

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7904 of 2014

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1. Mazhrul Bari Son of Abdul Rashid Secretary Managing Committee of Madarsa Jamia Azizia, Khaksa, Via AND P.S. Baisi, District - Purnea.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
2. The Special Secretary, Human Resource Development Department, Government of Bihar, Patna.
3. The Bihar State Madarsa Education Board, Patna.
4. The Chairman, Bihar State Madarsa Education Board, Patna
5. The Secretary, Bihar State Madarsa Education Board, Patna
6. The Sub Divisional Officer cum District Education Officer, Purnea.
7. Md. Niyaz Ahmad, President, New Managing Committee, Madarsa Jamia Azizia, Khaksa, Via + P.O. Khaksa, P.S. Baisi, District - Purnea.
8. Md. Aftab Hussain, Secretary, New Managing Committee, Madarsa Jamia Azizia Khaksa, Sahpur, P.O. Khoksha, P.S. Baisi, District - Purnea.

.... Respondent/s

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Appearance :

For the Petitioner	:	Mr. Siyaram Shahi, Advocate
		Mr. Md. Helal Ahmad, Advocate
For the Respondents 7 & 8:		Mr. Sanjay Singh, Advocate
For the Madarsa Board:		Mr. Rashid Alam, Advocate
For the State:		Mr. B. N. Singh, AC to GP 9

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL ORDER

6 04-02-2016 The two orders under challenge are Annexure-1 and Annexure-2. Annexure-1 is the order passed by the Appellate Authority rejecting the appeal of the petitioner and Annexure-2 was the notification issued under the signature of Secretary of Bihar State Madarsa Education Board on a decision of the Chairman, constituting the Managing Committee of the Madarsa in question.



Many a things with regard to the constitution and correctness otherwise including the manner in which such Committee has been given approval to has been said but the court will not opine on that aspect of the matter keeping in view a pointed submission of legal kind that the Annexure-2 itself indicates that the order has been passed by the Chairman acting himself and it is not the order of “Madarsa Board”.

The law has been settled for quite some time up to the division Bench that the Chairman acting alone has no powers to exercise in matters of such constitution and the Board has to and it will must take a decision on such issue. Obviously, these kinds of orders are passed to circumvent the judicial direction and declaration by exercising the power which is not vested in it. The court deprecates this kind of conduct of the Chairman of the Bihar State Madarsa Board.

Annexure-2 itself suffers from such a legal infirmity and no kind of rationale and reasoning are provided by the Appellate Authority with regard to the manner, in which the enquiry report was submitted, which formed the basis for constitution of the Committee, can stand.

Surprisingly, this question with regard to the order having been passed by the Chairman was also a question raised in

the appeal, but the Appellate Authority ignored such submission and has gone to reject the claim of the petitioner.

Keeping in view the above, Annexure-1 and Annexure-2 are quashed and as a consequence thereof even Annexure-3 stands quashed. Let the authorities take a fresh decision by following the procedure and the law within a reasonable time frame.

This court expresses no opinion on the merit of the claim of the parties which shall be, any way, decided on the basis of the meeting which may be convened and the enquiry which may be held.

(Ajay Kumar Tripathi, J)

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