

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9631 of 2016

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1. Fazlur Rahman S/o Late Shamsuddin
2. Zahiruddin S/o Late Md. Majbul, Secretary and President of the Managing Committee of Madarsa Islamia Mahammadia Mirchani Basti Shitalpur, P.S. Patharkatta, District - Kishanganj
3. Farhat Hussain Son of Md. Maniruddin
4. Md. Munna Son of Nurul Hoda null
5. Ziyauddin Son of Md. Jama
6. Gholam Rabbani Son of Late Daud Kauser
7. Md. Marghub Alam Son of Md. Kasiruddin Nos. 6 to 7 members of the Managing Committee of Madarsa Islamia Mahammadia Murchani Basti Shitalpur, P.S. Patharkatta, Distt. - Kishanganj

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department Government of Bihar, Patna
2. The Joint Secretary, Education Department Government of Bihar, Patna
3. The Bihar State Madarsa Education Board, through its Chairman
4. The Secretary, the Bihar State Madarsa Education Board, Patna
5. The District Magistrate, Kishanganj
6. The District Education officer, Kishanganj
7. The Block Education officer, Pothia District Kishanganj
8. The Superintendent of Police, Kishanganj
9. The Managing Committee of the Madarsa Islamia Mohammadia Mirchani, Basti Shitalpur through its President Md. Sayeedur Rahman Son of Allimuddin Resident of Mirchani basit shitalpur Paharkatta, Distt Kishanganj.
10. The Head Maulvi md. shafi
11. Aalim Md. Azimuddin
12. Mlovi Nusrt Jahan
13. I.A. Trained Md. Shakil Akhtar
14. Matric Trained Md. Zahir Hussain All techars shown in the Madarsa Islamia , MOhammadia Mirchabari Basti Shitalpur Police Station Paharkatta Distt Kishanganj

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Firoz Ahmad

For the Respondent/s : Mr. SHARAD KR. SINHA- GP15

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 23-06-2017

The relief sought for in the present writ application



filed under Article 226 of the Constitution of India is *paradoxical*. The petitioners, claiming to be the people of Poshak Area assert that they are members and office bearers of the Managing Committee of the *Madarsa Islamia Mohammadia Mirchani Basti Shitalpur*. They seek quashing of notification/resolution as contained in Annexure-1 issued *vide* memo No. 670, dated 07.09.2015 under the signature of the Joint Secretary, Education Department, Government of Bihar, Patna to the extent the same relates to said *Madarsa Islamia Mohammadia Mirchani Shitalpur*, which has been notified for financial grants to be extended by the State Government of Bihar. The petitioners also seek quashing of the enquiry report submitted by the District Education Officer, Kishanganj recommending the said Madrasa as fit for receiving grants-in-aid by the State Government.

2. Upon going through the materials on record it becomes amply clear that the dispute is between the two groups of persons, both claiming to be Managing Committee of a Madarsa christened '*Madarsa Islamia Mohammadia Mirchai Basti Shitalpur*'. I further find from the pleadings on record that they involve serious disputed question of facts, not only in relation to the office bearers of the Managing Committee of the Madarsa, but also as to which Madarsa is being run in the name of said *Madarsa Islamia Mohammadia Mirchani Basti*



Shitalpur and who are the teaching and non-teaching staff duly and genuinely appointed in the said Madarsa.

3. The disputed questions of fact are such that they cannot be adjudicated upon in writ proceedings under Article 226 of the Constitution of India, in my view.

4. The above noted claim of the petitioners, in the present application is not capable of being established or adjudicated upon in a summary proceeding under Article 226 of the Constitution of India because the disputes would require detailed examination of the evidence as can be had in a suit. The Supreme Court in case of ***Visakhapatnam Port Trust Vs. Ram Bahadur Thakur Pvt. Limited*** reported in **(1997) 4 SCC 582 (Para 13)**, observed that a proceeding under Article 226 of the Constitution of India cannot be converted into a suit and in case of highly disputed questions of fact for decision, civil suit would be the appropriate action. The principles also applies in case of mixed question of facts and law as held by the Supreme Court in case of ***D.D.A. V. Lila D. Bhagat*** **(AIR 1975 SC 495)(para 10)**.

5. Reference may also be made to a decision in case of ***Arya Sabha V. Commr. HRE***, reported in **(1976) 1 SCC 292**, wherein the Supreme Court held that even where the infringement of a fundamental right is alleged, the High Court would be justified in dismissing an application under Article



226 of the Constitution of India *in limine* where determination of the constitutional question depend upon the investigation of complicated questions of fact, on taking evidence. Another Supreme Court decision on the same point in case of ***D.L.F. Housing Construction (P) Ltd. Vs. Delhi Municipal Corporation and others*** reported in **(1976) 3 SCC 160** may also be usefully referred to wherein the Court held in clear terms in paragraph 20 as follows:-

“20. In our opinion, in a case where the basic facts are disputed and complicated questions of law and fact depending on evidence are involved the writ court is not the proper forum for seeking relief. The right course for the High Court to follow was to dismiss the writ petition on this preliminary ground, without entering upon the merits of the case. In the absence of firm and adequate factual foundation, it was hazardous to embark upon a determination of the points involved. On this short ground while setting aside the findings of the High Court, we would dismiss both the writ petition and the appeal with costs. The appellants may, if so advised, seek their remedy by a regular suit.”

6. In case of ***State of Bihar V. Jain Plastics and Chemicals Ltd.*** reported in **(2002) 1 SCC 216**, the Supreme Court has observed that seriously disputed questions or rival



claims of the parties which are to be investigated and determined on the basis of the evidence which may be led by the parties can be raised in a properly instituted civil suit.

7. Reference can also be made in this regard to a decision in case of ***ABL International Ltd. V. Export Credit Guarantee Corpn. Of India Ltd.*** reported in ***(2004) 3 SCC 553.***

8. Considering the nature of disputes involved in the present case and series of judicial pronouncements as noticed above, the present application cannot be maintained and deserves to be dismissed.

9. This application is, accordingly, dismissed with an observation that the petitioners shall have liberty to approach appropriate Court/forum by way of suit or otherwise for the purpose of resolution of dispute involved.

10. There shall be no order as to costs.

ArunKumar/-

(Chakradhari Sharan Singh, J)

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	23.06.2017
Transmission Date	

