

Item No.2

22.12.2021
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(via video conference)

WPA 20654 of 2021
Managing Committee, Enayetpur Rameswar Siddiquia
Ashrafia Sr. Madrasah & Anr.
v.
The State of West Bengal & Ors.

Mr. Soumen Dutta
Mr. Subhadeep Chatterjee
... for the petitioners.

Mr. Pinaki Dhole
Mr. Sayan Ganguly
... for the State respondents.

Mr. Nadeem Sulaiman
Ms. Sunita Guha
... for the Madrasah Board.

The petitioners are aggrieved by the appointment of Administrator by the Secretary of the West Bengal Board of Madrasah Education in respect of Enayetpur Rameswarpur Siddiquia Ashrafia Senior Madrasah.

According to the petitioners, due to the interim order passed in the pending writ petition being WP 11856(W) of 2017 (Md. Ruhulla Gazi vs. State & Ors.), the Administrator ought not to have been appointed.

The petitioner relies upon an order dated May 4, 2017 passed in WP 2062(W) of 2016 + CAN 3811 of 2017 (Mirza Abdul Rahim Beig v. State of West Bengal & Ors.) wherein a coordinate Bench of this Court was pleased to

pass an interim order not to take further steps regarding reconstitution of the Managing Committee of the respondent Madrasah Board.

According to the provisions of law, the term of the Managing Committee is for a period of three years from the date of taking over charges after completion of constitution or reconstitution of the Managing Committee or from the date of expiry of the term of the previous Committee whichever is earlier. On expiry of the term, the Committee shall cease to function.

It is the categorical submission of the petitioners that the Managing Committee is functioning since 2016. The petitioners under any stretch of imagination cannot be heard to submit that the Managing Committee, which was constituted in 2016, shall continue till the disposal of the earlier writ petition.

The earlier writ petition was kept pending in view of the pendency of the Special Leave Petition before the Hon'ble Supreme Court wherein the validity of the Notification dated October 12, 2007 was under challenge.

The Hon'ble Supreme Court by an order dated January 6, 2020 passed in the matter of Sk. Mohd. Rafique vs. Managing Committee, Contai Rahamania High Madrasah & Ors., reported in (2020) 6 SCC 689

was pleased to uphold the vires of the West Bengal Madrasah Service Commission Act, 2007.

The primary ground for challenge of the Act was that the minority status of the Madrasahs could not have been interfered with by the State Government. The Hon'ble Supreme Court was pleased to hold that the Act was intra vires.

The writ petition of Md. Ruhulla Gazi which is allegedly pending before this Court with an interim order subsisting therein in WP 11856(W) of 2017 is on the same grounds that have been pleaded for declaring the Management of Recognized Non-Government Madrasah (Aided & Unaided) Rules, 2002 as ultra vires.

As the Act in question has been held to be intra vires by the Hon'ble Supreme Court including the power of the State to frame Rules, accordingly, the interim order which the petitioners rely upon will not stand in the way of the West Bengal Board of Madrasah Education to take steps for reconstitution of the Managing Committee.

The Managing Committee of the Madrasah consists of several office bearers. There are guardian members, the Panchayat nominee, nominee from the State Government who may not be available for such a long stretch of time. If the ward of a guardian member

passes out from the Madrasah, then the guardian ceases to be a member of the Managing Committee.

A Managing Committee without its members becomes non-functional and it is very difficult for the Madrasah to run without a validly constituted Managing Committee.

As nearly five years have passed from the date the earlier Managing Committee took over charge, accordingly, no interference is called for in the action of the Board of Madrasah Education for appointing Administrator for the purpose of reconstituting the Managing Committee of the Madrasah.

The writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)