 3 teachers are from Christian Minority community and in the year 2022-23, out of total 10 teachers, 5 teachers are from Christian Minority community
5. It is stated in the petition that on dated 13.03.2023, the petitioner institution has applied to the State Competent Authority for grant of NOC which was received by the State Competent Authority on 15.03.2023 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 19.07.2023 and 24.11.2023, respondent has sent reply dated 28.07.2023 by post which was received by the Commission on 08.08.2023. In the replies filed by the respondent, it is submitted that the application has been received to grant NOC to the petitioner institution and necessary action will be taken on submission of application as per the guidelines issued in Govt. letter No. MNW01-CHSTOMSC(MSC)/1/2023-SDM-1, MW (SDM) Dept. dated 23.03.2023. For the reasons stated above, it is prayed that the Commission may be pleased to dismiss the case.
7. Learned Counsel for the petitioner filed subsequent pleadings and contended that the petitioner institution is a religious minority institution and run by Jyothi Niketan Charitable Society, Janampet which is a registered Society constituted by the members of the Christian minority community primarily for the benefit of Christian minority community. On dated 13.03.2023, 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 G.O. Ms. No. 1, M.W. (M&R) Department, dated

16.01.2004 with regard to the issuance of NOC by the State of Andhra Pradesh. The same Govt. order is dealing with the issuance of MSC and not on 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.

8. Heard the Learned Counsel for the petitioner, perused the pleading of the parties, the documents filed by the petitioner and affidavit of Sr. Elsamma Sebastian, President of Jyothi Niketan Charitable Society, Janampet.
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 Jyothi Niketan Charitable Society, Janampet 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. Elsamma Sebastian, President of Jyothi Niketan Charitable Society, Janampet.
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 Andhra Pradesh as per the census of 2011 is 1.34%.

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 Andhra Pradesh 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 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 Registrar on dated 24.07.2020 which is before the filing of NOC applications U/s 10 of the NCMEI Act, 2004 dated 13.03.2023 and petition for grant of MSC on dated 06.07.2023. 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 24.07.2020 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 unrebutted evidence produced on behalf of the petitioner, we find and hold that St. Mary's EM UP School Dr. No. 14/113, Denduluru, Denduluru (M), West Godavari District, Andhra Pradesh-534432 run by Jyothi Niketan Charitable Society, Janampet 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. Mary's EM UP School Dr. No. 14/113, Denduluru, Denduluru (M), West Godavari District, Andhra Pradesh-534432 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.
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 **Wednesday, 22nd Day of May, 2024.**

**DR. SHAHID AKHTER
MEMBER**

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