NOTIFICATION ISSUED BY GOVERNMENT NOTIFYING NCMEI (PROCEDURE FOR APPEAL) RULES, 2006

MINISTRY OF HUMAN RESOURCE DEVELOPMENT
(Department of Secondary Education)

NOTIFICATION

New Delhi, the 14th September, 2006

National Commission for Minority Educational Institutions (Procedure for Appeal) Rules, 2006

G.S.R. 553 (E):- In exercise of the powers conferred by Sub-section (1) read with clause (aa) of Section 24 of the National Commission for Minority Educational Institutions Act, 2004 (2 of 2005), the Central Government hereby makes the following rules, namely:-

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1. Short title and commencement.-

(1) These rules may be called the National Commission for Minority Educational Institutions (Procedure for Appeal) Rules, 2006.

(2) They shall come into force on the date of their publication in the official Gazette.

2. Definitions.- In these rules, unless the context otherwise requires,-

(a) "Act" means the National Commission for Minority Educational Institutions Act, 2004 (No.18 of 2006];

(b) "appeal" means an appeal made to the Commission under sub-section (1) of section 12A or under sub-section (1) of Section 12B of the Act;

(c) "appellant" means a person making an appeal to the Commission under Sub-section (1) of Section 12A or under Sub-section (1) of Section 12B of the Act.

(d) "Chairperson" means the Chairperson of the Commission nominated by the Central Government under sub-section (2) of section 3 of the Act;

(e) "competent authority" means an authority appointed by the appropriate Government to grant No Objection Certificate for the establishment of any educational institution of their choice by the minorities or to grant minority status certificate to any minority educational institution;

(f) "Form" means a form appended to these rules.

(g) "Pleader" has the same meaning assigned to it in clause (xv) of section 2 of the Code of Civil Procedure, 1908 (5 of 1908);

(h) "Secretary" means the Secretary of the Commission.

(i) The words and expressions used herein but not defined in the Act shall have the same meaning respectively assigned to them in the Act;

3. Language of the Commission.-

(1) The proceedings of the Commission shall be conducted in English or Hindi.

(2) No appeal, reference, application, representation, document or other matters shall be accepted by the Commission unless the same is accompanied by a true copy of translation thereof in English or Hindi,

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4. Procedure for filing appeals.-

(1) A memorandum of appeal shall be presented in the Form annexed to these rules by the appellant either in person, or by a pleader authorized by him for such purpose to the Secretary or shall be sent by registered post addressed to the Secretary.

(2) An appeal sent by post under sub-rule (1) shall be deemed to have been presented to the Secretary on the day on which it is received in the office of the Secretary.

(3) The memorandum of appeal under sub-rule (1) shall be presented in four complete sets in a paper book Form along with an empty file size envelope bearing full address of the respondent and where the number of respondent is more than one, as many extra copies of the appeal in a paper book Form as there are respondents together with unused file size envelopes bearing full address of each respondent to be furnished by the appellant.

5. Presentation and scrutiny of the memorandum of appeal.-

(1) The Secretary shall endorse on every memorandum of appeal the date on which it is presented under rule 4 or deemed to have been presented under that rule and shall sign the endorsement.

(2) If, on scrutiny, the memorandum of appeal is found to be in order, it shall be duly registered in a book of appeal and such book shall be called the register of appeal.

(3) If the memorandum of appeal on scrutiny is found to be defective, and the defect is of a formal nature, the Secretary may allow the appellant such time to rectify the defect as he may deem fit.

(4) If the appellant fails to rectify the defect within the time allowed in sub-rule (4), the Secretary may, by order and for reasons to be recorded in writing, decline to register such memorandum of appeal and inform the appellant accordingly.

(5) An appeal against the order of the Secretary under sub-rule (5) shall be made, within fifteen days of making of such order, to the Chairperson, whose decision shall be final.

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6. Contents of memorandum of appeal.–

Every memorandum of appeal filed under rule 4 shall set forth, concisely under distinct heads, the grounds of such appeal, without any argument or narrative, and such grounds shall be numbered, consecutively. Every appeal shall be typed in double space on one side on these paper of good Quality.

7. Documents to accompany memorandum of appeal.–

Every memorandum of appeal shall be in quadruplicate and shall be accompanied by four copies of the order, under appeal, attested by a notary or the pleader.

8. Rejection or amendment of Memorandum of appeal.-

(1) Where the memorandum of appeal is not submitted in the manner prescribed above, it may be rejected, or be returned to the appellant for the purposes of being amended within a time to be fixed by the Commission or be amended then and there.

(2) Where the Commission rejects any memorandum, it shall record the reasons for such rejection.

(3) Where a memorandum of appeal is amended, the Chairperson, or such officer, as he appoints in this behalf, shall sign or initial the amendment.

9. Application for condonation of delay.-

(1) Where an appeal is filed after the expiry of the period of limitation specified therefore, it shall be accompanied by an application supported by an affidavit setting forth the facts on which the appellant relies to satisfy the Commission that he had sufficient cause for not filing the appeal within such period.

(2) If the Commission sees no reason to reject the application, a notice thereof shall be issued to the respondent and the matter shall be finally decided by the Commission before it proceeds to deal with the appeal under rule 10.

10. Power to dismiss appeal without sending notice to the authority under whose order the appeal is preferred.-

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(1) The Commission after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day may dismiss the appeal.

(2) If on the day fixed or any other day to which hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Commission may make an order that the appeal be dismissed.

(3) Where the Commission dismisses an appeal under sub-rule (1), it shall deliver an order recording in brief the grounds for doing so.

11. Time within which hearing under rule 10 should be concluded.-

Every appeal shall be heard under rule 10 as expeditiously as possible and endeavour shall be made to conclude such hearing within sixty days from the date on which the memorandum of appeal is filed.

12. Day for hearing of appeal.-

(1) Unless the Commission dismisses the appeal under rule 10, it shall fix a date for hearing the appeal.

(2) Such day shall be fixed with reference to the current business of the Commission.

13. Publication and service of notice of day for hearing appeal.–

(1) Notice of the day fixed under rule 12 shall be affixed in the office of the Commission, and a like notice shall be sent by the Commission to the competent authority from whose order the appeal is preferred, and shall be served on the respondent or on his pleader, and all the provisions applicable to such summons, and to proceedings with reference to the service thereof prescribed by the Code of Civil Procedure, shall apply to the service of such notice.

(2) Instead of sending the notice to the competent authority from whose decree the appeal is preferred, the Commission may itself cause the notice to be served on the respondent or on his pleader under the provisions above referred to.

(3) The notice to be served on the respondent shall be accompanied by a copy of the memorandum of appeal.

(4) Notwithstanding anything to the contrary contained in sub-rule (1), it shall not be necessary to serve notice of any proceeding incidental to an appeal on any respondent other than a person impleaded for the first time in the Commission, unless he has appeared and filed an address for the service in the offices of the competent authority, or has appeared in the appeal.

(5) Nothing in sub-rule (4) shall bar the respondent referred to in the appeal from defending it.

14. Right to begin.–

(1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

(2) The Commission shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

15. Dismissal of appeal for appellant's default.–

(1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Commission may make an order that the appeal be dismissed.

Explanation.– Nothing in this sub-rule shall be construed as empowering the Commission to dismiss the appeal on the merits.

(2) **Hearing of appeals *ex parte*.–** Where, on the day fixed for hearing or any other date to which the hearing may be adjourned, the appellant appears and the respondent does not appear, the appeal shall be heard *ex parte*.

16. Re-admission of an appeal dismissed for default.–

Where an appeal is dismissed under rule 15, the appellant may apply to the Commission for the re-admission of the appealed and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Commission shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

17. Power to adjourn hearing and direct persons appearing interested to be made respondents.–

(1) Where it appears to the Commission at the hearing that any person who was a party to the proceedings before the competent authority from whose order the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Commission may adjourn the hearing to a future day to be fixed by the Commission and direct that such person be made a respondent.

(2) No respondent shall be added under this rule, after the expiry of the period of limitation for appeal, unless the Commission, for reasons to be recorded, allows that to be done, on such terms as to costs as it thinks fit.

18. Re-hearing of appeal on the application of respondent.–

Where the appeal is heard *ex parte* and order is pronounced against the respondent, he may apply to the Commission to re-hear the appeal; and, if he satisfies the Commission that the notice was not duly served, or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Commission shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

19. Upon hearing respondent may object to order as if he had preferred a separate appeal.–

(1) Any respondent, though he may not have appealed from any part of the order, may not only support the order but may also state that the finding against him by the competent authority in respect of any issue ought to have been in his favour; and may also take any cross-objection to the order which he could have taken by way of appeal provided he has filed such objection in the Commission within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Commission may see fit to allow.

Explanation.– A respondent aggrieved by a finding of the competent authority in the order on which the order appealed against is based may, under this rule, file cross-objection in respect of the order in so far as it is based on that finding.

(2) Such cross-objection shall be in the form of a memorandum, and the provisions of rule 6, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(3) Where, in any case, in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Commission thinks fit.

20. Where evidence on record is sufficient, Commission may determine case finally.-

Where the evidence upon the record is sufficient to decide the appeal, the Commission may finally decide the appeal.

21. Production of additional evidence in appeal.-

(1) The parties to the appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Commission. But if -

(a) the competent authority from whose order the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(b) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the order appealed against was passed, or

(c) the Commission requires any document to be produced or any witness to be examined to enable it to pronounce order, or for any other substantial cause, the Commission may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by the Commission, the Commission shall record the reason for its admission.

22. Mode of taking additional evidence.-

Such document may be produced or such witness examined or such evidence adduced before the Commission.

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23. Order when and where pronounced.-

The Commission, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the competent authority from whose order the appeal is preferred, to which reference may be considered necessary, shall pronounce order, either at once or on some future day of which notice shall be given to the parties or their pleaders.

24. Dissent to be recorded.-

Any member of the Commission dissenting from the order of the Commission shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

25. Adjournment of hearing.-

The Commission may if sufficient cause is shown at any stage of proceedings grant time to the parties or any of them, and adjourn the hearing of the appeal.

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26. Order to be signed and dated.-
Every order of the Commission shall be in writing and shall be signed by the Presiding Officer who pronounced the order.

27. Copies of orders to be furnished to parties.-

Certified copies of the orders shall be furnished to the parties on the application to the Commission.

28. Certified copy of orders to be sent to the competent authority whose order was appealed from.-

A copy of the order, certified by the Secretary, or such officer as the Chairperson appoints in this behalf, shall be sent to the competent authority which passed the order appealed from.

29. Inspection of records and certified copies of orders.-

(1) Any person who is a party in an appeal or a pleader authorized by such person may make an application for inspecting the records of such appeal to the Secretary and the Secretary may allow the inspection of the record by such person or the pleader, as the case may be.

(2) Any person or a pleader authorized by such person may make an application to the Secretary for obtaining a certified copy of any order of

the Commission and the Secretary shall order furnishing of a certified copy of such order to such person or the pleader, as the case may be.

(3) Every certified copy of the order of the Commission shall be prepared in the office of the Commission and shall be authenticated by the Secretary or any officer authorized by him in this behalf.

30. Orders and directions in certain cases.-

The Commission may make such orders or give such directions as may be necessary or expedient to give effect to its orders or prevent abuse of its process or to secure the ends of justice.

31. Working hours of the Commission.-

Except on Saturdays, Sundays and other public holidays, the office of the Commission shall, subject to any other order, made by the Chairperson, remain open daily from 9:30 A.M. to 6:00 P.M. but no work, unless of an urgent nature, shall be entertained after 4:30 P.M. on any working day.

32. Sitting hours of the Commission.-

The sitting hours of the Commission shall ordinarily be from 10:30 A.M. to 1:30 P.M. and 2:30 P.M. to 5:00 P.M. subject to any general or special order made by the Chairperson of the Commission.

33. Holidays.-

Where the last day for doing any official act falls on a day on which the office of the Commission is closed, and by reason thereof, such an act cannot be done on that day, it may be done on the next opening day.

34. Powers and functions of the Secretary.-

(1) The Secretary shall have the custody of the records of the Commission and shall exercise such other powers as may be assigned to him by the Chairperson.

(2) The official seal of the Commission shall be kept in the custody of the Secretary.

(3) Subject to any general or special direction by the Chairperson, the seal of the Commission shall not be affixed on any order, notice or other process, save under the authority in writing of the Secretary.

35. Seal and emblem.-

The official seal and emblem of the Commission shall be as in form no. 5.

[No. F. 7-12/2006-MC (P)]

SUNIL KUMAR, Jt. Secy.