

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1997 of 2015

In

Civil Writ Jurisdiction Case No. 17187 of 2013

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The New Managing Committee Of Madarsa Nomania Dumaria Idgah,
Madarsa No. 384, PO Dimaria, PS Mahalgaon, District Araria, through its
Secretary, Abdul Quddu, son of Late Abdul Majeed, resident of Village
Prasadpur, PO Dumaria, PS Mahalgaon, District Araria

.... Appellant

Versus

1. The State of Bihar through Secretary, Human Resources Department,
Govt. of Bihar, Patna
2. The Special Director, Secondary Education, Bihar, Patna
3. The Bihar State Madarsa Education Board, Patna through its Chairman
4. The Secretary, Bihar State Madarsa Education Board, Patna, Bihar,
Patna
5. The District Magistrate, Araria
6. The Sub Divisional Officer, Araria
7. The District Education Officer, Araria
8. The Old Managing Committee of Madarsa Nomania Dumaria Idgah,
Madarsa No. 384, PO Dumaria, PS Mahalgaon, District Araria, through
its Secretary, Md. Taiyab, son of Late S K Majeedullah, resident of
village Ghormara, PO Dumaria, PS Mahalgaon, District Araria

.... Respondents

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Appearance :

For the Appellant : Mr. Rajesh Kumar Sinha, Advocate

For the Respondents : Mr. Anshuman Singh, GP 24

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

2 23-11-2015

The appellant is “New Managing Committee” of Madarsa Nomania Dumaria Idgah, Madarsa No. 384, District Araria, which is aggrieved by an order, dated 24.8.2015, passed by the learned Single Judge in CWJC No. 17187 of 2013. There appears to be an apparent dispute between the “Old Managing Committee” and the “New Managing Committee” of the said Madarsa. New Managing Committee was impleaded as respondent No. 8 in the said CWJC No. 17187 of 2013 and is respondent No.8 in the present appeal.

2. The New Managing Committee had earlier preferred a writ petition before this Court under Article 226 of the Constitution of India, giving rise to CWJC No. 8027 of 2009, aggrieved by the instructions of the Secretary of the Madarsa Board, contained in letter No. 1469, dated 23.6.2009, whereby the Secretary had directed the District Magistrate, Araria, to make enquiry as regards constitution of a new Managing Committee. This Court disposed of the said CWJC No. 8027 of 2009 by order dated 16.7.2009, in the following terms:-

“Let petitioner assail the instruction of the Secretary before the Special Director, Secondary Education, who should consider the same in accordance with law as early as possible in any case within two months from the date of receipt of the representation.

This application is, accordingly, disposed of.”



3. In the light of the aforesaid order, dated 16.7.2009, the Special Director, Secondary Education, Government of Bihar, passed order, dated 28.6.2013, in Appeal No. 29 of 2009, whereby he set aside the memo, dated 29.4.2010, issued by the Madarsa Education Board, Patna. The Old Managing Committee came before this Court, seeking quashing of the said order, dated 28.6.2013, on the ground that the Special Director did not have jurisdiction to pass such order. The learned Single Judge, upon considering the entire matter, passed the following order which is under appeal in the present case:-

“Enough time has elapsed because the dispute related to formation of a Managing Committee relatable to year 2008. The time has come when a fresh decision is required to be taken afresh. If it leads to any kind of dispute it can be taken to the appropriate forum. The present dispute even otherwise is required to be resolved. The decision as rendered in Annexure-7, which is under challenge, will not come in the way, since it is a nonest order, since Special Director has no authority to hear such appeal. However, it seems, this appeal was decided on the basis of some direction, issued in CWJC No. 8027/2001, which is another matter.

Writ is disposed of with the above observation.”

4. Learned counsel, appearing on behalf of the appellant, i.e., the new Madarsa Board, contends that the learned Single Judge ought to have considered that the Special Director had passed the said order, dated 28.6.2013, in the light of the order

passed by this Court, dated 19.3.2009, in CWJC No. 3333 of 2009. He accordingly contends that the order of the Special Director, dated 28.6.2013, ought not to have been held to be without jurisdiction.

5. Learned counsel, appearing on behalf of the appellant, has very fairly admitted that the Special Director, Secondary Education, Government of Bihar, Patna, does not have the statutory power of appeal, which power vests in Bihar Madarsa Education Board, Patna. There being no dispute about the fact that the Special Director of the Secondary Education, Bihar, Patna, did not have any appellate power to pass the order in Appeal No. 29 of 2009, dated 28.6.2013, we do not find any infirmity in the order under appeal, wherein the learned single Judge has observed that the said order was beyond jurisdiction.

6. This Court, by order, dated 19.03.2009, passed in CWJC No. 3333 of 2009, had directed the Special Director, Secondary Education, Bihar, Patna, to pass order in accordance with law. In compliance of the said order, the Special Director, Secondary Education, Bihar, Patna, should have acted in accordance with law and not contrary to law. Conversely speaking, this would not have meant that the Special Director, Secondary Education, Bihar, Patna, could have passed an order,

which was not within his jurisdiction and, hence, the impugned order cannot be said to have been passed in accordance with law.

7. We do not find any merit in this appeal which does not deserve admission. The appeal is accordingly dismissed.

8. The appellant, however, shall have the liberty to take recourse to law before appropriate forum as may be available to him.

(I. A. Ansari, J)

(Chakradhari Sharan Singh, J)

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