

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17797 of 2016

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The Managing Committee of the Madrasa Islahul Muslimin Bocha Garhi, P.S Bahadurganj, District Kishanganj, through its Secretary Manzoor Alam, son of late Maninuddin, resident of Village Bochagarhi P.S.- Bahadurganj, District- Kishanganj.

... .. Petitioner

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, Govt. of Bihar, Patna.
5. The District Education Officer, Kishanganj,
6. The Bihar State Madrasa Education Board Patna through its Secretary.
7. The Chairman Bihar State Madrasa Education Board Patna.
8. The Secretary, Bihar State Madrasa Education Board, Patna.
6 to 8 are 5- Vidyapati Marg, P.S. Kotwali, District- Patna.
9. Md. Aslam Kamil, Son of Mokimuddin, Ex-Secretary of the Managing Committee of Madrasa Islahul Muslimin (as Stated in the party position in the memo of appeal), R/o Village- Bochagarhi, P.S.- Bochagarhi, District- Kishanganj.
10. Moulana Md. Suleman, Head Moulivi of the Madrasa Islahul Muslimin Bochagarhi, P.S. Bohadurganj, District - Kishanganj.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Satish Chandra Mishra Mr. Mahtab Alam
For the State	:	Mr. Prabhat Ranjan Singh, AC to AAG 15
For the Madarsa Board	:	Mr. Md. Rashid Alam
For Private respondents	:	Mr. Helal Ahmad

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 14-11-2017 The petitioner assails an order, dated 19.09.2016, passed in Appeal No. 06 of 2015, by the Joint Director, Secondary Education, Government of Bihar, whereby he has set aside the order passed by the Bihar State Madarsa Education Board (hereinafter referred to as the 'Madarsa Board'), as contained in



memo no. 6959-67, dated 30.11.2015.

It appears that an order, dated 18.06.2013, the Chairman of the Madarsa Board had accorded provisional approval to the petitioner's committee, as the Managing Committee of Madarsa Islahul Muslimin Bocha Garhi, Kishanganj. The said provisional approval of the Committee granted by the Chairman of the Madarsa Board of the Committee was subsequently ratified by the full board on 30.11.2015.

I have heard learned Counsel for the petitioner, learned Counsel appearing on behalf of the State of Bihar, learned Counsel for the Madarsa Board and learned Counsel appearing on behalf of private respondent no. 9.

Learned Counsel appearing on behalf of the petitioner has assailed the impugned order mainly on three grounds. It has been submitted that the appeal before the appellate forum was time barred being 01 year 07 months beyond the period of limitation. The Joint Director, however, entertained the appeal even without any formal application explaining reasons for condonation of delay and condoned the delay *suo motu*. This, according to him, is not permissible.

He has, secondly, submitted that in view of the decision of this Court, in the case of **Managing Committee of Madrasa**



Darul Hoda, Sikrona v. The State of Bihar and Others
(CWJC No. 19290 of 2016), dated 21.08.2017, Shri Vijay Kumar Pandey, Joint Director, who had passed the order was not the competent authority to exercise the appellate powers under the Bihar State Madarsa Education Board Act, 1981, read with Bihar State Madarsa Education Board Control (Appeal) Rules, 1983.

He has, thirdly, submitted that the provisional approval of the petitioner's Managing Committee by the Chairman was subsequently ratified on 30.11.2015, by the Madarsa Board, but the appellants before the Joint Director did not take any step to modify their relief by assailing the subsequent decision, dated 30.11.2015. He submits that going beyond the scope of the appeal, the Joint Director has set aside the subsequent decision also, i.e. order, dated 30.11.2015, of the Madarsa Board.

I need not go into the first contention and third contention for the present, in view of the nature of order, which I intend to pass, since I find that the submissions on behalf of the petitioner, in the light of the decision of this Court, in **CWJC No. 19290 of 2016** (supra), deserves to be accepted. As has been held by this Court in the said decision, evidently, Shri Vijay Kumar Pandey did not have the authority to function as the



appellate authority. The impugned order is set aside on that score alone.

The matter is remanded back to the appellate authority, i.e. the Joint Director, Secondary Education Department, Government of Bihar, to pass an order afresh.

While passing such order, the Joint Director shall be obliged to take into account the question of limitation and pass such appropriate orders on the basis of materials available on record.

The respondent no. 9 shall be at liberty to assail the subsequent order, dated 30.11.2015.

It is also directed that before passing any order, the Joint Director shall allow the parties an opportunity of hearing.

The appellate authority shall also consider passing of appropriate interim order, in case any such prayer is made, in accordance with law.

This application is allowed with the observation and direction, as above.

(Chakradhari Sharan Singh, J)

Prabhakar Anand/-

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