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

% *Judgment Pronounced on: March 16,2017*

+ LPA 773/2015 CMs 25394/2015, 25395/2015, 25397/2015

ISHAN EDUCATION RESEARCH SOCIETYAppellant
versus

NATIONAL COMMISSION FOR MINORITY
EDUCATION INSTITUTIONS & ORS.Respondents

+ LPA 774/2015 & CMs 25398/2015, 25399/2015, 25401/2015
ISHAN EDUCATIONAL RESEARCH SOCIETY (REGD) &
ANR.Appellants

versus

NATIONAL COMMISSION FOR MINORITY EDUCATION
INSTITUTIONS THRU ITS REGISTRAR & ANR.Respondents

+ LPA 776/2015 & CMs 25408/2015, 25409/2015, 25411/2015
ISHAN EDUCATION RESEARCH SOCIETYAppellant

versus

NATIONAL COMMISSION FOR MINORITY EDUCATION
INSTITUTIONS & ANR.Respondents

Appearance : Mr. Kailash Vasdev, Senior Advocate with Mr. Ajay
Saroya, Advocate.

Mr. Syed Abdul Haseeb, Advocate for respondent No. 1.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J

1. The present appeals are being preferred against the common judgment dated 02.07.2015 passed by the learned Single Judge in W.P.(C) Nos. 4901/2013, 9265/2014 and 1992/2014. The unsuccessful

petitioners are the appellants before us. Since the issue arising in these appeals is similar, we are disposing of the appeals by a common judgment.

2. LPA No. 773/2015 arises out of W.P.(C) No. 4901/2013, which was filed for according minority status to Ishan School and Ishan Institute of Law, Greater Noida, both established and run by the petitioner society. The National Commission for Minority Educational Institutions (hereinafter referred to as "NCMEI") vide order dated 05.06.2013 had rejected the said applications without considering the fact that NCMEI had earlier issued a Certificate dated 04.06.2012 declaring Ishan Institute of Management and Technology, established and run by the petitioner society, as a Minority Educational Institution.

3. LPA No. 774/2015 arises out of W.P.(C) No. 9265/2014, which was filed challenging the order dated 12.08.2014 passed by the NCMEI whereby, Lord Buddha Homeopathic College and Hospital, Greater Noida established and run by the petitioner society, was refused minority status by the NCMEI.

4. LPA No. 776/2016 arises out of W.P.(C) No. 1992/2014, which was filed seeking a declaration of the Ishan Institute of Architecture and Planning, established and run by the petitioner society as Minority Educational Institution. The NCMEI passed an order dismissing the application of the petitioner society.

5. W.P.(C) Nos. 4901/2013, 9265/2014 and 1992/2014 were dismissed by the learned Single Judge vide a detailed common judgment dated 02.07.2015 holding as under:-

"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."

6. Briefly stating the petitioner is a registered society by the name of Ishan Educational Research Society under the Societies Registration Act, 1994 with the aim to work for the educational development and upliftment of the community irrespective of caste, colour, creed or religion and in the interest of mankind in general, to aid, establish and manage institutes or adopt reasons for imparting or promotion of research science or any other field of education.

7. Eight of the founder members of the society followed Buddhist religion and obtained a certificate dated 04.06.2012 issued by the NCMEI granting minority status to Ishan Institute of Management and Technology, which is established and run by the petitioner society. On the wake of grant of minority status dated 04.06.2012, the petitioner society thereafter applied for minority status to three more institutes, namely Ishan School, Greater Noida, Ishan Institute of Law, Greater Noida and Lord Budhha Homeopathic College and Hospital, established and run by the petitioner society.

8. NCMEI declined the grant of minority status to all the three abovementioned institutes and also withdrew the minority status already

granted to one institute run by the petitioner society. The petitioner society thereafter, in efflux of time, filed the abovementioned petitions praying for grant of minority status and also challenging the rejection order passed by the NCMEI.

9. Shri Kailash Vasdev, learned Senior Counsel appearing for the appellants before us contended that 6 out of 8 of the members of the appellant society converted to Buddhism in the year 2003 and hence, the institutes in question will be covered under the term "*established and administered by a minority or minorities*" provided under section 2(g) of the National Commission for Minority Educational Institutions Act (hereinafter referred to as "the Act"). All necessary steps were taken by the members for conversion from Hindu to Buddhist religion and the fact of conversion of religion and the renunciation of Hinduism by the members of the appellant society was also published in the leading newspapers and gazettes.

10. The learned Senior Counsel further contended that it was a mere coincidence that the members of the appellant society chose to convert their religion in 2003, close to the time that the ordinance of the National Commission for Minority Educational Institutions Act, 2004 gained momentum. It is further argued that the conversion was bonafide, which is evident from the fact that even though the members of the appellant society had converted their religion in 2003, the first application for grant of minority status was made on 15.09.2011.

11. However, on the converse, Mr. Syed Abdul Haseeb, learned counsel appearing for respondent No. 1 refuted the contentions of the appellant and submitted that the view taken by the learned Single Judge

was correct and in accordance with the provisions of law and the guidelines passed by the Supreme Court. He further submitted that the appeals had been filed with an ulterior motive to obtain the benefits and privileges accorded to a Minority Educational Institution under the Act.

12. We have heard learned counsel for the parties and perused the material available on record.

13. Before addressing the controversy at hand, it would be pertinent to reproduce section 2(g) of the Act. It reads as under:-

"2 (g)- "Minority Educational Institution" means a college or an educational institution established and administered by a minority or minorities"

14. We have found from the record that prior to the amendment of section 2(g) in 2010 the phrase "*established and administered*" by a person or group of persons from amongst the minorities stood as "*established or maintained*". This amendment is a clear proof of the intent of the Legislature that the actual test of a Minority Educational Institution is whether a college or an educational institution is both, **established and administered**, by a minority or minorities. The language of the statute provision is clear and unambiguous in this regard that for grant of minority status to an educational institution, it must be established and also administered by a minority or minorities. These words must be read conjunctively with each other. This view is in consonance with various decisions of the Supreme Court in *S. Azeez Basha vs. Union of India* reported as *AIR 1968 SC 662* and *Dayanand Anglo Vedic (DAV) College Trust & Management Society vs. State of Maharashtra* reported as *(2013) 4 SCC 14*.

15. Indisputably, the petitioner society was not established as a 'minority society' and without making any substantial change in the Memorandum of Association post 2006, the petitioner society labeled itself as a 'minority society'. Hence, the educational institutions in question cannot be said to be established by a minority or minorities, which is a mandatory requirement of the law i.e. section 2(g) of the Act.

16. Moreover, in order to obtain minority status, an educational institution must be established primarily for the benefit of the minority community. The appellant society has failed to bring anything on record to prove that the educational institutions established by it, was for the benefit of the minority community i.e. Buddhism in the present case. On the contrary, after perusal of the bye-laws and the amended Memorandum of Association of the appellant society, we find no such particular clause or object that could show the beneficiaries of such educational institutions would be from the same minority committee or that the appellant society shall promote and propagate the principles of the Buddhism in its true sense. Merely because the members of the appellant society belong to a particular religion or faith, it would certainly not mean that they administer the educational institution with the said faith.

17. It has been held by the Supreme Court in the case of ***Dayanand Anglo Vedic (DAV) College Trust & Management Society vs. State of Maharashtra*** reported as ***(2013) 4 SCC 14***, that for being a minority institution, it would have to be more than mere pretence and to qualify as a Minority Educational Institution, the institution should be of and for the minorities in truth and reality and not merely on paper. It is imperative that there exists some real positive nexus to enable the institution to be

identified as an institution of and for the Minorities. Mere insertion of words in the bye-laws or memorandum of the society that describe the society as a minority society would not be sufficient to satisfy the requirement of granting minority status to an educational institution. It is the prerogative of the Courts to ascertain and satisfy itself whether an educational institution is of and for the minorities in its true letter and spirit or merely a cover to claim the benefits and privileges granted to a Minority Educational Institution under the said Act.

18. There is no iota of evidence on record to show that the members of the appellant society adopted Buddhist religion in its true letter and spirit by renouncing the Hindu religion. Nor there is anything to support the fact that the appellant society was promoting or promulgating the principles of the Buddhism in order to create more awareness of the minority religion. Further, we do not find anything in the bye-laws or the memorandum of the appellant society that incorporates that the educational institutions set up by the appellant society would be beneficial to the members of the minority religion.

19. We also notice that the NCMEI granted minority status to one of the institutes established and run by the appellant society namely, Ishan Institute of Management and Technology vide Certificate dated 04.06.2012, which was later revoked and cancelled by the NCMEI. We find no infirmity with the revocation or cancellation of the grant of minority status to the said institution as section 12C of the Act gives complete power to NCMEI to cancel the minority status granted to a Minority Educational Institution.

20. In light of the above observations, we find no reason to interfere with the view taken by the learned Single Judge in the judgment under appeal.

21. The appeals are accordingly dismissed.

SANGITA DHINGRA SEHGAL, J

CHIEF JUSTICE

MARCH 16, 2017

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