

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

Case No. 217 of 2019

In the matter of :-

St. Marys Convent School, Agwanpur, Moradabad, Uttar Pradesh-244502

..... **Petitioner**

V/s

Deputy Director, Minorities Welfare Department, Govt. of Uttar Pradesh

..... **Respondent**

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

ORDER

DATED 23.11.2021

Justice Narendra Kumar Jain, Chairman, NCMEI

1. This application has been received on 12.04.2019 by hand through Mr. Jose Abraham, Advocate of the petitioner institution for grant of Minority Status Certificate (in short 'MSC') to St. Marys Convent School, Agwanpur, Moradabad, Uttar Pradesh-244502.
2. Learned counsel for the petitioner filed an affidavit of Rev. Sr. Alice Peter, President of Seva Charitable Society, St. Marys Convent School, Delhi By-Pass, Serua Chaurah, Aghwanpur, Uttar Pradesh in support of the averments made in the petition and also to prove that the beneficiaries of the petitioner institution are primarily members of the Christian minority community.
3. Learned counsel for the petitioner has filed copy of Unique ID No. : UP/2018/0189688 of the petitioner's Society as given by the Niti Aayog Portal NGO Darpan, notarized copy of application dated 20.11.2018 sent to State Competent Authority

i.e. Deputy Director, Minorities Welfare Department, Govt. of Uttar Pradesh for grant of No Objection Certificate (in short 'NOC') alongwith its postal receipt and its tracking report, notarized copy of Society Registration Certificate of Seva Charitable Society, notarized copy of Memorandum of Association alongwith list of founding members, certified copy of List present members during the Financial Year 2019-20, and the notarized copy of Affiliation letter dated 29.08.2019 issued by the Deputy Secretary, CBSE for the period from 01.04.2019 to 31.03.2022 for Senior Secondary School Examination to the petitioner institution.

4. Learned Counsel for the petitioner also submitted the Census Report of Uttar Pradesh alongwith the census report of Moradabad District, Affidavit of Rev. Sr. Alice Peter, President of Seva Charitable Society 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 resolution of the General Body of the Society to authorize Rev. Sr. Alice Peter, President of Seva Charitable Society, St. Marys Convent School for obtaining MSC from this Commission.
5. As per the information supplied by the petitioner institution with regard to student strength, it is mentioned that out of total 1005 students, only 5 students are from the Christian minority community, 199 are from the Muslim minority community and 801 are Hindus. It is relevant to mention here that out of total 32 teachers, 9 are from Christian Minority community.
6. It is stated in the petition that on dated 20.11.2018, the petitioner institution had applied to the State Competent Authority which was received by the State Competent Authority on 26.11.2018 and the said application is still pending before the State Competent Authority. The State Competent Authority

till now has not granted NOC in favour of the petitioner institution and also not rejected the said application and neither communicated the same to the petitioner. As per the provisions of Section 10 and 11(f) of National Commission for Minority Educational Institutions (in short 'NCMEI') Act, 2004 and after 90 days from the submission of the application for grant of NOC the petitioner has filed this application for grant of MSC to this Commission straightway.

7. After service of registered notice dated 24.05.2019 and 04.11.2019, respondent has sent letter dated 10.10.2020 by post which was received by the Commission on 23.11.2020 wherein the NOC application of the petitioner institution is forwarded to Upper Chief Secretary, Basic Education Department, Uttar Pradesh for further necessary action but till date we have not yet received any reply from them. Thereafter 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 04.03.2020 but despite letter dated 06.03.2020, 07.10.2020 and 12.08.2021 to the said committee, committee has failed to send any report to this Commission.
8. Heard the Learned Counsel for the petitioner, perused the pleading of the petitioner institution, the documents filed by the petitioner and affidavit of Rev. Sr. Alice Peter, President of Seva Charitable Society.
9. Learned Counsel for the petitioner submitted that 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 Seva Charitable Society which is managed and run by the members of the Christian minority

community. 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 MSC is a constitutional right of minority educational institution. The petitioner institution is established and administered by the members of the Christian minority community. Learned Counsel for the petitioner has further submitted that the Hon'ble Apex Court, various High Courts as well as this Commission have categorically held that percentage governing admission of students from notified minority community in a minority educational institution is not an indicia for determining the minority status of such institution.

10. Learned Counsel for the petitioner has also drawn attention of this Commission on the judgement dated 06.07.2010 passed in case No. 1320 of 2009 of Buckley Primary School, Cuttack, Orissa Vs. Government of Orissa which reads as under :-

" it has been held by the Supreme Court in TMA Pai (Supra) that the intake of minority students in the concerned institution has to be dependent upon variety of factors like what kind of institution it is, whether primary, secondary, high school or college or otherwise, the population of that community in the State and to the need of the area in which the institution is located. It is by considering these factors that the State may fix a minimum intake of minority and non-minority students. The Supreme Court has also held that "what would be a reasonable extent would depend upon variable factors, and it may not be advisable to fix any specific percentage." From the above it is clear that a ceiling of 50% cannot be imposed against the minority institutions, requiring them to compulsorily admit the minority students upto 50%. There cannot be a common rule or regulation in respect of all types of educational institutions from primary to college level and for the entire State fixing the uniform ceiling in the matter of admission of students in minority educational institutions".

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Consequently, we find and hold that the identifying criteria of fixation of a percentage governing admission of a minority community in a minority educational institution cannot be included in the indicia for determining the minority status of such an institution."

X X X X X

11. Taking into consideration, the documents, information supplied by the petitioner institution, affidavit of Rev. Sr. Alice Peter, President of Seva Charitable Society, in the facts and circumstances of this case, the main issue is whether the petitioner institution is entitled to get MSC from this Commission ?
12. It is an admitted fact by the petitioner institution that out of the total 1005 students only 5 students are from the Christian minority community in the petitioner institution situated at Agwanpur, Moradabad, Uttar Pradesh-244502. As per the 2011 Census, in the State of Uttar Pradesh, population of Christian minority community is 0.18%. It is also pertinent to mention here that out of total teachers strength of 32 in the petitioner institution, 9 teachers are from the Christian minority community. So in our considered opinion the strength of students in the petitioner institution is negligible and also surprisingly the strength of minority students are less than the teachers from minority community in the petitioner institution. Petitioner institution's students strength is only five. In our considered opinion and in the interest of justice, it should be atleast 1%.
13. 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 Uttar Pradesh represents less than 1% of the State population, the minimum percentage governing admissions could be fixed near about 1%. Petitioner institution has less than the above strength of the students in their institution and is also less than the number of teachers from minority community.

14. It has been held in P.A. Inamdar V/s 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 educational 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".
15. It is pertinent to mention here that an educational institution is established to sub-serve or advance the purpose for its establishment. Whereas the minorities have the right to establish and administer educational institutions of their own choice with the desire that their children should be brought up properly and be eligible for higher education and go all over the world fully equipped with such intellectual attainments as it will

make them fit for entering into the public services, surely then there must be an implicit in such a fundamental right the corresponding duty to cater to the needs of children of their own community. The beneficiaries of such a fundamental right should be allowed to enjoy it in the fullest measure. Therefore, the educational institutions of their choice will necessarily cater to the needs of the minority community which had established the institution. Mere receipt of state aid does not annihilate the right guaranteed under Article 30(1). It has been held in the case of P.A. Inamdar (Supra) that "a minority institution does not cease to be so, the moment grant-in-aid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and at the same time, would be required to admit a reasonable extent of non-minority students, so that the rights under Article 30(1) are not substantially impaired and further the citizens' rights under Article 29(2) are not infringed. What would be a reasonable extent, would vary from the types of institution, the courses of education for which admission is being sought and other factors like educational needs. The State Government concerned has to notify the percentage of the minority students to be admitted in the light of the above observations."

16. That from bare reading of Article 30(1) of the Constitution of India read with several authoritative pronouncement of the Hon'ble Supreme Court and the definitions of minority educational institution in Section 2(g) of the NCMEI Act, 2004 and Section 2(f) of the Central Educational Institutions (Reservation in Admission) Act, 2006, the following facts should be proved for grant of MSC to an educational institution on religious basis :-

- (i) That the educational institution was established by a member / members of the religious minority community;
 - (ii) That the educational institution was established primarily for the benefit of the minority community; and
 - (iii) That the educational institution is being administered by the minority community.
17. The proportion of law enunciated in T.M.A. Pai Foundation case is reiterated in the clarificatory judgement rendered by another constitution bench of Hon'ble Supreme Court in P.A. Inamdar V/s State of Maharashtra (2005) 6 SCC 537 and general principles relating to establishment and administration of educational institutions by minorities are clarified.
18. The State Government can prescribe percentage of the minority community to be admitted in a minority educational institution taking into account the population and educational needs of the area in which the institution is located. There cannot be a common rule or regulation or order in respect of types of educational institutions from primary to college level and for the entire State fixing the uniform ceiling in the matter of admission of students in minority educational institutions. Thus a balance has to be kept between two objectives – preserving the right of the minorities to admit students of their own community and that of admitting “sprinkling of outsiders” in their institutions subject to the condition that the manner and number of such admissions should not be violative of the minority character of the institution. It is significant to mention here that Section 12C (b) of the Act also empowers the State Government to prescribe percentage governing admissions in a minority educational institution. Thus the State Government has to prescribe percentage governing admissions of students in the minority educational institutions in accordance with the aforesaid principles of law enunciated by their lordships of the Supreme

Court in the cases of T.M.A. Pai Foundation and P.A. Inamdar (supra).

19. The emphatic point in the P.A. Inamdar (Supra) reasoning is that the minority educational institution is primarily for the benefit of minority community. Sprinkling of the non-minority students in the student population of minority educational institution is expected to be only peripheral either for generating additional financial source or for cultural courtesy. Thus, a substantive section of student population in minority educational institution should belong to the minority. In the context of commercialisation of education, an enquiry about composition of student population of minority educational institution will reveal whether the substantive peripheral formula that can be gathered from P.A. Inamdar case (Supra) is adequately complied with or whether minority educational institution is only a façade for money making.
20. We have also considered that, when the Constitution of India enshrines rights on minority educational institutions, it is obvious that there should be some duties required from them as well. But some of the institutions are not adhering to their duties and not giving admissions to students of their own community. The words "that the educational institution was established for the benefit of the minority community" clearly imposes the duty on the minority educational institutions to work for the benefit of their own community rather than mostly for private profit or other purposes. Section 12C of the NCMEI Act, 2004 empowers the NCMEI to cancel the minority status of an educational institution if, on verification of records during an inspection or investigation it is found that the minority educational institution has failed to admit students belonging to the minority community as per rules and a prescribed minimum percentage governing admissions of minority students during

any academic year. So the reasonable strength of students of minority community should be there in the minority educational institution for serving their own community for which they are provided constitutional privileges and benefits. Minority educational institutions have the permanent obligation to benefit their own minority community students.

21. We have also considered another aspect that in order to provide Free and Compulsory Education of all Children in the age group of six to fourteen years as a fundamental right, the Government of India inserted Article 21A in the Constitution of India and also enacted the Right of children to Free and Compulsory Education Act, 2009 (in short RTE Act, 2009) which provides that every child in the age group of six to fourteen years has a right to full time elementary education of satisfactory and equitable quality in a formal school, which satisfies certain essential norms and standards. But in order to protect minority educational institutions from implementation of the RTE Act, 2009 the Hon'ble Constitutional Bench of Supreme Court in its judgement dated 06.05.2014 in Pramati Educational and Cultural Trust and others V/s Union of India and others (2014) 8 SCC Page 1 held, that the RTE Act, 2009 in so far as it applies to minority schools aided or unaided covered under Clause 1 of Article 30 of the Constitution of India is ultra virus of the Constitution. This proposition of law establishes that said Act 2009 is not applicable to minority educational institutions, aided or unaided at all. In these circumstances, minority educational institutions have moral obligation and duty to benefit their own community students by giving admissions to the reasonable extent.
22. We have considered the Buckley Primary School (Supra) judgement of this Commission which is probably unintended and created an absolute right for minorities to establish minority

educational institutions irrespective of the number of beneficiaries which appears to be in contravention of the provisions of Section 12C of the NCMEI Act, 2004, which empowers the NCMEI to cancel the minority status of an educational institution, if on verification of records during inspection or investigation, it is found, inter-alia that the minority educational institution has failed to admit a prescribed minimum percentage of minority students during any academic year. We are also of the opinion that States should comply with their obligation to determine eligibility of minority educational institutions as mandated in the NCMEI Act, 2004 and should prescribe the minimum percentage governing admissions of minority students during any academic year together with rules and regulations for its determination and to verify its implementation by a minority educational institution, taking into account of population, education needs of the area in which the institution is located and also principles of law enunciated by their lordships of the Hon'ble Supreme Court in the case of T.M.A. Pai Foundation and P.A. Inamdar Case (Supra).

23. In the interest of justice, Secretary of this Commission is directed to direct all the Competent Authority of State / UTs to comply with this obligation as mandated in NCMEI Act, 2004 and above said judgements passed by Hon'ble Supreme Court and should prescribe a minimum percentage governing admissions of minority students during any academic year based on the proportion of minority students in the State or other reasonable formula and prescribed rules and regulations for such determination and verification of its implementation.
24. As discussed above, the petitioner institution has failed to fulfill the criteria for grant of MSC.
25. Consequently, the petition filed by the petitioner institution namely St. Marys Convent School, Agwanpur, Moradabad,

Uttar Pradesh-244502 is hereby dismissed. However, petitioner institution is free to move fresh application for grant of MSC as per the law, following the procedure after having minimum percentage of students in their institution.

In the interest of justice, office is directed to send copy of this judgement to State Competent Authority as well as Secretary of this Commission for compliance of this judgement.

In view of the above, the present petition is disposed of in accordance with this order.

Signed, pronounced and published on Tuesday, 23
Day of November, 2021.

JUSTICE NARENDRA KUMAR JAIN
CHAIRMAN

DR. JASPAL SINGH
MEMBER

DR. SHAHID AKHTER
MEMBER

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