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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 519/2019 & CM Nos. 2433/2019 & 2434/2019**

BARA INTERCOLLEGE Petitioner
Through: Mr Romy Chacko, Advocate.

versus

DEPUTY DIRECTOR, MINORITIES WELFARE
DEPARTMENT AND ORS. Respondents
Through

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
18.01.2019

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VIBHU BAKHRU,J

1. The petitioner has filed the present petition impugning an order dated 28.11.2018 (hereafter 'the impugned order') passed by the National Commission for Minority Educational Institutions (hereafter 'the Commission'), whereby the petitioner's application for minority status was rejected.

2. The petitioner claims that the Commission had erred in not appreciating that the petitioner institution was established by one Mrs Nabihan Bibi wife of Late Raja Khan. She was a Muslim widow and had donated land for establishment of a Junior High School. It is submitted that one Mr Tazmal Khan was appointed as a caretaker to manage and administer the school. He had, thereafter, formed an association under the name and style of 'National Association, Bara', which was registered

under the Societies Registration Act, 1860. The said association was formed on 27.08.1951 for administration and management of the Junior High School.

3. In this view, it is contended that the Commission had erred in observing that the petitioner institution was not established by a Muslim.

4. Mr Romy Chacko, learned counsel appearing for the petitioner had earnestly contended that merely because 7 (out of 21) members of the Society were not from minority community would make no difference as to its character as a minority institution.

Factual Context

5. The petitioner was established as a Junior High School which was established in Bara, District Ghazipur, Uttar Pradesh in the year 1948. The said school was upgraded to a Higher Secondary School in the year 1966 and thereafter, to an Intermediate College in the year 1972. There is a controversy whether the Junior High School was established by Mrs Nabihan Bibi, as claimed by the petitioner. This is in variance with the observations made by the Allahabad High Court in the order dated 05.04.1999 passed in the Writ Petition No. 7827/1998, wherein it is observed that the Junior High School was established by the National Association. It does not appear that this observation was challenged and, in any event, has not been set aside.

6. In the year 1966, the Deputy Director of Education (DDE) had approved a Scheme for administration of the High School, which was

subsequently amended in the year 1985.

7. On 13.03.1995, the State Government of Uttar Pradesh had declared the petitioner institution as a linguistic Minority Education Institution for the purposes of Section 16FF of the Intermediate Education Act, 1921. The said decision was impugned by one of the life members of the National Association (the society managing the petitioner institution) and one of the teachers employed with the petitioner institution, in a writ petition filed before the Allahabad High Court: *Writ Petition No. 7827/1998* captioned *Yogendra Nath Singh & Anr. v. State of U.P. & Ors.*

8. The said petitioners claimed that the order passed by the State Government had effectively changed the secular nature of the petitioner institution.

9. The Court examined the Memorandum of Association of the National Association as well as the origin of the institution and concluded that the petitioner institution was not established solely by the minority community with the view to conserve its language, script and culture. It was concluded that the National Association was established by prominent citizens, which not only included members of the Muslim Community but several Hindus as well. The object of establishing the institution was not to benefit any minority community but to impart general and technical education to all and sundry. The Court also took note of the scheme of administration as approved by DDE, wherein express stipulations were made to the effect that the management of the

institution shall not be allowed to pass in the hands of the members of a particular caste, creed, religion and community or family.

10. In view of the aforesaid conclusion, the Allahabad High Court allowed the writ petition by an order dated 05.04.1999.

11. The aforesaid order dated 05.04.1999 was challenged by the petitioner before the Division Bench of the Allahabad High Court (Special Appeal No. 401 of 1999). The said appeal was dismissed by an order dated 11.09.2012, as the Division Bench found that no error was committed by the Single Judge in allowing the writ petition.

12. The said decision has attained finality and was not challenged by the petitioner.

13. On 06.01.2011, the resolution was passed by the general body of the National Association to change its name from 'National Association' to 'Muslim Welfare Association'. Subsequently, on 10.06.2012, the Memorandum of Association of the said society was further amended to include an object to start and maintain educational institutions for imparting Islamic Cultural Education to students of Muslim Minority Community.

14. Thereafter, the petitioner filed a fresh application dated 03.03.2013 before the Commission claiming a minority status. The said application was allowed and the Commission passed an order dated 08.12.2014 granting minority status to the petitioner. In its order, the Commission observed that all members of the society, Muslim Welfare

Association, are Muslim and the amended Memorandum of Association of the society clearly reflects that beneficiary of the petitioner institution are members of the Muslim Community.

15. The aforesaid decision of the Commission was challenged before the Allahabad High Court in *W.P.(C) 23297/2016* captioned *Aslam Khan & 13 Others v. State of U.P. & 6 Ors.*

16. The Court allowed the said writ petition by an order dated 30.11.2016. In its order, the Court observed that the Commission had not noted the facts with regard to establishment of the petitioner institution and had not examined whether the institution had been set up by the religious minority. The earlier orders passed by the Allahabad High Court had also not been noticed by the Commission.

17. In view of the aforesaid observations, the order dated 08.12.2014 passed by the Commission was set aside. However, the Court reserved the liberty to the manager of the petitioner institution to make a fresh application before the Commission. It further directed that the Commission would examine the orders passed by the Allahabad High Court and it would be open for the Commission to take a fresh decision in accordance with law.

18. The petitioner filed an appeal against the aforesaid decision (Special Appeal No. 82 of 2017). Cross appeals were also filed against the said decision. The said appeals were disposed of by a common order dated 01.08.2017. The Division Bench of the Allahabad High Court upheld the conclusion that the petitioner was not established as a

minority institution. The Court further held that the amendments to the Memorandum of Association and Byelaws would not dilute the findings of the Court that the petitioner institution had not been established as a minority institution. However, the Court set aside the observations whereby liberty was granted to the petitioner to file a fresh application before the Commission.

19. The petitioner filed a Special Leave Petition before the Supreme Court seeking leave to appeal against the decision of the Division Bench of the Allahabad High Court, being Special Leave to Appeal (C) Nos. 29994-29995/2017). The said SLP was disposed of by an order dated 13.11.2017, whereby the Supreme Court expressly observed that there was nothing wrong with the approach of the Division Bench of the Allahabad High Court. However, the Supreme Court restored the direction of learned Single Judge with respect to reserving liberty for filing a fresh application with the Commission.

20. In view of the above, on 04.12.2017, the petitioner filed a fresh application for Minority Status Certificate. The Commission has rejected the said application by the impugned order.

Submissions

21. Mr Romy Chacko, learned counsel for the petitioner contended that the Commission had erred in rejecting the petitioner's application for the minority status on the ground that the National Association also included members who were not from the minority community. He referred to the decision in the case of *St. Stephen's College v. University*

of Delhi: 1992 (1) SCC 558 in support of his contention that it is not necessary that all members of the governing body of a minority society belong to the minority community. He drew the attention of this Court to paragraph no. 38 of the said decision, wherein the Supreme Court had observed that out of thirteen categories of members only three categories could be non-Christians and, therefore, the same made little difference in the Christians character of the Governing Body of the St. Stephan's College. He further submitted that the petitioner was a government aided institution and, therefore, in terms of Article 29(2) of the Constitution of India, was required to impart education to persons of all communities. He also submitted that the Commission had erred in overlooking that the petitioner institution had been established by a member of the Muslim Community (Mrs Nabihan Bibi).

Discussion and Conclusion

22. At this stage, it will be relevant to refer to Section 2(g) of the National Commission for Minority Educational Institutions Act, 2004. The said clause is set out below:-

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

23. Keeping in mind the aforesaid contention as well as Article 30(1) of the Constitution of India as interpreted in various decisions, the Commission had noted that the following aspects were required to be determined for concluding whether an educational institution could be granted minority status:

- (i) Whether educational institution was established by a member/members of religious minority community;
- (ii) Whether the educational institution was established for the benefit of minority community; and
- (iii) Whether the educational institution was being administered by the minority community.

24. The Commission concluded that the petitioner institution was not established by Muslims for Muslims. The operative part of the impugned order reads as under:-

“22. Society was registered under the Societies Registration Act, 1860 and the membership of the society was not restricted to the minority community only. From the readings of the aims and objects of the society it was clear that there was no intention to establish any minority institution for protecting or promoting the language or religion of any particular minority community. On the contrary, the institution was to impart education general and technical to the students belonging to the different communities. It is true that we cannot sit in appeal over the findings returned by the competent Writ Court which stands affirmed with the dismissal of special appeals as noted above. The documents filed by the petitioner did not help the petitioner in the facts and circumstances of the present case. The proof of the fact of establishment of the institution is a condition precedent for claiming the right to administer the institution. The onus lies on the one who asserts that an institution is a minority institution. In the present case, petitioner has failed to prove that at the first instance institution was established by the muslim for the muslims.

23. In view of the observations made by the learned Writ Court and affirmed by Special Appellate Court and

after taking into consideration all the documents, affidavits, we are of the considered opinion that the petitioner institution Bara Inter College, Bara, District Ghazipur, UP is not a minority educational institution covered under Article 30 of the Constitution of India.

24. After taking into consideration of the judgements of Hon'ble Writ Courts as well as Appellate Courts, the documents filed by both the parties, in the facts and circumstances of the present case, we are of the considered opinion that the petitioner institution was at the first instance not established by only the members of the religious minority community and not established for the benefit of the minority community only and also not being administered by only the members of the minority community.”

25. The contention that the Commission has erred in not appreciating that the petitioner institution was initially established by Mrs Nabihan Bibi, widow of Late Raja Khan is unpersuasive. The petitioner relies upon entry in land record which indicates that the Junior School was constructed on land of Mrs Nabihan Bibi. However, there is no material to indicate that the petitioner institution (or the Junior School) was established by her. On the other hand, it is not disputed that the petitioner institution is an undertaking of the society, National Association. Admittedly, this Society did not bear any religious character when established. There was no restriction in the Memorandum of Association with regard to the membership of the said society. Indisputably, members of all communities could be included as members of the Society. The aims and objects of the said society also were not focused towards any religious community. It is also relevant to note that

apparently there was no dispute, in the initial round of litigation before the Allahabad High Court, that the institution in question was established by the National Association, and this fact was noted by the learned Single Judge in the Order dated 05.04.1999 passed in *Writ Petition No. 7827/1998* captioned *Yogendra Nath Singh & Anr. v. State of U.P. & Ors.* (*supra*) and the said decision has become final. Plainly, the petitioner cannot be permitted to now invite a fresh investigation.

26. Even if it is accepted that a junior high school was established on land donated by Mrs Nabihan Bibi, as noticed above, there is no material to establish that she had established the junior high school for the benefit of the minority community.

27. At this stage, it is also relevant to refer to the objects of the National Association as set out in its Memorandum of Association. The object clause in the Memorandum of Association is set out below:-

“2. The objects of the Association are as follows:-

- (a) To start and maintain schools and colleges for imparting moral, intellectual and physical education.
- (b) To start and maintain schools and colleges for imparting cultural education to the students.
- (c) To impart technical and agricultural education to the students of the institutions in order to enable them to start a successful career.
- (d) To construct buildings for the Schools, and open and maintain hostels and other residential quarters for the scholars reading in the institution opened by the Association.

- (e) To found and establish reading rooms, free night classes, libraries and other such institutions for the cultural advancement of the public.
- (f) To acquire, hold and manage funds and properties for one or more of the above objects.
- (g) To establish and acquire by lease, exchange, sale, gift or otherwise any movable or immovable property for the benefit of the above objects.
- (h) To sell, manage, improve or give in lease any of the properties of the Association.
- (i) To make necessary arrangement for games and to pay special attention to the physical development and military training of the students.
- (j) To render pecuniary help to intelligent and poor students of the institutions and to award merit scholarship to deserving students and to help them in their studies if funds permit.”

28. It is, at once, clear from the aforesaid that the petitioner institution was not established for the benefit of the minority community. Mr Chako had contended that the expression “cultural education” as used in sub-clause (b) of Article 2 of the Memorandum of Association referred to cultural education of the Muslim community. This contention is bereft of any merit. There is no reason to interpret the expression “cultural education” in the manner as contended. Given the various objects of the said society as well as its name, it would not be apposite to restrict the meaning of the expression “cultural education” to any particular religion. The expression ‘cultural education’ must be understood in the context Indian Culture and universal cultural values.

29. The question whether the change in the name of the said society from National Association to Muslim Welfare Association and the subsequent changes in the Memorandum of Association have any relevance is of any relevance has already been answered against the petitioner by the Division bench of the Allahabad High Court in the order dated 01.08.2017 passed in Special Appeal No. 82/2017 and other cross appeals. In the said order, the Division Bench of the Allahabad High Court had observed as under:-

“In our opinion, any change of memorandum of Association of bye-laws of the society after 64 years of the establishment of the institution has no legal consequence on the issue of establishment of the Society/Institution by persons belonging to different community i.e., not only by minority community. No such subsequent developments would dilute the finding of the writ Court that the Institution had not been established by the Minority Institution.”

30. The aforesaid decision was appealed against by the petitioner but the Supreme Court had not interfered with the aforesaid conclusion.

31. In view of the above, this Court finds no infirmity with the impugned order. The petition is unmerited and is, accordingly, dismissed. All pending applications stand disposed of.

VIBHU BAKHRU, J

JANUARY 18, 2019/pkv