

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.746 of 2015

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1. Md. Habibur Rahman S/o Md. Nezamuddin Resident of Village Bahadurpur, P.O. Bhelaganj, Via Barsoi Ghat, P.S. Kadwa, District Katihar, Secretary of the Managing Committee of Madarsa Wahidia Nazamia Shamshul Oloom at Bahadurpur, District Katihar.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Human Resources Development Department, Bihar, Patna.
2. The Special Director, Secondary Education, Human Resources Development Department, Bihar, Patna.
3. The District Education Officer, Katihar.
4. The Block Education Officer, Barsoi, District -Katihar.
5. The Bihar State Madarsa Education Board through its Secretary, 5, Vidyapati Marg, Patna.
6. The Chairman, Bihar State Madarsa Education Board, 5, Vidyapati Marg, Patna.
7. The Secretary, Bihar State Madarsa Education Board, 5, Vidyapati Marg, Patna.
8. Md. Raisuddin S/o Haji Samsuddin Resident of Village Bahadurpur, P.O. Bhelaganj, P.S. Kadwa, District Katihar.
9. Md. Anjarul Islam S/o Ishaque Alam Resident of Village Basatpur, P.O. Sudhani, P.S. Barsoi, District Katihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raj Nandan Prasad
For the Respondent No.9 : Md. Anjum Akhtar
For the Madarsa Board : Mr. Md. Rashid Alam
For the State : Mr. GP20- NADEEM SERAJ
Ms. Shalini, AC to GP-5.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
Date: 02-07-2018

This writ application was filed in the year 2015. The petitioner seeks following relief:

“1. That this application is being filed for issuance of appropriate writ, order/orders, directing the respondents particularly respondent no. 2, 5, 6 and 7 to make fresh enquiry of Madarsa Wahidia Nazamia Shamshul Uloom at



Bahadurpur within District-Katihar regarding genuineness of its management and working teachers, which comes under the category of 2459 affiliated madarsa. Since earlier report submitted by District Education Officer, Katihar and conducted by Block Education Officer, Barsoi is collusive, managed and table enquiry in favour of respondent No. 8 and 9 as well as without giving any opportunity to the petitioner.”

2. Respondent Nos. 8 and 9 were noticed. Respondent No. 9, though has entered appearance by way of Vakalatnama, has not filed any counter affidavit. The Bihar State Madarsa Board, despite this Court's order dated 01.04.2016, has not filed any counter affidavit.

3. The Court is, thus, left with no other option but to proceed on the basis of pleadings and other materials available on record.

4. Learned counsel appearing for the petitioner has straightway taken me to the Resolution, dated 15.02.2011, of the Human Resources Development Department, Govt. of Bihar, clause 7 of which prescribes that inspection of 2459 Madarsas shall be conducted in the light of department's Resolution No. 1090 dated 29.11.1980 by the District Education Officer of the concerned district. After inspection/inquiry, such Madarsas, which fulfill the requisite conditions, shall be granted sanction/approval/recognition by the Bihar State Madarsa Education Board, whereafter decision shall be taken for



release of grant for payment of teachers of such Madarsa.

5. Learned counsel, referring to the said clause 7 of the Resolution dated 15.02.2011, contends that in case of Madarsa in question, i.e. Madarsa Wahidia Nazamia Shamsul Oloom at Bahadurpur in the district of Katihar, the enquiry has been conducted by the 'Block Education Officer' and not by the 'District Education Officer'. He contends that such enquiry conducted by the Block Education Officer is *non est* in the eye of law for the purpose of consideration of grant of sanction/approval/recognition of Madarsa falling in group of 2459 Madarsas.

6. Learned counsel appearing for the Madarsa Board, on the other hand, has submitted, with reference to Annexure- 4 to the writ application that the desired report has been submitted by the District Education Officer, Katihar and therefore, contention on behalf of the petitioner is unsustainable.

7. Learned counsel appearing for the Private Respondent Nos. 8 and 9 has made same submission and contends that the report which has been sent to the Board is of District Education Officer, Katihar in accordance with the requirement under Clause 7 of the Resolution.

8. It transpires that based on the said report dated 16.11.2013, the Madarsa Board has granted approval and the Govt. of Bihar has acted on such enquiry report.



9. I find substance in the submission made on behalf of the learned counsel appearing for the petitioner that the Madarsa Board and the State Government were required to act on the basis of the report of the District Education Officer only in terms of specific provision under Clause 7 of the Resolution dated 15.02.2011.

10. I do not find any substance in the submission made on behalf of the Madarsa Board and the Private Respondents that the report communicated to the Secretary, Bihar State Madarsa Education Board through letter dated 16.11.2013 of the District Education Officer, Katihar can be treated to be report of the District Education Officer. It is evident from the letter itself that the enquiry was conducted by the Block Education Officer. The District Education Officer, Katihar, just forwarded the said report to the Secretary of the Madarsa Board, as is manifest from the records.

11. Accordingly, the decision of the Madarsa Board/ the State Government, based on the said incompetent enquiry report, is held to be illegal and void, in the light of the Resolution of the State Government dated 15.02.2011.

12. This writ application is accordingly allowed.

13. It is directed that the report sent to the Secretary, Bihar State Madarsa Education Board through letter no. 258 dated 16.11.2013 (Annexure-4) should not be treated to be a report for the purpose of Clause 7 of the Resolution dated 15.02.2011.



14. The District Education Officer, Katihar is directed to hold an enquiry afresh and proceed accordingly.

15. The Secretary, Bihar State Madarsa Education Board and the State-respondents are directed to proceed thereafter on the basis of the report of the District Education Officer in accordance with law.

(Chakradhari Sharan Singh, J.)

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AFR/NAFR	
CAV DATE	N.A.
Uploading Date	17.07.2018
Transmission Date	

