

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.740 of 2018
IN
Civil Writ Jurisdiction Case No. 5895 of 2018**

- =====
1. Managing Committee of Madarsa Islamia, Village-Swanahi Jagdish, P.O. Bathua Bazar, District- Gopalganj, Ward No. 756, through its Head Maulvi, Noor Alam @ Maulana Noor Alam, Son of Mustafa, Resident of Behind I.B. Board Ward No. 26, Police Station- Gopalganj, District- Gopalganj.
 2. Noor Alam @ Maulana Noor Alam, Son of Mustafa, Resident of Behind I.B. Board, Ward No. 26, Police Station- Gopalganj, District- Gopalganj, Head Maulvi, Madarsa Islamia (Madarsa No.-756), Resident of Village- Swanahi Jagdish, P.O. Bethua Bazar, District- Gopalganj.

.... Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Department of Human Resources, Govt. of Bihar, Patna.
2. The Bihar State Madarsa Education Board, Bihar, Patna.
3. The Chairman, Bihar State Madarsa Education Board, Bihar, Patna.
4. The Secretary, Bihar State Madarsa Education Board, Bihar, Patna.
5. The Controller of Examination, Bihar State Madarsa Education Board, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Binay Kumar, Advocate
For the Respondent/s : None

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 28-06-2018

The present Letters Patent Appeal has been preferred for setting aside the order dated 07.05.2018 passed in CWJC Case No. 5895 of 2018. By the impugned order the learned Writ Court has not only dismissed the writ petition but has also observed that let an enquiry be conducted in respect of the affairs of the Madarsa in question by the District Magistrate, Gopalganj, on the issue as to how



the Madarsa is claiming to have 410 students who are eligible for Maulvi examination.

The learned Writ Court has taken note of the counter affidavit filed on behalf of the Bihar State Madarsa Education Board (hereinafter referred to as 'the Board') wherein it has been stated that the Madarsa is not affiliated nor any permission of any kind has been granted to this Madarsa for Maulvi examination 2018. It is for these reasons the Board refused to accept any forms and fees and to permit the students of the Madarsa to participate in the said examination. The bona fide of the claim of the petitioner that there were 410 students, who intend to take Maulvi examination from the Madarsa in question has been seriously questioned. Learned counsel for the appellant submits that the Madarsa in question had applied for affiliation/upgradation in the year, 2010 itself and with the provisional permission the petitioners were running the class of Maulvi.

From the counter affidavit filed on behalf of the respondent No.2 to 5 it appears that earlier provisional permission was granted to the Madarsa to allow the students of the Madarsa to seat in Maulvi examination 2011 to 2016 but after 2016 Madarsa in question was not granted any permission. The Madarsa, thereafter, filed a writ application earlier as the fag end of the process of examination but upon considering the facts and circumstances, for the said session the



Madarsa had been allowed to appear for the said examination 2017.

The Madarsa was however not granted permission for the next year examination 2018. It is submitted that the Madarsa cannot claim upgradation or permission to make its students appear in different examinations conducted by the board as a matter of right. The board as a matter of policy decision had earlier postponed consideration of such request for grant of permission or upgradation for higher examination of Madarsa not affiliated by the board, the said decision of postponement has been lifted in the proceedings on 30.10.2017 and an enquiry was entrusted to the District Magistrate, Gopalganj in this regard. The report of the District Magistrate is still awaited. It is submitted that since the Madarsa in question is neither affiliated nor permission has been granted for Maulvi examination 2018, the Board is not legally bound to accept any form and fee and permit the students of the said Madarsa to participate in the Maulvi examinations.

After hearing learned counsel for the parties and on perusal of records we do not find any reason to interfere with the impugned judgment of the learned Writ Court. In the matter of affiliation and permission to appear in the Moulvi examination it is the policy decision and the requirements laid down by the competent board/authorities which would be the guiding factor. If the Board has



not granted either affiliation or any permission to the Madarsa in question for the Maulvi examination 2018 as the enquiry is still pending, in the given facts of the case no illegality or the infirmity may be found with the decision of the Board.

The Letters Patent Appeal has no merit. It is dismissed accordingly.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Sanjeev/Mukesh

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.07.2018
Transmission Date	N/A

