

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13337 of 2015

=====

Managing Committee Of Madrasa Darul Hoda Sikrona, P.S.- Kadwa, District-
Katihar through its Secretary Dr. A. Ali son of Late Rayazuddin At Sikrona P.S.
Kadwa, District- Katihar

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Education Govt. of Bihar, Patna
3. The Special Director, Secondary Education, Department of Education, Govt. of Bihar, Patna
4. The Joint Director, Secondary Education, Department of Education, Govt. of Bihar, Patna
5. District Education Officer, Katihar District Katihar
6. Irfan Ahmad, PA to Special Director, Assistant New Secretariat, Patna
7. The Bihar State Madarsa Education Board, Patna through its Secretary
8. The Chairman, Bihar State Madrasa Education Board, Patna
9. The Secretary, Bihar State Madrasa Education Board, Patna Nos. 7 and 8 are 5 Vidyapati Marg, P.S. Kotwali, District Patna
10. The Outgoing Managing Committee of Madrasa Darul Hoda Sikrona P.S. Kadwa District Katihar through its Secretary Ajaz Ahmad, son of Late Abdul Mannan At Sikrona P.S. Kadwa District- Katihar

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. P. K. Shahi, Sr. Advocate Mr. Raj Nandan Prasad
For the Madarsa Board	:	Mr. Md. Rashid Alam
For the private respondent	:	Mr. Y. V. Giri, Sr. Advocate Mr. Durga Nand Jha
For the State	:	Mr. U.S.S. Singh, GP-1

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
CAV JUDGMENT

Date: 16-09-2016

Annexure – 15 is under challenge in the present writ application. This order is dated 07.07.2015 and has been passed by the Joint Director, Secondary Education, Government of Bihar, Patna, the Appellate Authority in Appeal No. 17 of 2014 and Appeal No. 1 of 2013, which jointly came to be decided against the present

petitioners, therefore, quashing has been sought of Annexure – 15.

2. Both the appeals were preferred by the private respondents in the background of a decision initially taken by the Chairman of the Bihar Madarsa Board. Appeal No. 1 of 2013 came to be filed against the said order. Subsequently when the full Board approved a particular managing committee Appeal No. 17 of 2014 came to be filed. Both the appeals, therefore, were taken up together, heard and appeals have been allowed. The sum essence of the decision of the Joint Director is that the both decisions of the Chairman and the Madarsa Board has been set to knot and the committee of the private respondents was held to be legal, valid and in control of the affairs of the Madarsa.

3. Learned senior counsel representing the petitioner attacks the impugned order on a question of law that the Appeal No. 17 of 2014, which was filed against the order, dated 01.11.2013, passed by the Madarsa Board was preferred after more than 10 months of delay. There is nothing to show from the record that the delay was condoned at any point of time. If the objection against the maintainability of the appeal and condonation was not decided at all, then the whole appeal becomes vulnerable.

4. No appeal, which is a creature of a Statue can be entertained without removal of its defects and infirmity, including the issue of limitation.

5. In fact, there was no occasion to decide Appeal No.

1 of 2013, since the order of the Chairman merged with the order of the Full Board decision and to that extent, Appeal No. 1 of 2013 moved against the order, dated 11.08.2013, was a dead order, as is the stand of the petitioner.

6. Senior counsel, representing the petitioner, thereafter, also took the Court through the detailed order and pointed out the legal infirmities, committed by the Joint Director even in the matters of facts and the wrong logic, which formed the basis for allowing the appeal. He also submits that the Appellate Authority had misconstrued the previous orders passed by a writ court and twisted the facts to come to the conclusion, which is subject matter of challenge in the present writ application. These aspects also, are good enough for interfering and setting aside the impugned order, contained in Annexure-15.

7. Attention of the Court was drawn to Annexure – 11, which is an order, dated 12.02.2014, passed in M. J. C. No. 4889 of 2012, arising out of same dispute between the rival parties.

8. Learned senior counsel, representing the respondents, however, submits that the order of the Joint Director, Secondary Education has been passed after taking the entire history of the litigation, going on between the parties. A reading of the said order would itself indicate as to how things had been manipulated by the petitioner and how they would like to overcome the findings, which had earlier emerged against them in previous litigations.



9. There cannot be any dispute on one legal aspect of the matter that the appeal is creature of a Statute and the power to file appeal is provided under Section 28 of the Bihar State Madarsa Education Board Act, 1981. If a period of limitation of 60 days has been provided therein, then, either the prescribed period has to be adhered to or else the appeal can only be entertained, if a bona fide valid reason and explanation is offered for the delay, which in the opinion of the Court prevented a litigant from approaching the forum. In this case, the appeal 17 of 2014 has been admittedly filed after more than 10 months of delay. Surprisingly on a reading of the entirety of the impugned order, the Court does not find any remotest mention on the question of delay or that the Appellate Authority had condoned the delay while entertaining the appeal on merit.

10. The Court even called for the original records to verify the position. The entire order-sheet do not even talk of any petition for condonation, having been filed, though a copy of condonation application was found on record, nor did the Appellate Authority deal with the question of delay before proceeding with the merits of the matter.

11. Since a valuable right had accrued in favour of the petitioner and the matter can only be decided on merits, provided the condonation in delay was made by the Appellate Authority and since he chose not to do so, a statutory right created, has been overlooked and violated, which has fall out on the right of the

petitioner. This is good enough ground for this Court to quash Annexure – 15 and allow the writ application.

12. The matter, however, is remanded back for fresh consideration by the Appellate Authority, who also has an obligation to first deal with the objection of delay, pass an order thereon either way and if the necessity arises, may be he can proceed with the merits of the matter thereafter.

The writ application stands allowed on this limited aspect itself.

(Ajay Kumar Tripathi, J)

SKM/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	16.09.2016
Transmission Date	