

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16578 of 2015

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1. Managing Committee Of Darul Uloom Kalimia Parasmani Sarsi Dhamdaha, Purnea, Police Station- Sarsi, District- Purnea through its Secretary Md. Morsil Alam son of Sri Abdul Rahim
 2. Md. Morsil Alam son of Abdul Rahim resident of Village- Parasmani, Police Station- Sarsi, District- Purnea.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Human Resources, Govt. of Bihar, Patna.
2. Bihar State Madarsa Education Board, Patna through its Secretary.
3. Chairman Bihar State Madarsa Education Board, Bihar, Patna.
4. Secretary, Bihar State Madarsa Education Board, Patna.
5. Managing Committee of Kalimia, Parasmani, Sarsi, Purnea through its Secretary Md. Islamuddin son of Late Abdul Hameed
6. District Education Officer, Purnea.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Atif Inam

For the Respondent/s : Mr. GA10- SMT.NIVEDITA NIRVIKAR

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER

ORAL

Date: 28-04-2017

The petitioner no. 1 claims to be the Managing Committee of Darul Uloom Kalimia Parasmani and petitioner no. 2, Secretary of the said Managing Committee, which is said to have established a Madarsa, known as 'Madarsa Darul Oloom Kalimia, Parasmani'.

2. It seems that there is dispute between the said Managing Committee and respondent no. 5, which is the



Managing Committee of Kalimia, Parasmani, Sarsi, Purnea, having Md. Islamuddin as its Secretary.

3. It is the claim of the petitioners, as is evident from the pleadings, that the petitioners' Madarsa Kalimia has been affiliated by the Madarsa Board up to *Wastania*, though in the application for affiliation, name of the Madarsa was mentioned as "Darul Oloom Kalimia". It is also their case that there was no other Madarsa in the said village Parasmani and, therefore, the petitioner did not lodge any objection over the name of the said Madarsa, at the time of grant of affiliation. The students of the said Madarsa are said to have appeared for *Wastania* examination, conducted by the Madarsa Board up to 2014.

4. The Bihar State Madarsa Education Board (hereinafter referred to as 'the Board') has come out with a notice, dated 23.09.2014, clause 7 of which mentions that all such Madarsas, in which two persons claim to be the Head Modarris, their examination forms shall not be accepted. This is the reason why the Board refused to accept the examination fees and forms of the students of the Madarsa, which is being claimed to be run by the Managing Committee of Darul Oloom Kalimia, Parasmani (petitioner). The Managing Committee of Kalimia, Parasmani (respondent no. 5) is also claiming to be the Committee running the same Madarsa and



thus Head Modarris for the same Madarsa have been appointed by the two different Committees both claiming to be genuinely constituted to run the Madarsa. There are pleadings in the writ application on the point that the Madarsa, being run by the petitioner nos. 1 and 2, is the genuine Madarsa, established long back in the year 1987, after sufficient land was donated for the said purpose in the year 1981 itself; whereas respondent no. 5 cannot claim to be having enough land for lawfully running a Madarsa and for having affiliation from the Board.

5. A counter affidavit has been filed on behalf of the Board, stating therein that the Madarsa run by respondent no. 5 has already been notified by the State Government and that the petitioners' Madarsa does not have recognition by the Board.

6. It will be relevant to reproduce paragraph nos. 9, 10 and 11 of the counter affidavit:

"9. That it appears from the report, dated 03-11-2011, that the District Education Officer, Purnea, has found that there are two Madarsas are viable in the said village. But one Madarsa, named as Madarsa Kalimia Parasmani, is managed and governed by its Secretary, Md. Islamuddin, and another Madarsa, named as Madarsa Darul Uloom Kalimia, Parasmani, is



managed and governed by its Secretary, Md. Morsil Alam. Both the Madarsa have its different sets of teaching staffs.

10. That, the deponent submits that the Board, therefore, issued notices to all the sets of claimants including the writ petitioner to produce its original papers. However, after considering the facts that the land as registered by the Madarsa of the respondent. Md. Islamuddin, is in the name and style of Madarsa Kalimia Parasmani under which name the Board has affiliated the Madarsa, prepared a check list, by the order, dated 14.01.2014, and forwarded the entire materials as per direction contained in Government notification, dated 15-02-2011, to the Department of Education for final decision in the matter.

11. That it is submitted here that the State Government thereafter issued two notification whereby 609 Madarsa of the category of 2459 Madarsa have been recognized and granted financial assistance and the Madarsa, in question, has been placed in the said notification to be granted financial assistance. Therefore, the instant writ petition is wholly misconceived and fit to be rejected."

7. The respondent no. 5 has also filed counter



affidavit, raising plea, *inter alia*, that there being disputed questions of facts involved, this application, under Article 226 of the Constitution of India, may not be maintained. It has also been pleaded that the relief sought for in the application has become infructuous in view of the subsequent development and decision taken by the State Government, notifying the Madarsa of respondent no. 5 to be recognized for grant of financial assistance under its notification, contained in letter no. 670, dated 07.09.2015, on the basis of check list, prepared by the Board, on the report of the District Education Officer, Purnea, after hearing the parties including the writ petitioners.

8. It is the specific case of the petitioners as has been noted above that their Madarsa was established in the year 1975, land for the said Madarsa was given in the year 1981 and it was affiliated in the year 1987; whereas the Madarsa of respondent no. 5 was established in the year 2011 over only 5 (five) decimals of land for the Madarsa, which was gifted by the wife of one Md. Islamuddin.

9. It is true that the questions involved in the present case are of disputed facts and this application could have been held to be not maintainable on that count alone, permitting the parties to seek their remedies before the civil court of competent jurisdiction.



10. However, since the matter relates to grant-in-aid being made available by the State Government to the private Madarsas and there appears to be scope of manipulations and bunglings, by setting up Committees and establishing Madarsas for the purpose of obtaining illegitimate advantages out of the scheme of the State Government providing for grants-in-aid, I am of the view that there is necessity of detailed investigation and enquiry by an impartial body, into the affairs of the Board with special reference to grant of recognition/affiliation in favour of the private Madarsas in order to find out whether such recognition and affiliations have been duly granted, without any extraneous considerations and not for the purpose of providing illegal gains to private persons in the name of private Madarsas, through deceit and fraud.

11. In my view, the Institution of Lokayukta, established under Section 3 of the Bihar Lokayukta Act, 2011, is vested with power of investigation and prosecution, under Chapter VII and VIII of the Act, having its own investigation wing and prosecution wing, under Chapter III and IV of the Act.

12. The Court requests the Institution of Lokayukta, Bihar, to proceed in the matter and formalize its own line of action for the purpose of in-depth enquiry as to



whether public money to be utilized for genuine Madarsas as grants-in-aid, is being utilized for the purpose it is meant for and is being released or it is being plundered with the connivance of the State Government’s officials, Officials of the Board and the Managing Committees of such Madarsas.

13. The Court expects that the materials on record, in the present proceeding, may form the basis for the Institution of Lokayukta, to proceed so far present controversy is concerned. The Court further expects that the enquiry and investigation to be undertaken by the Institution of Lokayukta should take within its sweep all privately run Madarsas in the State of Bihar, which are getting Grants-in-Aid, under the scheme of the State Government..

14. While parting with, I must observe that the parties shall be at liberty to approach civil court of competent jurisdiction for adjudication of their inter se disputes on the question as to which Committee is the genuine one to run a private Madarsa and, therefore, entitled to get Grants-in-Aid.

15. This application stands disposed of.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	14.05.2017
Transmission Date	N.A.

