

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2516 of 2017

-
1. Managing Committee of Madarsa Jannatul Banat At P.O. Gad Bahuwari, P.S. Palanwa Block - Raxaul District - East Champaran through its Secretary namely Md. Heshamuddin, Son of Late Dost Mohammad, resident of village - Katahari, P.O. & P.S. Sathi, District - West Champaran
 2. Md. Imran, Son of Ali Hassan Ansari, resident of village - Maswas, P.O. Sughan Bhawanipur, P.S. Sikta, District - West Champaran
 3. Irfan Alam, Son of SK. Izhar, resident of village - Ram Parsauna, P.O. Daniyal Parsauna, P.S. Sathi, District - West Champaran
 4. Fazlur Rahman, Son of Daroga Gadi, resident of village & P.O. Gad Bahuwari, P.S. Palanwa, District - East Champaran
 5. Shamim Alam, Son of Fazal Karim Ansari, resident of village & P.O. Gad Bahuwari, P.S. Palanwa, District - East Champaran
 6. Arshad Alam, Son of Md. Islam, resident of village - Katahari, P.O. & P.S. Sathi, District - West Champaran
 7. Jaibun Nesa, Wife of Md. Heyat, resident of village & P.O. Gad Bahuwari, P.S. Palanwa, District - East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar through the, Chief Secretary Government of Bihar, Patna
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna
3. The Special Director, Secondary Education Government of Bihar, Patna
4. The District Education Officer, East Champaran at Motihari
5. The District Programme officer (Establishment), East Champaran at Motihari
6. The Bihar State Madarsa Education Board, Patna through its Secretary, 5 Vidyapati Marg, Patna 800001
7. The Chairman Bihar State Madarsa Education Board, Patna 5 Vidyapati Marg Patna 800001
8. The Secretary Bihar State Madarsa Education Board, Patna Vidyapati Marg, Patna 800001

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Md. Anis Akhtar
		Mr. Arif Daula Siddiquie
For the Board		Mr. Md. Rashid Alam
For the State		Mr. Madanjeet Singh-GP-20

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

6 23-04-2018

Madarsa Jannatul Banat at P.O.- Gad Bahuwari in



Raxaul Block of the district of East Champaran, was established by local minority people of the locality for imparting education to the girls of that locality. The Madarsa has been granted affiliation by the Bihar State Madarsa Education Board, Patna, with effect from 01.01.1987 upto *Fauqania* standard. Initially, the payments of salary to the teaching and non-teaching staff of the Madarsa were being made by the Managing Committee, constituted by the local minority people. Subsequently, the State Government came out with a policy to provide grant-in-aid to Madarsas, and under the said policy, an inquiry was entrusted to the District Education Officer, East Champaran, Motihari, who after making spot verification, is said to have submitted a report, recommending for bringing the Madarsa under the purview of the said policy of the State Government, in first phase, as it satisfied the requisite terms and conditions.

2. The inquiry report was submitted in 1999, but for the reasons unknown, the matter of allowing grant-in-aid remained pending till April, 2012 when the Secretary, Bihar State Madarsa Education Board, Patna, communicated to the District Education Officer, East Champaran, Motihari through a letter dated 09.04.2012 that though the Madarsa, in question,



was located in East Champaran, it was wrongly placed in the list of West Champaran. The District Education Officer was requested through the said letter dated 09.04.2012 to make spot verification and send his report. The letter has been brought on record by way of Annexure-3 to the writ application. From the said latter, it transpires that a list of 2459 Madarsas was prepared for making facility of grants-in-aid to them. In response to the said letter dated 09.04.2012, the District Education Officer, East Champaran had furnished the details, after the requisite inquiry and had submitted his report, through a letter dated 27.04.2012 to the Secretary of the Bihar State Madarsa Education Board. In the said report, he had pointed out that he had recommended for approval of Madarsa upto to *Fauqania* level since it fulfilled the requisite condition. The Education Department, Govt. of Bihar, through its resolution dated 04.09.2015, has decided to allow grants-in-aid in favour of 609 Madarsas, out of which 590 upto to *Wastania* standard and 19 upto *Fauqania* standard. In terms of the said resolution, the teaching and non-teaching employees, working against sanctioned posts have been made entitled to prescribed salary from 01.09.2015.

3. The Madarsa in question is one among them



which has been given the status of aided Madarsa but upto *Wastania* standard only and not upto *Fauqania*.

4. This writ application has been filed by the Managing Committee of the said Madarsa and others, raising a grievance that since there was a recommendation by the District Education Officer for approval of grants-in-aid upto *Fauqania* level/standard, there was no rational basis for the Education Department to have allowed grants-in-aid up to *Wastania* level only which has the consequence of less number of teaching and non-teaching employees of the Madarsa getting benefits of the grant-in-aid. In that background, the petitioners seek a direction to the respondents to shift approval of the said Madarsa from *Wastania* standard to *Fauqania* standard.

5. The facts which have been asserted in the writ application have not been disputed in the counter affidavit filed on behalf of the State of Bihar, sworn by the Deputy Director, Secondary Education, Govt. of Bihar. The only statement which has been made in the counter affidavit to oppose the relief sought for in the writ application, is that the grant-in-aid is not a matter of right, rather it is a prerogative of the State Government. It is accordingly the case of the State



Government that it has decided to provide grant-in-aid to the Madrasa in question for the staffing strength upto *Wastania* standard only. The averments made in paragraphs 5 and 6 of the counter affidavit, which are the only facts available on record to oppose the relief sought for in the writ application, are being reproduced hereinbelow:-

“5. That from the perusal of the writ application it appears that the present writ application is misconceived on the sole ground that the grant in aid is not a matter of right and specially when the State Government in view of the policy decision has decided to approve the Madarsa Jannatul Banat at P.O. Gad Bahuwari P.S. Palanwa, Block-Raxaul, District-East Champaran up to Wastania standard for the purpose of the grant in aid, is not an illegal decision neither it is a discriminative decision because it is a prerogative of the Sate Government

6. That at present the Government has already decided to provide the grant in aid to the madarsa in question for the staffing strength upto to Wastania standard, hence the present wit application is totally misconceived and as such deserves to be dismissed being devoid of merit.”



6. Mr. Anis Akhtar, learned counsel, appearing on behalf of the petitioners, has submitted that there does not appear to be any rational basis why the Government has made available the benefits of grants-in-aid in some of the Madarsas upto to *Fauqania* level whereas in case of others, including the petitioners, the approval is upto *Wastania* level only. He contends that even the counter affidavit does not disclose any reason for differential treatment and, therefore, the Government's decision, granting the Madarsa approval for the purpose of grant-in-aid only upto *Wastania* standard is discriminatory and violative of Article 14 of the Constitution of India. He has submitted that even the discretion has to be exercised by a State within the meaning of Article 12 of the Constitution of India in fair and transparent manner and exercise of discretion cannot be unfettered. A discretion exercised unreasonably without any rational basis, requires interference by this Court by exercising power of judicial review under Article 226 of the Constitution of India, he submits.

7. Mr. Md. Rashid Alam, learned counsel for the Board and Mr. Madanjeet Singh, learned G.P.-20, appearing for the State have, on the other hand, defended the impugned



order on the ground that no institution, much less a Madarsa, can claim grant-in-aid as a matter of right and since the petitioners do not have any right to claim grant-in-aid upto to *Fauqania* standard, this writ application deserves to be dismissed.

8. As has already been noticed, there is no explicable reason given in the counter affidavit to justify the decision of the State-respondents to approve the grant-in-aid upto *Wastania* level only when there was a recommendation for upto *Fauqania* standard. There is no explanation as to why approval in respect of some of the Madarsas is upto to *Fauqania* standard whereas approval in case of the petitioners is upto *Wastania* level only.

9. It is true that an institution cannot claim, as a matter of right, grant-in-aid from the State. There is neither any fundamental or legal right of any institution to receive grant-in-aid. But that is not the question in the present case. The petitioners are asserting infringement of fundamental right under Article 14 of the Constitutions of India on the ground of differential treatment; on the ground of unreasonableness on the part of the State; and on the ground of unfettered and unguided exercise of discretion by the State.



10. I find merit in the submissions made on behalf of the petitioners that there is no explanation on record put forth by the State-respondents why approval in respect of the Madarsa in question is only upto *Wastania* standard. The plea that since it was the discretion of the State Government, it decided to approve grant-in-aid upto to *Wastania* level only, cannot be accepted by this Court. An unfettered discretion has been held to be a sworn enemy of constitutional guarantee against discrimination. In case of **Bharat Heavy Electricals Ltd. vs. M. Chandrashekhar Reddey & Ors.** reported in **(2005) 2 SCC 481**, the Supreme Court has held that no authority, be it administrative or judicial, has any power to exercise discretion vested in it unless the same is based on justifiable ground, supported by acceptable materials and reasons therefor. Reference may also be made in this regard to the Supreme Court decision in case of **1987 (Supp) SCC 543 (Vellore Educational Trust vs. State of Andhra Pradesh & Ors.)** It is a well established principle by now that any differential government action which is not based on any logic or reason is discriminatory so as to hit Article 14 of the Constitution of India. All government actions must withstand the test of reasonableness and fairness and in the event they



are lacking, the law courts would be well within their jurisdiction to deal with it aptly, because reasonableness and fairness is the heart and soul of Article 14 of the Constitution of India [See **Anil Ratan Sarkar & Ors. vs. Hirak Ghosh & Ors.**, reported in (2002) 4 SCC 21, and **Delhi Development Authority & Anr. vs. Joint Action Committee, Allottee of SFS Flats & Ors.** reported in (2008) 2 SCC 672].

11. Having noticed the facts which are admitted and submissions advanced on behalf of the parties, I find merit in this writ application inasmuch there is absence of any ground for differential treatment meted out to the Madarsa, in question, while approving the said Madarsa upto *Wastania* standard only. The plea of the State Government based only on the discretion available is not at all acceptable and does not justify their action.

12. The writ application is accordingly allowed with the direction to the respondents, particularly respondent no.2, to ensure that the case of the petitioners for grant of approval upto to *Fauqania* standard is considered afresh, based on the materials available. If the respondents are of the view that the Madarsa cannot be granted approval upto *Wastania* level, the same will have to be done by passing a reasoned and speaking



order by the competent authority. In that case, the competent authority will also be required to record the reasons for not granting approval to the Madarsa upto *Fauqania* level while allowing some other Madarsas such approval upto *Fauqania* level, as has been asserted in the writ application.

13. The entire exercise must be completed within six months from the date of receipt/production of a copy of this order.

14. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

HR/-

U			
---	--	--	--

