

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2827 of 2015

1. New Managing Committee Madarsa Madarsatul Quran, Bahichakutti, Madarsa No. 473 Through its Secretary Abdur Rahman S/o - Late Shafiquel Haque, R/o - Village - Bahichakutti, P.O. - Garngihat, P.S. - Kochadhaman, Distt. - Kishanganj.

.... .... Petitioner/s

Versus

1. The State of Bihar Through Principal Secretary, Department of Education, Govt. of Bihar, Patna.
2. The Director (Higher Education), Department of Education, Govt. of Bihar, Patna.
3. The Special Director (Secondary Education), Department of Education, Government of Bihar, Patna.
4. The Bihar State Madarsa Education Board Through its Secretary, Bihar, Patna.
5. The District Magistrate, Kishanganj
6. The District Education Officer, Kishanganj.
7. Maulala Abdul Bari, Secretary, Old Managing Committee, Madarsa Madrasatul Quran, Bahichakutti, Gangihat (Madarsa No. 473)

.... .... Respondent/s

**Appearance :**

For the Petitioner/s : Mr. Rajendra Prasad Singh, Sr. Advocate  
Mr. Mukesh Kumar Singh  
Mr. Aparna Pandey

For the Respondent No. 7 : Mr. Sanjay Singh  
Mr. Firoz Ahmad

For the Madarsa Board: Md. Rashid Alam

For the State of Bihar AC to SC-23

**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**  
ORAL JUDGMENT  
**Date: 30-06-2015**

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**30.06.2015** Heard learned senior counsel for the  
petitioner, counsel for the Madarsa Board, counsel for

the State as well as private-respondent no. 7.

Annexure-1 is the order passed in Appeal No. 5 of 2013. This order, obviously, has adverse effect on the interest of the present petitioner, since initially recognition was granted in their favour by the Chairman of the Madarsa Board on some kind of an enquiry, which was held and the inputs provided therein.

The Court does not want to go into the factual aspect of the matter beyond a point. The primary legal question, which emerges, is whether the order passed by the Director, Higher Education, Government of Bihar, Patna in any manner requires consideration since his finding is that the decision taken by the Chairman of the Board is a nonest order in view of the provisions, contained in Madarsa Act, as he is not the "Board".

There is no dispute on the fact that the decision in question against which appeal was filed was taken by the Chairman of the Madarsa Board and the Chairman alone. The law is already laid down in this regard that such decisions are not required to be taken by the Chairman alone. The "Board" has to take decisions. The Chairman is only a member of this Board, who has privilege of presiding over the meeting. The whole object and purpose of the Act is defeated if

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decisions are taken by individuals by surpassing or bypassing the other members of the Board, because collective wisdom is lacking in such decision making.

No doubt, the Director has held the decision of the Chairman to be not only malafide, but also in violation of principles of natural justice in the facts discussed therein. But that aspect of the matter does not prevail upon this Court for the reason that ultimately the order passed in favour of the petitioner, giving them recognition, is a unilateral decision of the Chairman of the Board so the order of the Director does not suffer from any kind of legal infirmity.

However, the Court is willing to remand the matter back to the "Board" with an obligation created upon the Chairman of Madarsa Board that he must convene a meeting of all the members of the Board, giving opportunity of hearing to both the parties and then take a collective decision with regard to the rival claim of the petitioner and the respondent no. 7.

If the Board feels that a fresh enquiry is required to be conducted from the materials which are brought before its knowledge, it may be done. It will help and assist the Board in coming to a fair decision. It can be done because there is no bar in this regard. It will be

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in the interest of things that an early adjudication is made, preferably within a period of three months.

Writ application, however, is dismissed.

**(Ajay Kumar Tripathi, J.)**

