

(2018) 01 DEL CK 0011

In the Delhi High Court

Case No : 15 of 2018 & CM Nos 1345-1347 of 2018

TK TRUST PUBLIC SCHOOL

APPELLANT

Vs

THE CENTRAL BOARD OF SECONDARY EDUCATION & ANR

RESPONDENT

Date of Decision : 12-01-2018

Acts Referred:

[Constitution of India](#), [Article 30](#) - Right of minorities to establish and administer educational institutions
[National Commission for Minority Educational Institutions Act, 2004](#),
[a](#), [a](#)

Citation : (2018) 01 DEL CK 0011

Hon'ble Judges : S. Ravindra Bhat, A. K. Chawla

Bench : Division Bench

Advocate : M.P. Raju, Jose Abraham, M.P. Srivignesh, Blessen Mathews, Sarah Shaji, Amit Bansal, Seema Dolo

Final Decision : Disposed

Judgement

1. The appeal is directed against the order of the learned Single Judge rejecting the writ petition filed by the appellant Trust. It sought a direction that the "deemed no objection" under Section 10(3) of the National Commission for Minority Educational Institutions Act, 2004 (hereafter referred to as "the Act") resulted in the "no objection certificate", which obliged the CBSE to affiliate its school established by it. The Commission had adopted its interpretation; the Trust sought enforcement of the Commission's observations and order through the writ petition, which was rejected by the impugned order. The Single Judge also imposed costs.

2. Dr. M.P. Raju, learned counsel brought to the notice of the Court Section 2(a) and Section 10 of the Act, to highlight that the concept of affiliation is limited to affiliation of Colleges alone and that the Single Judge fell into error in interpreting the provisions so as to confine affiliation to the right to seek affiliation only to one class of institutions i.e. the Colleges. It is also highlighted that in the past the Central Board of Secondary Education (CBSE) was directed,

to grant the affiliation, which it did. Learned counsel for the CBSE urged that this Court should not disturb the order of the Single Judge and submitted that the right to seek affiliation is only to Colleges as the tenor of Section 10A explicitly suggests.

3. The Act appears to be Parliament's attempt to consolidate the legal position arising out of declaration of law by the Supreme Court in various Larger Bench formations (Kerala Education Bill 1958 Supp. SLR 995; St. Xavier's College v. State of Gujarat 1975 1 SCC 175 and T.M.A. Pai Foundation v. State of Karnataka 2002 8 SCC 481). The essential requirements for establishing minority education have been spelt out in the latter two judgments. It appears that the Commission's task is to discern whether those tests are fulfilled and assist the concerned authorities in the functions assigned to them in various statutes - both State and Central. This is evident from Section 10; Section 2(a) states as follows: "Section 2(a)-

In this Act, unless the context otherwise requires, - "affiliation" together with its grammatical variations, includes, in relation to a college, recognition of such college by, association of such college with, and admission of such college to the privileges of, a University."

The above definition of affiliation, in the opinion of the Court, is not confined only to the institutions of higher learning such as Colleges but being an inclusive one would also extend to other educational institutions as well. This is apparent from the definition of minority educational institutions under Section 2(g) which reads as follows:

"Section 2(g)

"Minority Educational Institution" means a college or institution (other than a University) established or maintained by a person or group of persons from amongst the minorities.

[prior to National Commission for Minority Educational Institutions (Amendment) Act, 2010 (Act No. 20 of 2010): "Minority Educational Institution" means a college or an educational institution established and administered by a minority or minorities.]"

4. Section 10 does not authorize the National Commission for Minority Educational Institutions per se to declare that an applicant is a minority institution. It merely provides for the mechanism, whereby, a competent authority has to deal with the application of an institution which states that it is a minority educational institution. This is apparent from Section 10(2) and 10(3). Section 10(2), (3) and (4) read as follows: "Section 10

(1) xxxx xxxx xxxx

(2) The Competent authority shall,-

(a) on perusal of documents, affidavits or other evidence, if any; and

(b) after giving an opportunity of being heard to the applicant, decide every application filed under sub-section (1) as expeditiously as possible and grant or reject the application, as the case may be: Provided that where an application is rejected, the Competent authority shall communicate the same to the applicant.

(3) Where within a period of ninety days from the receipt of the application under sub-section (1) for the grant of no objection certificate,-

(a) the Competent authority does not grant such certificate; or

(b) where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate, it shall be deemed that the Competent authority has granted a no objection certificate to the applicant.

(4) The applicant shall, on the grant of a no objection certificate or where the Competent authority has deemed to have granted the no objection certificate, be entitled to commence and proceed with the establishment of a Minority Educational Institution in accordance with the rules and regulations, as the case may be, laid down by or under any law for the time being in force.

Explanation.- For the purposes of this section,-

(a) "applicant" means any person who makes an application under subsection (1) for establishment of a Minority Educational Institution;

(b) "no objection certificate" means a certificate stating therein, that the Competent authority has no objection for the establishment of a Minority Educational Institution."

5. Thus, the "deemed no objection" arising on account of Section 10(3) is only for the purpose of establishing that the institution concerned, fulfils the criteria of minority educational institution under the Act. This is also clear that the purpose of the "deemed no objection" is "for the establishment of a minority educational institution" - in terms of Section 10(4) explanation. It is quite apparent, therefore, that the right to establish the minority educational institution is not per se controlled by provisions of the Act; rather that arises from the larger right, which all minorities have under Article 30 of the Constitution. The provisions of the Act appear to be to only regulate the concerns of institutions, who may face inordinate delay, in seeking the declaration. At the same time, however, no provision of the Act entitles any institution to claim a right to affiliation per se. Even the lone provision i.e. Section 10A merely enables an institution such as a College, to apply for affiliation, and, if not informed in time, within 60 days to seek explanation for the delay in the processing of its application for affiliation. This is understandable because the right to seek affiliation is dependent upon fulfillment of various regulatory conditions and criteria that statutory authorities may require and insist upon, depending on the scheme of various annexures. As far as schools are concerned, the "deemed no objection" under the Act would only mean that the State cannot object to the

minority status. However, the institution, would nevertheless, have to seek the no objection or clearance from the local or state authorities to establish the school having regard to the stipulated criteria for school or college education such as availability of land, location, financial resources, etc. Equally, the right to seek affiliation from a Board or from the state authorities by the Board would also depend upon the educational institution fulfilling the basic conditions spelt out from such authority or Board. To that extent, the Single Judge interpreted Section 2(a) restrictively, it appears, there is a clear error. Equally, the right to seek affiliation being a larger one, cannot be said to be per se regulated by Section 10A. Therefore, in view of the analysis and discussion by this Court, all that can be said is that the "deemed no objection" obtained by the appellant is only for the purpose of stating that it is a minority educational institution. However, it would still have to fulfil the other criteria to establish a school i.e. no objection/clearance from the concerned state authorities and based upon that, seek affiliation from the CBSE. The directions of the Single Judge, to pay costs, in view of the above discussion, are hereby set aside. The appeal is disposed of in the above terms. All the pending applications also stand disposed of accordingly.