

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

Case No. 71 of 2022

In the matter of:-

Nabajyoti U.P. School, Kerjenga, Pallahara, Angul Dist., Orissa – 759 119.

.....Petitioner

V/s.

**Director, Elementary Education, 5th Floor, HOD Building, Unit-V,
Bhubaneswar-01, Khordha, Odisha.**

..... Respondent

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

ORDER

DATED 23.05.2023

Dr. Shahid Akhter, Member, NCMEI

1. This petition has been received on 27.05.2022 by hand through Mr. Jose Abraham, Advocate of the petitioner institution for grant of Minority Status Certificate (in short 'MSC') to "Nabajyoti U.P. School, Kerjenga, Pallahara, Angul Dist., Orissa – 759 119".
2. Learned counsel for the petitioner filed an affidavit of Fr. Petrus Kullu, President, of the "The Divine Word Educational 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 Christian minority community.
3. Learned counsel for the petitioner has filed a copy of Unique ID No. : OR/2017/0168442 of the petitioner's Society as given by the Niti Aayog Portal NGO Darpan, copy of application dated 08.10.2021 sent to the State Competent Authority i.e. Director, Elementary Education, 5th Floor, HOD Building, Unit-V, Bhubaneswar-01, Khordha, Odisha-751 015, which was received by the respondent by post on 11.10.2021. The petitioner institution has also filed the notarized copy of Certificate of Registration, Memorandum of Association, Rules and Regulations, amended Memorandum of Association and amended Rules and Regulations of the "The Divine Word Educational Society", notarized copy of school recognition order issued to the petitioner institution by the District Education Officer, Angul. He has also filed the notarized copy of Governing Body Resolution of the "The Divine Word Educational Society".
4. As per the information supplied by the inspection committee report dated 29.10.2022 with regard to the students strength, it is mentioned that in the year 2022-23 in unaided petitioner institution, out of total 141 students, only 55 students are from the Christian minority community. Population of Christian

minority community in the State of Odisha as per the census of 2011 is 2.77 %. 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.

5. It is stated in the petition that on dated 08.10.2021, the petitioner institution has applied to the State Competent Authority for grant of NOC which was received by the State Competent Authority on 11.10.2021 and the same 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 application 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 dated 15.07.2022, no reply/ response 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 13.09.2022, after service of letters, reminder/ emails to the physical inspection committee dated 11.10.2022 and 23.12.2022, Collector & District Magistrate, Angul, sent the physical inspection report through post vide letter dated 29.10.2022, which was received in the Commission's Office on dated 04.11.2022 in which it is mentioned that in the year 2022-23 in unaided petitioner institution out of total 141 students, only 55 students are from the Christian minority community and 86 students are Hindus. The student strength of Hindu community is more than the Christian community. Religion status has been entered in admission register basing on oral self declaration of the students or guardian. Moreover most of the Christian students do not belong to Pallahara locality.
7. 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's population. In the present case, Christian minority community in the State of Odisha as per the census of 2011 represents 39.1% of the State population, the minimum percentage governing

admission could be fixed as 2.77 % and in this institution students are more than the 2.77%.

8. It has been held in P.A. Inamdar Vs. State of Maharashtra (2005) 6 SCC 537, “the minority institutions are free to admit students of their own choice including students of non minority community and also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority status is lost. If they do so, they lose the protection of Article 30(1) of the Constitution.” And further it has been held in Kerala Education Bill AIR 1958 SC 956 that “Articles 29(2) and 30(1), read together, clearly contemplate a minority institution with a ‘sprinkling’ of outsiders” admitted in it. By admitting a member of non minority into the minority institution it does not shed its character and cease to be a minority institution.”
9. Heard learned counsel for the petitioner, perused the pleading of the petitioner institution, the documents filed by the petitioner and affidavit of Fr. Petrus Kullu, President, of the “The Divine Word Educational Society”.
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 Christian minority community and is being administered by the “The Divine Word Educational Society”, 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 Fr. Petrus Kullu, President, of the “The Divine Word Educational Society”.
11. The amended Memorandum of Association of the said Society clearly reflects that the beneficiaries of the petitioner institution are primarily members of the Christian minority community. In addition, the said facts are 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 the “Nabajyoti U.P. School, Kerjenga, Pallahara, Angul Dt., Orissa-759 119”, run by “The Divine Word Educational 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 subserving the interests of the Christian minority community.
13. Consequently, “Nabajyoti U.P. School, Kerjenga, Pallahara, Angul Dt., Orissa-759 119”, which is for Upper Primary, 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 Christian 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 **Tuesday, 23rd Day of May, 2023.**

**DR. SHAHID AKHTER
MEMBER**

**DR. JASPAL SINGH
MEMBER**