

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8346 of 2016

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Md. Manzoor Alam, aged about 49 years, son of Late Md. Zafaruddin, resident of Village- Salimpur, P.S.- Jagdishpur, District- Bhagalpur.

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Education Department, Vikas Bhawan, Patna
2. Special Director, Secondary Education, Bihar, Patna, Vikas Bhawan, Patna.
3. The Chairman, Bihar State Madarsa Education Board, Patna Bihar, 5 Vidyapati Marg, Patna-1.
4. The Secretary, Bihar State Madarsa Education Board, Patna Bihar, 5 Vidyapati Marg, Patna-1.
5. District Education Officer, Bhagalpur.
6. Head Maulvi of Madarsa Anisul Husna Salimpur, P.O.- Simaria, P.S.- Jagdishpur, Distt- Bhagalpur.
7. Md. Shahabuddin- President of Managing Committee of Madarsa Anisul Husna Salimpur, P.O. Simaria, P.S. Jagdishpur, Distt- Bhagalpur.
8. Md. Nahar-Secretary of the Managing Committee of Madarsa Anisul Husna Salimpur P.O. Simaria, P.S.- Jagdishpur, Distt- Bhagalpur.
9. Hafiz Md. Mukhta Member of the said Managing Committee
10. Md. Rizwan member of the said Managing Committee
11. Maulana Md. Ilyas- member of the said Managing Committee
12. Md. Wahidul Haque- member of said Managing Committee
13. Haji Md. Abdul Jatil- member of said Managing Committee
14. Maulana Md. Ibnul Hasan- member of said Managing Committee

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Alim Jang Khan, Advocate
For the State	:	Mr. M.K. Upadhyay, A.C. to G.P.3
For Madarsa Board	:	Mr. Rashid Alam, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 19-08-2016

The petitioner is aggrieved by the order passed by the Joint Director, Secondary Education, Government of Bihar dated 08.03.2016. This order is Annexure-7 to the writ application and petitioner wants quashing of the said order.

2. The Joint Director has dismissed the appeal of the



petitioner primarily on account of the appeal not being maintainable that the Madarsa in question no longer remaining a private body where right of the petitioner or the family members could be protected and the finding that since there is funding by the State, the Madarsa in question partakes the nature of a public body and, therefore, the Managing Committee elected by the people will have a right to manage the affairs of the Madarsa.

3. Learned counsel for the petitioner submits that the question of maintainability should not have been raised after the appeal remained pending for consideration for more than six years. Question of maintainability should have been decided at the threshold. In addition to that since the Division Bench had permitted the petitioner to move the appellate authority, the issue of maintainability ought not to have been allowed to be raised by the Joint Director.

4. Both these submissions are fallacious because maintainability issue though ought to be decided generally at the threshold but such issue can be raised at any point of time and taken into consideration even by a court of law. If it is not done then the entire exercise and the adjudication will amount to a nullity and, therefore, a wasted exercise on the whole.

5. Merely because the Division Bench allowed the petitioner to move the appellate authority, it does not mean that a

jurisdiction was created in the appellate authority by virtue of that observation. The creation of jurisdiction is a matter of rule or statute and even the courts do not have powers to create a jurisdiction in an authority, body or court if the same do not exist otherwise in terms of the statute.

6. The submission of the counsel for the petitioner thereafter is that since the Madarsa was set up by a minority by the resources and effort of the petitioner or the family, they have a right to manage the Madarsa. The wish and desire of the people who set up the Madarsa in question has to be honoured and a right has been created upon the family members to manage the Madarsa.

7. As a proposition of law, there is no dispute but then the Madarsa in question should have remained within the confines and resources of the petitioner or the family members. The moment recognition has been given by the State, public funding has been made and accepted by the Madarsa, it partakes the nature of a public body and that is why the people have elected a Managing Committee and the Managing Committee has been given recognition for running the affairs of the Madarsa and the Madarsa does not remain a family venture or enterprise where no interference would be warranted.

8. In totality, therefore, the rationale and reasoning provided by the Joint Director is not required to be interfered with

because the rationale and reasoning are all cogent and valid reasons.

9. The principles urged by the petitioner will have to be applied to the given facts. Such principles may be good as a proposition but they do not apply to the facts of the present case.

10. Writ has not merit. It is dismissed.

(Ajay Kumar Tripathi, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	22.08.2016
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