

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.216 of 2022
In
Civil Writ Jurisdiction Case No.165 of 2022

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Managing Committee of Madarsa Madarstul Banat Azizul Uloom Madarsa No. 609/467 at Jamwara, P.O.-Pothraita, P.S. Sheikhpura, District-Sheikhpura through its Secretary Syed Sadique Hussain age 69 Years (M) Son of Late S. Ashique Hussain, Resident of Village-Jambara, Post Pathraitia, P.S. Sheikhpura, District-Sheikhpura. At Present Resident of Magistrate Colony, Road No. 2B, P.O. Ashiana Nagar, P.S. Rajiv Nagar, District-Patna.

... .. Appellant/s

Versus

1. The State of Bihar through Additional Chief Secretary Education Department, Bihar, Patna.
2. The Bihar State Madarsa Education Board, Bihar, Patna through Chairman, Bihar State Madarsa Education Board, Patna Apex Tower Haroon Nagar, Sector-2, Phulwari Sharif, Patna-801505.
3. Chairman, Bihar State Madarsa Education Board, Patna Apex Tower Haroon Nagar, Sector-2, Phulwari Sharif, Patna-801505.
4. Secretary, Bihar State Madarsa Education Board, Patna Apex Tower Haroon Nagar, Sector-2, Phulwari Sharif, Patna-801505.
5. The District education Officer, Sheikhpura.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Helal Ahmad, Adv.
For the Respondent/s : Mr. Ajay Kr. Rastogi (AAG10)
For the Madarsa Board : Mr. Aslam Ansari, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 28-11-2022

Learned counsel for the appellant presses I.A.

No. 01 of 2022, seeking condonation of delay of four days
in preferring this appeal.



For the reasons stated in this application, the delay is condoned.

The application stands allowed.

Heard Mr. Helal Ahmad, learned advocate for the appellant/Managing Committee of the Madarsa (Madarsatul Banat Azizul Uloom) and Mr. Md. Aslam Ansari for the Bihar State Madarsa Education Board.

The affiliation granted to the Madarsa in question was withdrawn by the Chairman of the Board and not by the Board.

The learned Single Judge, while hearing the challenge, found that any decision by the Board or the Chairman is appealable before the Special Secretary cum Appellate Authority within a period of sixty days. Since this statutory provision was not exhausted, the challenge was not sustained.

Apart from this, it has been submitted that the learned Single Judge based his decision on an ancillary issue that an opportunity of hearing had been given to the



Secretary of the Management Committee before taking a decision and, therefore, there was no cause for the appellant to grieve when the affiliation was withdrawn in view of the findings of the Chairman that no teaching work was going on in the Madarsa for the last two years.

Mr. Helal Ahmed, learned counsel for the appellant has submitted that the power to withdraw affiliation rests with the Board as would appear from Section 7 of the Bihar State Madarsa Board Rules, 1981.

The Chairman of the Board is not synonymous with the Board and any decision taken in his personal capacity as Chairman would be non-est in the eyes of law. For this reason, there was no necessity for the appellant to have preferred an appeal before the Special Secretary cum Appellate Authority regardless of the provision contained in Section 28 of the Rules, which provides a forum of appeal against the order passed by the Board or the Chairman of the Board. The reason for saying so is that there are certain powers which can be exercised by the Chairman of



the Board in his individual capacity and under exceptional circumstances but, such decisions are to be ratified by the Board in its next meeting.

Nowhere in the Rules is there any exemption of the requirement of such decisions like withdrawal of affiliation or grant of affiliation, to be made by the Board only and not by the Chairman.

Apart from this, it has been submitted that the learned Single Judge did not advert itself to the issue that once the affiliation to the Madarsa was granted by the Board, it could only have been withdrawn by the Board and not by the Chairman.

There is nothing on record to indicate that such decision of the Chairman was ratified by the Board in accordance with Section 7(4) of the 1981 Rules.

It is axiomatic that when a procedure has been provided in the Rules, that must be followed.

Considering the aforementioned arguments on behalf of the appellant, we set aside the order passed by the



learned Single Judge and direct the Madarsa Board to take an appropriate decision afresh, for which notice shall be given to the appellant within a period of thirty days from the date of receipt/production of a copy of this order and after hearing all the concerned parties, a decision shall be taken by the Board regarding the Madarsa in question within a further period of sixty days.

The appeal stands allowed to the extent indicated above.

(Ashutosh Kumar, J)

(Nawneet Kumar Pandey, J)

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