

Neutral Citation No. - 2025:AHC-LKO:47096

Court No. - 6

Case :- WRIT - C No. - 7832 of 2025

Petitioner :- Sharda University Thru. Registrar And Another

Respondent :- State Of U.P. Thru. Chief Secy. Lko And 3 Others

Counsel for Petitioner :- Vaibhav Sharma

Counsel for Respondent :- C.S.C., Syed Mohammad Haider Rizvi

Hon'ble Pankaj Bhatia, J.

1. Heard Sri Sudeep Seth, learned Senior Advocate assisted by Sri Surjeet Kumar, Ms. Chayya Gupta and Sri Vaibhav Sharma the counsel for the petitioners and Syed Mohammad Haider Rizvi who appears for the respondent no.4.

2. The present petition has been filed by the petitioners challenging the order dated 10.08.2025 wherein, the request of the petitioner for permission to be included in the list of colleges in the ongoing NEET Counselling was rejected on the ground that the minority status granted to the petitioner is not in terms of the Government Order dated 28.08.1999.

3. The facts, in brief, are that the petitioners claim to be a minority institution run by the Minority Jain Community at Greater Noida. It is stated that in terms of the provisions contained in the National Commission of Minority Educational Institutions Act, 2004 (hereinafter referred to as 'the NCMEI Act, 2004'), the petitioner was granted the minority status by virtue of a certificate issued on 25.02.2025, as contained in Annexure no.6. In pursuance to, the status of minority enjoyed by the petitioner, the petitioner university applied in March 2025 to the State of U.P. to record and declare the petitioner university as minority status university, which was accepted by the State Government and a certificate to that effect was granted on 07.08.2025 (Annexure no.7).

4. It is stated that although, the decision was taken on 25.02.2025, the actual certificate was granted on 07.08.2025 and as such, the petitioner moved an application for treating the institution as a minority institution and to display the status and the fee structure of the institution as a minority institution vide letter dated 29.07.2025 and 07.08.2025. On the said application, the order impugned came to be passed on 10.08.2025 wherein it was mentioned that the prescriptions are contained in the U.P. Private Professional Educational Institutions (Regulation of Admission and Fixation of Fee), Act, 2006. It was further stated that in terms of the Government Order dated 28.08.1999, certain parameters were prescribed for grant of minority status and the prescriptions contained in the said Government Order had to be adhered to. It was further recorded that as, the minority status was not applied for in terms of the prescriptions contained in the Government Order dated 28.08.1999, no decision has been taken by the State Government, as such, the application filed by the petitioners would not be considered.

5. In the light of the said facts, the neat contention of the counsel for the petitioners is that the process of determination and according the minority status, is governed by the National Commission of Minority Educational Institutions Act, 2004 wherein Section 2(aa) defines 'appropriate government' and Section 2(aa)(ii) in relation to the educational institutions in a State, it is the State Government which is empowered and is known as the 'appropriate government'. My attention is also drawn to the definition of 'Minority Educational Institutions' as defined under Section 2(g) of the NCMEI Act, 2004.

6. It is also argued that in terms of the provisions contained in the U.P. Private Professional Educational Institutions (Regulation of Admission and Fixation of Fee), Act, 2006, an enactment enacted for regulation of admission and fixation of fee in private professional

educational institutions, the definition of 'minority institutions' contained in Section 3(h) is similar to the definition of 'minority institutions' as prescribed in the NCMEI Act, 2004. He argues that after the enactment of the said Act, the power to grant minority status to the institutions is contained in Section 11 of the NCMEI Act, 2004 and it is the commission who is empowered to grant minority status. He argues that after enactment of the NCMEI Act, 2004, the Government Order of the year 1999 loses all relevance, hence the status of minority can be granted only by the commission and thus, to that extent the order impugned is bad in law.

7. He also draws my attention to the judgment of the Supreme Court in the case of ***Chandan Das (Malakar) vs. State of West Bengal and Ors.; (2020) 13 SCC 411***, the judgment of the Full Bench, wherein the matter was referred in terms of difference of opinion as noticed in Paragraph 4 of the said judgment. The Supreme Court had the occasion to consider the scope of power conferred by the Act on the commission and has categorically held that it is the commission who is empowered to take a decision. Paragraph 30 of the said judgment wherein reliance was placed in an earlier judgment of the Supreme Court in the case of ***Corporate Educational Agency v. James Mathew; (2017) 15 SCC 595*** is being quoted herein below:

"30. This statement of the law was then followed by Corporate Educational Agency v. James Mathew [Corporate Educational Agency v. James Mathew, (2017) 15 SCC 595 : 8 SCEC 619] as follows : (SCC pp. 599-601, paras 7 & 10-11)

"7. As far as the validity of the declaration of minority status is concerned, this Court in N. Ammad v. Emjay High School [N. Ammad v. Emjay High School, (1998) 6 SCC 674 : 1 SCEC 732] has held that the certificate of the declaration of minority status is only a declaration of an existing status. Therefore, there is no question of availability of the status only from the date of declaration. What is declared is a status which was already in existence. ...

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10. Chapter IV deals with functions and powers of the Commission. Under Section 11(f), the Commission has been vested with the power rather the mandate to decide all questions relating to the status of any institution as a minority educational institution and declare its status

as such. Section 11 of the Act is quoted hereunder:

‘11. Functions of Commission.—Notwithstanding anything contained in any other law for the time being in force, the Commission shall—

(a) advise the Central Government or any State Government on any question relating to the education of minorities that may be referred to it;

(b) enquire, suo motu, or on a petition presented to it by any minority educational institution, or any person on its behalf into complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating to affiliation to a University and report its finding to the appropriate Government for its implementation;

(c) intervene in any proceeding involving any deprivation or violation of the educational rights of the minorities before a court with the leave of such court;

(d) review the safeguards provided by or under the Constitution, or any law for the time being in force, for the protection of educational rights of the minorities and recommend measures for their effective implementation;

(e) specify measures to promote and preserve the minority status and character of institutions of their choice established by minorities;

(f) decide all questions relating to the status of any institution as a minority educational institution and declare its status as such;

(g) make recommendations to the appropriate Government for the effective implementation of programmes and schemes relating to the Minority Educational Institutions; and

(h) do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission.’

11. Therefore, after the introduction of the National Commission for Minority Educational Institutions Act, 2004, it is also within the jurisdiction and mandate of the National Commission to issue the certificate regarding the status of a minority educational institution. Once the Commission thus issues a certificate, it is a declaration of an existing status.”

(emphasis in original)

8. Reliance is also placed upon the judgment of Supreme Court in the case of ***Sisters of ST. Joseph of Cluny vs. State of West Bengal and Ors.***; (2018) 6 SCC 772, wherein Section 11 of the NCMEI Act, 2004 was interpreted as under:

"23. Secondly, Section 11(f) is a very wide provision which empowers Ncmei to decide all questions relating to the status of an institution as a minority educational institution and to declare its status as such. The expression “all questions” as well as the expression “relating to”, which are words of wide import, clothe Ncmei with the power to decide any

question that may arise, which may relate directly or indirectly, with respect to the status of an institution as a minority education institution. Looked at by itself, Section 11(f) would include the declaration of the status of an institution as a minority educational institution at all stages. Article 30 of the Constitution of India grants a fundamental right to all minorities, whether based on religion or language, to establish and administer educational institutions of their choice. The power under Section 11(f), read by itself, would clothe Ncmei with the power to decide any question that may arise with regard to the right to establish and/or administer educational institutions by a minority. The power does not stop there. It also includes the power to declare such institution as a minority educational institution, which is established and administered as such, so that it can avail of the fundamental right guaranteed under Article 30 of the Constitution.

28. This judgment unequivocally holds that, insofar as existing minority institutions are concerned, Section 11(f) clearly confers jurisdiction on Ncmei to issue a certificate regarding the status of the minority educational institution. We respectfully concur with the aforesaid view."

9. In the light of the said, it is argued that the petition deserves to be allowed.

10. Learned counsel for respondent no.4 tries to justify the order by saying that the prescriptions contained in the Government Order also ought to have been considered, however, he does not dispute the broad proposition of the law as explained by the Supreme Court in the two judgments referred above.

11. In the light of the prescriptions contained in the NCMEI Act, 2004 and in particular Section 11 thereof, it is clear that the power to declare an institution as a minority institution vests exclusively in the domain of the power conferred upon the commission. Once the Act has been enacted, the Government Order loses relevance. This position of law was explained by the Supreme Court in the cases as extracted above.

12. In view of the said, the necessary conclusion is that the order impugned dated 10.08.2025 cannot be sustained wherein he places reliance on the Government Order of 1999. Thus, the same cannot be sustained and is quashed. Consequential orders dated 10.08.2025 contained in Annexure - 2 and Annexure - 3 are also quashed.

13. As the first round of conselling is to conclude tomorrow (13.08.2025), the respondent no.4/DGME/competent authority is directed to pass a fresh order in respect of the application filed by the petitioner by 3 PM tomorrow i.e. 13.08.2025 and communicate the same to the petitioner on their Email by 3 PM itself.

14. The petitioner shall provide their Email on which the communication shall be sent to the respondent no.4 alongwith a copy of this order.

15. Learned counsel for respondent no.4 shall communicate this order for compliance.

16. Present petition stands *allowed* in above terms.

17. Copy of the order be provided to counsel for the parties today itself on payment of usual charges.

Order Date :- 12.8.2025
VNP/-

[Pankaj Bhatia, J.]