

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 2nd July, 2015

+ W.P.(C) 4901/2013
ISHAN EDUCATION RESEARCH SOCIETY Petitioner
Through: Mr. Rajeshwar Kumar Gupta, Adv.

Versus

NATIONAL COMMISSION FOR MINORITY EDUCATIONAL
INSTITUTIONS & ORS. Respondents
Through: Mr. Syed Abdul Haseeb, Adv. for NCMEI

AND

+ W.P.(C) 1250/2014
ISHAN EDUCATION RESEARCH SOCIETY Petitioner
Through: Mr. Rajeshwar Kumar Gupta, Adv.

Versus

NATIONAL COMMISSION FOR MINORITY EDUCATIONAL
INSTITUTIONS AND ORS Respondents
Through: Mr. Syed Abdul Haseeb, Adv. for NCMEI

AND

+ W.P.(C) 1992/2014
ISHAN EDUCATION RESERACH SOCIETY Petitioner
Through: Mr. Rajeshwar Kumar Gupta, Adv.

Versus

NATIONAL COMMISSION FOR MINORITY EDUCATIONAL
INSTITUTIONS & ANR. Respondents
Through: Mr. Syed Abdul Haseeb, Adv. for NCMEI

AND

+ W.P.(C) 9265/2014
ISHAN EDUCATIONAL RESEARCH
SOCIETY (REGD.) & ANR. Petitioners
Through: Mr. Rajeshwar Kumar Gupta, Adv.

Versus

NATIONAL COMMISSION FOR MINORITY EDUCATIONAL
INSTITUTIONS & ANR. Respondents
Through: Mr. Syed Abdul Haseeb, Adv. for NCMEI

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. W.P.(C) No.4901/2013 was filed seeking a declaration that the institutions managed by the petitioner Ishan Education Research Society to be Minority Educational Institutions within the meaning of Section 2(g) of the National Commission for Minority Educational Institutions Act, 2004 (NCMEI Act). It was the plea of the petitioner therein, i) that it was registered in the year 1994 as a Society under the Societies Registration Act, 1860 with the objective to establish, run and maintain educational institutions; ii) that in the year 1995, the petitioner Society established an educational institution in Greater Noida, Uttar Pradesh in the name of Ishan Institute of Management and Technology for imparting Postgraduate

Diploma in Management and which course was approved by the All India Council for Technical Education (AICTE); iii) that in the year 2006, the petitioner Society applied to the Registrar for amendment in Bye-laws of the Society to show the Status of The Society as a minority Society and the Bye-laws of the petitioner Society were duly amended; iv) that on 15th September, 2010, the petitioner Society applied to the Government of Uttar Pradesh for grant of minority status to Ishan Institute of Management & Technology; v) that not receiving any response to the said application, the petitioner Society approached the National Commission for Minority Educational Institutions (NCMEI) established under the NCMEI Act; vi) that it was the plea of the petitioner Society before the NCMEI that there were eight founder members of the petitioner Society at the time of establishment thereof and of which six were followers of Buddhist Religion, a minority religion and the said members are continuing to follow the Buddhist religion from inception of the petitioner Society and the majority of the members of the petitioner Society belong to minority community; vii) that the NCMEI after several hearings and verification, under its seal, issued a letter dated 18th July, 2012 and a Certificate dated 4th June, 2012 declaring

the Ishan Institute of Management and Technology run by the petitioner Society as a Minority Educational Institution; viii) that the petitioner Society on 28th August, 2012 submitted two applications to the NCMEI for according minority status to Ishan School, Greater Noida, and Ishan Institute of Law also at Greater Noida, both established by the petitioner Society; ix) that however NCMEI vide order dated 5th June, 2013 rejected the said applications *inter alia* without considering that another institution established by the petitioner Society had been accorded minority status. Soon after filing of the aforesaid petition, an application for amendment thereof was filed, to also impugn the order dated 5th June, 2013 of the NCMEI and which was allowed.

2. The petitioner Society at about the same time also filed W.P.(C) No.1250/2014, additionally pleading, i) that Mrs. Neetu Garg, Mr. Prem Chand and Mr. Dharmendra Kumar being the founder members of the petitioner Society converted to Buddhism from Hinduism after attending the ceremony in the Sichin Buddhist Monastery, Bihar on 16th April, 2003 and Mr. Om Prakash Agarwal, Mrs. Usha Agarwal and Mr. Ved Prakash Garg (the name of Mr. Ved Prakash Garg was not mentioned in the documents of

incorporation of the petitioner Society) converted to Buddhism on 2nd May, 2003; ii) that the said six members of the petitioner's Society thereafter started to follow the Tibetan Mahayana School of Buddhism and daily repeat and recite the three vows of Buddhist preaching thrice; iii) that thus, of the eight members of the petitioner Society, six are followers of Buddhist religion, a minority religion; iv) that on 30th September, 2012, the petitioner Society approached NCMEI and sought minority status for another institute run by the petitioner Society i.e. Ishan Institute of Architecture and Planning at Greater Noida; v) that after filing of W.P.(C) No.4901/2013 (supra) by the petitioner Society, the NCMEI vide order dated 19th December, 2013 cancelled the minority status of the petitioner Society. Accordingly, the petition was filed impugning the said order dated 19th December, 2013.

3. Before notice of either of the aforesaid two petitions could be issued, W.P.(C) No.1992/2014 was also filed *inter alia* with the same pleadings as in the other two petitions and seeking a declaration of the institutions managed by the petitioner Society to be minority educational institutions and a direction to the NCMEI to declare the two institutions administered and managed by the petitioner Society, as minority educational institutions.

4. The aforesaid three petitions were taken up together on 5th August, 2014 when notice thereof was issued. Counter affidavits have been filed by the NCMEI. Though in each of the petitions, Minority Welfare Department of Government of Uttar Pradesh has been impleaded as respondent No.3 but does not even appear to have been served and neither has any reply been filed on its behalf nor has anyone been appearing on its behalf before this Court.

5. W.P.(C) No.9265/2014 has been filed impugning the order dated 12th August, 2014 of the NCMEI by which the NCMEI refused minority status to Lord Buddha Homeopathic College and Hospital, Greater Noida which is the petitioner No.2 in the said petition and which appears to have also been established by the petitioner Society and declaration of whose status as a minority educational institution was also sought by the petitioner Society.

6. The petitioner Society has not filed any order of the NCMEI containing the reasons for declaring the Ishan Institute of Management and Technology to be a minority educational institution, save the Certificate dated 4th June, 2012 (supra) issued in this respect and the letter dated 18th July, 2012 under cover of which the said certificate was forwarded by the

NCMEI to the petitioner society. It is thus not known as to what reasons prevailed with the NCMEI for issuing the said certificate. The respondent NCMEI however has produced a copy of the order dated 4th June, 2012 and a reading whereof shows that the said certificate was issued on the basis of “unrebutted evidence produced by the petitioner” of five out of its eight members being Buddhist and on the principle that the identifying criteria for determining the minority status cannot be by percentage.

7. However, the NCMEI subsequently has given the following reasons for denying the minority status to the petitioner Society and the educational institutions established by it and for revoking the minority status earlier granted to Ishan Institute of Management and Technology:

- (i) that the six out of the eight members of the petitioner Society who were claimed to have converted to Buddhist religion, had in support thereof produced certificates but which were only of having attended Buddhist teachings and the said persons even in their affidavits filed by them have nowhere stated that they renounced Hindu religion before embracing Buddhist religion;

- (ii) that the said certificates relied upon by the said persons were not conclusive proof of renunciation of Hindu religion by the said persons;
- (iii) that a person who was admittedly a Hindu is presumed to continue as such, unless renounces Hindu religion;
- (iv) that in the absence of any proof of renunciation of Hindu religion, it has but to be presumed that all the founding members of the petitioner Society were Hindu by religion;
- (v) that if the founding members of the petitioner Society want to prove that they have renounced Hinduism and embraced Buddhist religion, they must approach the Civil Court of competent jurisdiction for such a declaration;
- (vi) that from a very large number of applications claiming that the promoters of educational institution had converted to minority religion, it appeared that a big lobby was at work misusing the minority status and the NCMEI cannot allow such blatant abuse

/ misuse of fundamental rights enshrined in Article 31 of the Constitution of India;

(vii) that the petitioner Society had attempted to commit fraud on the Constitution;

(viii) that the petitioner Society had obtained minority status certificate from the NCMEI by suppressing material facts relating to the religious status of its members;

(ix) that in order to have a declaration of minority status, it has to be shown:

(a) that the educational institution was established by a member / members of the religious minority community;

(b) that the educational institution was established primarily for the benefit of that minority community; and,

(c) that the educational institution is being administered by the minority community.

- (x) that the certificates produced by the petitioner Society and its members as proof of conversion of six of its members to Buddhism only mentioned that the said persons had received “*diksha*” and which was not proof of denouncement of Hindu religion;
- (xi) that one can adore Prophets / Saints of other religion or inculcate their preaching but that by itself does not prove renouncement of one’s original religion and faith;
- (xii) that the NCMEI does not have the mandate to declare the religious status of the person and which can be done by a Civil Court of competent jurisdiction only;
- (xiii) that the petitioner Society had also not shown that the beneficiaries of the educational institution set up by it are from minority community;
- (xiv) on the contrary, a bare reading of the aims and objectives of the petitioner Society makes it clear that the approach of the founding members of the petitioner Society was, to be secular

and the petitioner Society was not created with the objective of providing any primary or special benefits for a specific / particular religious community;

(xv) that merely because the members of a society may belong to a particular shade of faith would not entitle them to administer the educational institution with the said faith;

(xvi) that it has been held by the Supreme Court in *T. Varghese George Vs. Kora K. George* (2012) 1 SCC 369 that establishment and administration must be both by and for a minority community and which is not the case of the petitioner Society;

(xvii) that the Memorandum of Association of the petitioner Society nowhere declares that the beneficiaries of the Society are members of the Buddhist community;

(xviii) that there is no evidence that the institutions set up by the petitioner Society have been established and are being administered by a notified minority community and that the

beneficiaries of the petitioner institutions are members of Buddhist community.

8. The respondents No.1&2 NCMEI in their counter affidavit have reiterated the aforesaid reasoning and have additionally pleaded:

- (a) that it is clear from the documents that the petitioner Society was established in the year 1994 by members from the Hindu community;
- (b) the six members of the petitioner Society were claimed to have embraced Buddhist religion only in the year 2003;
- (c) that going by the said logic also, the educational institutions established by the petitioner Society prior to 2003 were established by petitioner Society members whereof were from Hindu community; before an institution can be granted the minority status, it has to be established as a matter of fact that the institution has been established by the minority community;
- (d) that the terms “establish and administer” as appearing in Section 2(f) of the NCMEI Act have to be read conjunctively;

- (e) that thus, even if it is to be believed that the members of the petitioner Society have converted to Buddhism, it still cannot be said that the educational institutions have been established by a minority community;
- (f) that a notified minority has the right to administer educational institutions of their choice provided they have been established by them but not otherwise; reliance in this regard is placed on *S. Azeez Basha Vs. Union of India* AIR 1968 SC 662 and on *Dayanand Anglo Vedic (DAV) College Trust & Management Society Vs. State of Maharashtra* (2013) 4 SCC 14;
- (g) that the institution has to be established as a minority educational institution; the educational institutions of the petitioner were admittedly not established as minority educational institutions;
- (h) that to claim minority status, the establishment and administration of the institution must be by and for a minority, which is also not the case here;

- (g) that it has been held in *S.P. Mittal Vs. Union of India* AIR (1983) 1 SCC 51 that if the institution has been established by somebody else, a religious or linguistic minority even if administering it, cannot claim to be a minority institution;
- (h) that the Madras High Court in *T.K.V.T.S.S. Medical Educational & Charitable Trust Vs. State of Tamil Nadu* AIR 2002 Madras 12 has held that a minority status can be cancelled on the ground that the same was obtained by suppression of any material fact;
- (i) Section 12C of the NCMEI Act also expressly empowers the NCMEI to cancel a minority certificate obtained by fraud and suppression.

9. The counsel for the petitioner has referred to *Punjab Rao Vs. D.P. Meshram* AIR 1965 SC 1179 laying down that if a public declaration is made by a person that he has ceased to belong to his old religion and has accepted another religion, he will be taken as professing the other religion; that it is unnecessary to enquire further as to whether the conversion to

another religion was efficacious. (I may however notice that in the same judgment, it is also mentioned that a declaration of one's belief must necessarily mean a declaration in such a way that it would be known to those whom it may interest. The newspaper declarations which are alleged to have been made are in 'Classified Columns' of newspapers which ordinarily would not be noticed by anyone. The same is the position of the Gazette of the Government of India. A declaration to the said effect should have been shown to have been made to the relatives and friends in the social gatherings and functions attended by the petitioner and which has not been done).

10. It was the contention of the counsel for the petitioner Society on 14th May, 2015 when these matters came up before this Court that there are several instances where institutions run by Societies / Trusts have been granted minority status based on the conversion of members of the Society / Trust. This Court, vide order of the said date, observing that it appeared that the NCMEI does not carry out any investigation as to the percentage of the students from the minority community studying in the institution, NCMEI was directed to file an affidavit indicating the nature of the investigation or examination carried out by it to determine the minority status, the number of

institutions that have been granted minority status on the basis of conversion of the members of the Society / Trust and the number of institutions which had applied for being granted minority status prior to the Right of Children to Free And Compulsory Education Act, 2009 (RTE Act) and thereafter and the various aspects considered by it in granting or refusing the said status.

11. Though the NCMEI has not filed the affidavit as directed, but the counsel for the petitioner Society proceeded to argue. It is argued that though the NCMEI had earlier certified one of the institutions established by the petitioner Society as a minority educational institution but has subsequently revoked the said declaration and has also refused to grant the minority educational status to the other educational institutions established by the petitioner Society.

12. I have however enquired from the counsel for the petitioner Society whether not the question, whether an educational institution is a minority educational institution or not, is to be determined from the documents of the establishment of the institution and not by filing of affidavits and making pleadings etc. In this regard, it may be noticed that the NCMEI Act has constituted the NCMEI with the power (Section 12B) to decide on the

minority status of an educational institution. Section 12F bars the jurisdiction of Courts to entertain any suit, application or other proceeding in respect of any order made under Chapter 4 of the NCMEI Act and which includes Section 12B. Thus NCMEI has been vested with a final say on the minority status of an educational institution.

13. The test of ‘minority’, as prescribed in Section 2(g) of the NCMEI Act is that the educational institution must have been established ‘and’ must be administered by a minority or minorities. ‘Minority’ is defined in Section 2(f) as a community notified as such by the Central Government. The counsel for the NCMEI on enquiry states that Buddhist have been notified as a minority for the purpose of the Act.

14. It is not the contention of the counsel for the petitioner Society that the words ‘established and administered’ in Section 2(g) of the NCMEI Act have to be applied disjunctively and not conjunctively. In this regard, it may be noticed that Section 2(g) prior to its amendment with effect from 1st September, 2010 defined ‘minority educational institution’ *inter alia* as an institution established or maintained by a person or group of persons from amongst the minorities. The Legislature having intentionally substituted the

words “established or maintained” with the words “established and administered” , it cannot possibly be argued that merely being established or merely being administered by a minority, is sufficient to claim a minority status. Notice in this regard may also be taken of Article 30(1) of the Constitution of India, where also the words are “establish and administer”. The Supreme Court, as far back as in *In Re: The Kerala Education Bill* AIR 1958 SC 956 reiterated in *S. Azeez Basha* supra held that the said words have to be read conjunctively. The same view has also been reiterated in *S.P. Mittal* supra and in *Dayanand Anglo Vedic (DAV) College Trust & Management Society* supra.

15. The Supreme Court, in *S. Azeez Basha* also held that the word “establish” in Article 30(1) means “to bring into existence” and that the right given by Article 30(1) to the minority, is to bring into existence an educational institution, and if they do so, to administer it. In this view of the matter, the Supreme Court proceeded to see what happened in the year 1920 and who brought the Aligarh Muslim University, with which the Supreme Court was concerned in that case, into existence.

16. I have thus enquired from the counsel for the petitioner as to what was the status of the petitioner Society when it set up the educational institutions.

17. The counsel for the petitioner Society has candidly admitted that at that time, there was nothing in the Memorandum of Association of the petitioner Society to show that it was a 'minority' society though the petitioner Society in the year 2006 amended the said Memorandum of Association to describe its status as a 'minority' society.

18. The NCMEI Act, 2004 was notified on 6th January, 2005. The possibility of the petitioner Society, in the year 2006, amending its Memorandum of Association to describe itself as a 'minority' society with the intent of having itself declared a minority educational institution to take advantage of the freedom from a host of laws and regulations governing the educational institutions, cannot be ruled out. Though the petitioner Society claims its members to have converted to Buddhist religion in the year 2003, however the said conversion also did not prompt the petitioner Society to then amend its Memorandum of Association. The obvious conclusion is that the amendment of the Memorandum of Association was guided by the

promulgation of the NCMEI Act, and not by the alleged conversion of religion by its members.

19. It is also worth noticing that though the petitioner Society by the said amendment of the year 2006 labelled itself as a ‘minority’ Society, but without making any substantial change otherwise in the Memorandum of Association. The Aims and Objective of the petitioner Society still remain secular, though a conflicting clause has been added that the main beneficiaries of the Society shall be from Buddhist community. However the petitioner Society has not even pleaded that the educational institutions established by it, have reserved any number of seats for students from Buddhist religion / community or in the matter of admission, give any preference to those professing Buddhist religion. Rather, the Clause 1 of the Aims and Objectives of the petitioner Society is, “to work for educational development and upliftment of community irrespective of religion and in the interest of mankind in general”. The subsequent Clause 19 added by way of amendment that “the main beneficiary of the Society shall be from Buddhist Community and also the same can be extended to others” is clearly inconsistent therewith and relying on the rule of interpretation of deeds that

in the event of inconsistency, the earlier clause prevails over the latter (See *Uma Devi Nambiar Vs. T.C. Sidhan* (2004) 2 SCC 321, *Satpal Yadav Vs. M/s. Cambata Aviation Pvt. Ltd.* MANU/DE/2024/2013 and *Jyoti Ltd. Vs. E.I.H. Ltd.* MANU/DE/0795/2009) also, the Clause 1 has to prevail over Clause 19.

20. Supreme Court, in *A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh* (1986) 2 SCC 667, approved of in *Dayanand Anglo Vedic (DAV) College Trust & Management Society* supra, in nearly similar facts held the claim of being a minority institution to be no more than a mere pretence and further held that to qualify as a Minority Educational Institution, the institution should be of the minorities in truth and reality and not a mere masked phantom. It was further held that what is imperative is that there must exist some real positive index to enable the institution to be identified as an Educational Institution of the Minorities. Insertion of half a dozen words in the memorandum of the society to proclaim it as a minority society was held to not suffice and to be a mere smoke screen. It was yet further held that the Government, University and the Courts have a right to pierce the minority veil and discover whether there

is lurking behind it no minority at all and in any case, no minority institution.

21. Similarly, in *T. Varghese George* supra, the Supreme Court inspite of the educational institution established by the Trust having been conferred the status of Minority Educational Institution, on an interpretation of the document creating the Trust and not finding therein any declaration by the founder that the institution was to be a minority institution and further not finding anything therein to exclude persons other than Christians from the Management of the institution and also not finding any declaration by the founder that the institution would be a minority institution, held the character of the Trust as a Public Charitable Trust.

22. Applying the aforesaid principles, there is no error requiring interference in exercise of power of judicial review in the order/s of the NCMEI in so far as holding that there is nothing to show that the subject educational institutions have been established by a person/s belonging to minority community.

23. The petitioner, has not even attempted to show that the educational institutions established by it are being administered by the minorities. No management / administration structure of the said educational institutions has been placed before the Court.

24. The counsel for the petitioner Society has also drawn attention to the public notices stated to have been inserted in certain newspapers in December, 2013 in the 'Classified Columns' by some of its members of having relinquished Hindu religion and having embraced the Buddhist religion. Attention is also invited to such a declaration having been made in the Gazette of India in 2014. However in my view, the said acts / actions simply display the desperation of the said persons to acquire the minority status for their educational institutions. They have not otherwise stated that since the year 2003, they have in their dealings viz. in the matter of marriages of their children or other ceremonies and functions not been following the Hindu religion and have adhered to the tenets of Buddhist religion. No other document where they may have declared themselves to be professing Buddhist religion has been shown or put on record. Even otherwise, as per the Rules and Regulations of the petitioner Society, the

membership is open to all with no requirement of the applicant professing Buddhist religion. Similarly, ceasing to profess Buddhist religion is also not made a ground for cessation of members. As per the said Rules and Regulations, all the members have a right to seek election to the Managing Committee / Governing Body of the petitioner Society and which it can safely be presumed would administer the educational institutions established by it. There is nothing else in the said Rules and Regulations to show that the administration of the educational institutions is to be in the hands of only such of the members of the petitioner Society who profess Buddhist religion. Merely labelling a society as a minority society and which label is not even required to be given under the provisions of the Societies Registration Act, 1860 would not make the society a society of the minority community, if the aims and objectives and rules and regulations show otherwise.

25. Else, the NCMEI has given detailed reasons for its decision and no fault therein has either been pointed out or is found by me.

26. The petitions are highly misconceived and have been filed and are being pursued with ulterior motives and are dismissed with cumulative cost

of Rs.50,000/- payable to the NCMEI which has been forced to contest the same. The costs be paid within a period of one month from today.

RAJIV SAHAI ENDLAW, J

JULY 02, 2015

‘gsr’..

(Corrected and released on 24th July, 2015).