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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 6105/2017

TK TRUST PUBLIC SCHOOL

..... Petitioner

Through Mr.Jose Abraham and Mr.Junais
Padalath, Advocates.

versus

CENTRAL BOARD OF SECONDARY EDUCATION & ANR

..... Respondents

Through Mr.Amit Bansal, Mr.Akhil
Kulshreshta and Ms.Seema Dolo,
Advocates.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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26.09.2017

1 Petitioner before this Court is a school who is seeking re-affiliation to the CBSE. As per the averments in the petition, the petitioner school has applied online in June, 2014 seeking affiliation. Case of the petitioner is that the petitioner was declared a minority education institution in terms of Section 2(g) of the National Commission for Minority Education Institutions Act, 2004 (hereinafter referred to as the NCMEI Act) on 03.09.2015. On 24.11.2014 the application of the petitioner seeking affiliation had been rejected by the CBSE as the petitioner had failed to produce the copy of the No Objection Certificate (NOC) to be issued by the State Government. Submission is that pursuant to the order of NCMEI dated 07.02.2017 an NOC certificate dated 01.05.2017 had been

obtained by the petitioner school under Section 10(3) read with Section 12A of the NCMEI Act which was duly forwarded to the respondent but the same was not considered. The communication of the petitioner enclosing this certificate dated 01.05.2017 (issued by the NCMEI) has remained unanswered. Present petition has accordingly been filed.

2 Counter affidavit has not been filed. At the outset, learned counsel for the respondent points out that this petition is not maintainable; it is an abuse of the process of the Court. The provisions of the NCMEI Act would apply only to an Educational Institution which would be a university; this is clear from the definition of “affiliation” as contained in Section 2(a) of the NCMEI Act. Reference is made only to a “University”. Petitioner is a school. The NOC obtained by the petitioner under the NCMEI Act is not a certificate which is required for the purposes of affiliation. For the purpose of affiliation what is required from the petitioner school is an NOC from the concerned State Authority which has not been obtained. This also being the admitted position, the petition is liable to be dismissed in limine.

3 Perusal of the record shows that the petitioner institute claims itself to be a minority educational institution. The petitioner had been recognized as a minority education institution in terms of Section 10(3) of the NCMEI Act. The explanation to Section 10 (4) of the NCMEI Act explains definition of an NOC which reads herein as under:

“(b) “no objection certificate” means a certificate stating therein,

that the Competent authority has no objection for the establishment of a Minority Educational Institution ”

4 This definition of “no objection certificate” makes a reference to a no objection certificate to be obtained from the Competent Authority for the establishment of a minority educational institution. The status of the petitioner institution as a minority education institution is not in dispute.

5 The right of such a minority educational institution to seek affiliation is contained in Section 10A of the NCMEI Act. This section makes a reference to a “university” only. It has no reference to a school. Petitioner is admittedly a school.

6 The case of the petitioner is not covered by any of the provisions of the NCMEI Act. First and foremost the petitioner’s minority educational institution being a school the provisions the NCMEI Act would not apply. That apart the NOC which is required to be furnished for the purposes of affiliation is an NOC to be obtained from the Competent Authority which is the State Government and the NOC which has been obtained by the petitioner under the NCMEI Act is not an NOC which had to be furnished to the respondent.

7 In a judgment of the Single Bench of this Court reported as 180(2011) DLT 268 Medical Council of India Vs. Al Karim Educational Trust and Anr. the scope of the provisions of NCMEI Act had been considered; this was in the context of the establishment of a medical college and the Court was dealing with the issue qua the essentiality certificate which was required to be obtained by the such

a medical institution. The Single Bench of this Court had returned the following finding qua the provisions of Section 10 of the NCMEI Act:

“20.As aforesaid, while the NOC under Section 10 is concerned only with the minority character, the approval/permissions/NOC under other Acts/Rules/Regulations are concerned with the very existence as an Educational Institution. Without qualifying as an “Educational Institution” there can be no tag of “minorities” by way of issuance of NOC under Section 10. It is not as if the Regulations aforesaid requiring Essentiality Certificate from the State Government/Union Territory come in the way of issuance of the NOC under Section 10. Without inconsistency, Section 22, relied upon by the senior Counsel for respondent No. 1 Trust, is not attracted.

21. The NOC under Section 10 of the Minorities Act cannot take place of Essentiality Certificate. While issuing the NOC under Section 10 of the Act, as aforesaid, the Central/State Government is required to primarily test the Minority character of the proposed Institution, while issuing the Essentiality Certificate the Government is required to assess the desirability and feasibility of the proposed Medical College at the proposed location and the adequacy of the clinical material available. The senior Counsel for the petitioner MCI has in this regard placed reliance on State of Maharashtra v. Indian Medical Association, (2002) 1 SCC 589, and Govt. of A.P. v. Medwin Educational; Society, (2004) 1 SCC 86, on the relevance of Essentiality Certificate. The Regulations (supra) do not contain any deeming provision and do not provide for the Essentiality Certificate having been “deemed: to have been issued. If the argument of the respondent No. 1 Trust were to be accepted, it would tantamount to holding that in the matter of grant of Essentiality Certificate while for Minority Educational Institutions the deeming provision applies, to non-minority it does not. The same cannot be permitted.”

8 This judgment of the Single Bench was upheld by the Division Bench in LPA 593/2011 Al Karim Education Trust vs. Medical Council of India and Anr. delivered on 21.7.2011. The Division Bench has reiterated that an NOC as ordained in the NCMEI Act is

only for the purpose of establishment of a minority university alone. The affiliation with the CBSE can be fulfilled only by obtainment of an NOC from the State Government in terms of the essential requirements of the Bye Laws of the CBSE.

9 Reliance by the learned counsel for the petitioner on the judgment of the Apex Court reported as (1997) 1 SCC 9 R.Thiruvirkolam Vs. Presiding Officer and Anr. is wholly misplaced. The Court is in fact at loss to understand how and in what context this judgment can be made applicable to the facts of the instant case.

10 The petitioner at the outset has been informed that this petition is not maintainable being an abuse of the process of the court and he has been advised to withdraw this petition, however, he has chosen an order on merits. This petition being an abuse of the process of the Court and a wastage of its precious time; it is dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

SEPTEMBER 26, 2017

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