

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**Civil Writ Petition No.7977 of 2015**

**Date of decision: 09.09.2015**

Sh. Gurunanak Mission Educational Trust (Regd.)

**...Petitioner**

**Versus**

State of Haryana and another

**...Respondents**

**CORAM: MR.JUSTICE G.S.SANDHAWALIA**

Present: Mr. J.S.Chahal, Advocate for the petitioner

Mr. Saurabh Girdhar, Assistant Advocate General, Haryana  
for the respondents.

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**G.S.SANDHAWALIA, J, (Oral)**

In the present writ petition prayer made is for issuance of a writ of mandamus directing the respondents to take a decision on the application dated 10.7.2012 (Annexure P/3) preferred by the petitioner and for grant of minority status as "Sikh Minority" to the school, namely, Springdales Public School run by the petitioner society.

The pleaded case of the petitioner is that it is a registered trust and set up the aforesaid school which is affiliated to the CBSE and is running since 2002-03 and recognised by the Education Department. The members of the petitioner trust are members of Sikh Community which believe in the tenets of Sikhism. The petitioner-trust had applied for grant of minority status for school in question along with requisite documents on 10.7.2012 (Annexure P/3). On account of certain deficiencies documents were returned by respondent no.2 and after fulfilling the deficiencies and enclosing desired documents as required by the respondent no.2, the same were sent on 27.11.2013 (Annexures P/4 and P/5). But no further action had been taken by the respondents. Resultantly, the present writ

petition was filed.

The petition has not been opposed on merits by the State and short reply of the Deputy Director, O/o the Director, Secondary Education, Haryana has been filed.

The plea taken is that the matter could not be finalised on account of any specific policy/guidelines to deal with the matter for grant of minority status. The guidelines have now been framed on 14.8.2015 (Annexure R/1). The petitioner society has been requested to submit the claim as per policy guidelines and as and when the same are received, necessary action would be taken immediately.

Counsel for the petitioner has vehemently pointed out that apart from the fact that the policy contains onerous condition of deposit of ₹ 1 Crore as non-transferable Endowment Fund, the same would not be applicable to the petitioner in view of the fact that application was pending with the respondents since 27.9.2013 after the deficiencies had been removed which is not denied.

He has placed reliance upon the provisions of Section 10 of the National Commission for Minority Educational Institutions Act, 2004 (hereinafter referred to as "the Act") to submit that the Government was to act expeditiously as possible and grant or reject the application. Under Sub-Section 3, 90 days period dead line has been fixed and there is a deemed sanction. It is accordingly contended that in view of the mandatory nature of the Statute, it does not lie in the mouth of the State to submit that they could not take up the application for consideration and NOC is deemed to have been granted and only formal certificate is to be issued by the State. Section 10 of the Act reads as under:-

**"RIGHTS OF A MINORITY EDUCATIONAL INSTITUTION**

**10. Right to establish a Minority Educational Institution.-**

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Punjab and Haryana High Court,  
Chandigarh

(1) Subject to the provisions contained in any other law for the time being in force, any person, who desires to establish a Minority Educational Institution may apply to the competent authority for the grant of no objection certificate for the said purpose.

(2) The Competent authority shall,—

(a) on perusal of documents, affidavits or other evidence, if any; and

(b) after giving an opportunity of being heard to the applicant, decide every application filed under sub-section (1) as expeditiously as possible and grant or reject the application, as the case may be:

Provided that where an application is rejected, the Competent authority shall communicate the same to the applicant.

(3) Where within a period of ninety days from the receipt of the application under sub-section (1) for the grant of no objection certificate,—

(a) the Competent authority does not grant such certificate; or

(b) where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate, it shall be deemed that the Competent authority has granted a no objection certificate to the applicant.

(4) The applicant shall, on the grant of a no objection certificate or where the Competent authority has deemed to have granted the no objection certificate, be entitled to commence and proceed with the establishment of a Minority Educational Institution in accordance with the rules and regulations, as the case may be, laid down by or under any law for the time being in force.

Explanation.—For the purposes of this section,—

(a) “applicant” means any person who makes an application under subsection (1) for establishment of a Minority Educational Institution;

(b) “no objection certificate” means a certificate stating therein, that the Competent authority has no objection for the establishment of a Minority Educational Institution.”

A perusal of the aforesaid provisions would go on to show that there is strength in the submission made by the counsel for the petitioner that deeming clause is to come into play. Even a perusal of the said Sub

Section (4) would go on to show that where the NOC is deemed to have been granted the no objection certificate, the minority educational institute can proceed with the establishment of the institution in accordance with rules and regulations.

The matter is not res-integra. The Gujarat High Court in **Muslim Vidhyarthi Prakrati Mandal Trust Vs. State of Gujarat and another** 2007 AIR (Gujarat) 221 was also seized of the similar controversy. In the said case on account of inaction of the State Government, the National Commission for Minority Educational Institutions had issued the certificate. It was accordingly held that where the application was delayed and not processed within the prescribed period, there is deemed fiction and the application is deemed to have been allowed and NOC granted. Relevant portion of the judgment reads as under:-

6. As can be seen from provisions of [Section 10](#) of the Act any person who is desirous of establishing a Minority Educational Institution may apply to the Competent Authority for grant of No Objection Certificate for the said purpose. Under Sub-section (2) of Section 10 of the Act the Competent Authority is required to decide every application filed under Sub-section (1) as expeditiously as possible and grant or reject the application, as the facts warrant. The Proviso under Sub-section (2) of [Section 10](#) of the Act requires that where an application is rejected the Competent Authority is bound to communicate the order of rejection to the applicant. Under [Section 12A](#) of the Act any person aggrieved by the order of refusal is entitled to prefer an appeal against such order to the Commission. However, in a case where the Competent Authority either does not grant the No Objection Certificate or, where application has been rejected and such rejection is not communicated to the applicant, within a period of ninety days from the receipt of the application under Sub-section (1) of [Section 10](#) of the Act, [Section 10\(3\)](#) of the Act provides that it shall be deemed that the Competent Authority has granted No Objection Certificate to the applicant. Thus in a case where either the application is not processed and dealt with, or in a case where the application is rejected but rejection is not

communicated, both within a period of ninety days from the date of receipt of the application, the provisions create a deeming fiction whereunder the application is deemed to have been allowed and No Objection Certificate granted.

7. It is necessary to note that under [Section 12B](#) of the Act the Commission has been granted appellate powers to decide on the minority status of an educational institution. However, for the present it is not necessary to deal with those powers for the simple reason that there is no lis between the parties on this count. In fact the certificate issued by the Commission on 18.4.2007 declaring the petitioner to have the status under [Section 2\(g\)](#) of the Act is premature. [Section 2\(g\)](#) of the Act defines 'Minority Educational Institution' to mean a College or Institution (other than a University) established or maintained by a person or group of persons from amongst the minorities. Therefore, the first requirement is that a College or Institution for the purpose of education has to be established, only then the question of granting that status would arise. In the fact situation of the present case there is a deemed grant of No Objection Certificate for establishing a Minority Educational Institution. Hence, there can be no question of granting the status before that point of time. Even otherwise considering the amended provisions of the Act, more particularly [Section 12B](#) of the Act it is a moot question whether the Commission can issue such a certificate on its own without exercise of the appellate powers with which the Commission has been specifically vested under [Section 12B](#) of the Act. Normally, no appeal would lie before the same authority/forum against whose order the Statute has provided a right to appeal.

8. However, it is not necessary to dwell any further on the aforesaid aspect. Suffice it to state that undisputed facts reveal that on operation of law, more particularly [Section 10\(3\)\(a\)](#) of the Act, the Competent Authority having not granted No Objection Certificate within the stipulated period of ninety days from the date of receipt of the application under [Section 10\(1\)](#) of the Act, by virtue of deeming fiction a state of affairs comes about whereunder the Competent Authority is deemed to have granted a No Objection Certificate to the applicant. As a natural corollary the respondent authority is required to ensure that all the consequential entitlements which a minority educational institution is entitled to in connection with running a P.T.C. College shall be granted to the petitioner. The respondent authority is accordingly directed to undertake such an exercise at

the earliest point of time.

9. The petition is allowed accordingly in the aforesaid terms.

Rule made absolute. There shall be no order as to costs.

Petition allowed.”

Counsel for the State is not in a position to show any case law to the contrary.

Accordingly, the present writ petition is allowed and the writ of Mandamus is issued to respondent no.2 to issue necessary No Objection Certificate within a period of two weeks from the receipt of a certified of this order.

**September 09, 2015**  
**Pka**

**(G.S.SANDHAWALIA)**  
**Judge**