

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.379 of 2014

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1. The Managing Committee Madarsa Qasimul Uloom, At Village- Beldiha, P.O- Silhan, Via- Ekchari, Police Station- Sanokhar (Sanhauila), District- Bhagalpur (Madarsa No. 189) through its Secretary Md. Farooque Azam.
 2. Md. Farooque Azam S/O Late Md. Shamsuzzoha Resident of Village- Beldiha, P.O- Silhan, Via- Ekchari, Police Station- Sanokhar (Sanhauila), District- Bhagalpur, the Secretary, Madarsa Qasimul Uloom, Beldiha.

.... Petitioners

Versus

1. The State of Bihar through the Secretary, Bihar State Madarsa Education Board, Patna.
2. The Bihar State Madarsa Education Board, Patna through its Chairman.
3. The Chairman, Bihar State Madarsa Education Board, Patna.
4. The Secretary, Bihar State Madarsa Education Board, Patna.
5. The District Education Officer, Bhagalpur.
6. Md. Manzar Alam S/O Late Md. Usman Resident of Village- Beldiha, P.O Silhan And P.S- Sanokhar, District- Bhagalpur.
7. Md. Abdur Razzaque S/O Late Md. Ibrahim Resident of Village- Beldiha, P.O Silhan and P.S- Sanokhar, District- Bhagalpur.
8. Md. Mahfooz S/O Late Abdul Majeed Resident of Village Beldiha, P.O Silhan and P.S- Sanokhar, District- Bhagalpur.
9. Md. Aslam S/O Late Muddan Resident of Village- Beldiha, Post Office- Silhan, District- Bhagalpur
10. Md. Ekramul Haque S/O Md. Usman Resident of Village- Amdhiya, Post Office- Gajhanda, Police Station- Balbadda, District- Godda.
11. Md. Athar S/O Sk. Shekhawat Resident of Village- Beldiha, Post Office- Silhan, P.S- Sanokhar (Sanhauila), District- Bhagalpur.
12. Anwarul Haque S/O Late Sharafat Hussain Resident of Village- Beldiha, Post Office- Silhan, P.S- Sanokhar (Sanhauila), District- Bhagalpur.
13. Hafiz Md. Allauddin Mansoori S/O Late Md. Fakhruddin Resident of Beldiha, Post Office- Silhan, Via- Ekchari, P.S- Sanokhar (Sanhauila), District- Bhagalpur.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 5319 of 2014

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1. Managing Committee, Madarsa Islaima At And P.O. Behpura, P.S. Bihta, District - Patna through its Secretary Ibrar Ahmad.
2. Ibrar Ahmad Son of Late Md. Sulaman Resident of Village - Behpura, P.O. Behpura, P.S. Behta, District - Patna, the Secretary Managing Committee Madarsa Islamia, Behpura, Village - Behpura, P.O. Behpura, P.S. Bihta, District – Patna.

.... Petitioners

Versus

1. The Bihar State Madarsa Education Board, Patna, through its Secretary.
2. The Chairman, Bihar State Madarsa Education Board, Patna.
3. The Secretary, Bihar State Madarsa Education Board, Patna.
4. Md. Irfan Khurshadi Son of Late Md. Maroof At And P.O. Behptrara, P.S. Bihta, District – Patna.

.... Respondents

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Appearance :

(In CWJC No. 379 of 2014)

For the Petitioners : Mr. Abdul Mannan Khan, Advocate
Md. Najmul Hodda, Advocate
For Madarsa Board : Mr. Rashid Alam, Advocate
For Private Res. : Md. Shabbir Alam, Advocate

(In CWJC No. 5319 of 2014)

For the Petitioners : Md. Anisur Rahman, Advocate
For Madarsa Board : Mr. Rashid Alam, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 05-11-2015

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In both the cases, the legal argument advanced on behalf of the petitioners is that any unilateral decision of the Chairman giving any recognition to any Managing Committee of the Madarsa in question sitting singly is an illegal order and if not, in violation of various judicial pronouncements that such decisions are required to be taken by "the Board" and the Chairman can never be treated to be "the Board".

The proposition or the question of law urged at the Bar on behalf of the petitioners is well settled and there is no ambiguity on this question anymore. However, learned counsel for the Madarsa Board submits that all these decisions are subject to further scrutiny and fresh decision taken by the "Madarsa Board".

The foundation which was laid for giving recognition to the Managing Committee was in terms of the order and notification issued as per the decision of the Chairman. Obviously such a decision has pre-empted if not foreclosed the issue and even if for the formality, the same is placed before the Board for reconsideration the fact that the

Board has mechanically put a seal of approval which itself shows abdication if not usurping and pre-empting such decisions if not leaving nothing for the Board to take any independent decision minus the decision of Chairman.

This Court cannot be unmindful of the fact that the Chairman has a vantage position and if he has taken a decision in one way then the Board would not like to either embarrass the head of the institution or be at loggerheads with the Chairman.

Such a modality, therefore, cannot be adopted nor approved by this Court. Such decisions have to be taken by the Board and such issues should be placed for consideration by the Board. The Chairman should never take a unilateral decision on his own not leaving much for the Board to do after he has decided one way or the other.

In view of the above observation, the impugned order dated 26.11.2013 contained in Annexure-1 (in CWJC No.379 of 2014) and Annexure-6 dated 21.11.2014 (annexed with I.A. No.7774 of 2015 of CWJC No.5319 of 2014) stand quashed. Let the Board take a fresh decision in accordance with law.

Both the writ applications stand allowed.

(Ajay Kumar Tripathi, J.)

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