

SL- 26.07.2022
01 Ct.15
rkd

W.P.A. 2830 of 2018

Golam Rabbani & Ors.

-vs-

The State of West Bengal & Ors.

Mr. Sardar Amjad Ali,
Mr. Sujit Bhunia

....for the petitioners.

Mr. Jayanta Kumar Das,
Mr. Gourav Das,
Ms. Madhumati Das

....for the respondent no.6.

Mr. Prahlad Chandra Ghosh,
Mr. Subir Hazra

....for the respondent nos. 7 & 8.

Mr. Tapan Kumar Mukherjee,
Ms. Saheli Mukherjee

....for the State.

Mr. Nadeem Sulaiman,

....for the Madrasah Board.

The writ petition has been presented, *inter alia*, challenging the decision of the President, being the respondent no.3, of the West Bengal Board of Madrasah Education (for short “Board”) dated 29th January, 2018 whereby the election for reconstitution of the Managing Committee of Talbangua High Madrasah (HS), District-Malda (for short the “said Madrasah”) was declared null and void and directing the concerned District Inspector of Schools (SE), Malda to appoint an

administrator in the said Madrasah for completing the election for reconstitution of the Managing Committee within six months from date.

Sardar Amjad Ali, learned senior advocate appears on behalf of the petitioners who are claiming to be elected members based on the election programme prepared by the Headmaster of the said Madrasah in Form 3(MC) which is at page 48 of the writ petition. It has been submitted upon drawing attention of this Court to Memo dated 16th December, 2016 issued by the Secretary of the Board that in terms of the conditions attached to the said general Circular dated 16th December, 2016 the election programme was framed and approach was made to the Board for extending the life of the Managing Committee.

Mr. Ali has heavily relied upon 3rd paragraph of the said general Circular dated 16th December, 2016 whereby the life of the Managing Committees/Adhoc Committees/Administrators of Non-Government Recognized Madrasah was extended up to 15th May, 2017 subject to certain conditions. It has been provided in the said general Circular that in case life of the Managing Committee was valid up to 31st December, 2016

but the election in guardian category is not held within the period, authority may pray for extension of term with proper proposal and programme of election after 15th March, 2017 as per rule. Based on such condition attached to the said general Circular, it has been submitted on behalf of the petitioners that since the petitioners' Madrasah is coming within the purview of such condition as normal life of the Managing Committee of the said Madrasah was up to 31st December, 2016 which got extended up to 15th May, 2017. In compliance of such condition by adopting resolution dated 3rd July, 2017 the Managing Committee of the said Madrasah decided to hold election and also decided to approach the Board with the prayer seeking extension of the life of Managing Committee and accordingly letter was sent on 27th July, 2017 to the Board in this regard.

It is the contention of the petitioners that such action on the part of the said Madrasah Authority was in terms of the aforementioned condition of the general Circular of the Board, accordingly Board ought to have extended the life of the Managing Committee of the said Madrasah and permitted the said Madrasah Authority to hold

election as per the proposal forwarded to the Board.

Based on such submission on behalf of the petitioners, attempt has been made to impress upon this Court that the decision of the respondent no.3 to declare the election held on 3rd December, 2017 as null and void is erroneous. It is submitted that in one hand Board by general Circular dated 16th December, 2016 on extending the life of the Managing Committee up to 15th May, 2017 permitted the Managing Committee to forward proposal for holding election as well as prayer for extension of life of the Managing Committee after 15th March, 2017 but on such approach being made vide letter dated 27th July, 2017 the same was not approved and ultimately by passing the impugned order dated 29th January, 2018 the respondent no.3 disapproved such election conducted by the said Madrasah.

The next limb of such submission advanced on behalf of the petitioners is on supplementary affidavit affirmed by the petitioners wherefrom it appears that the District Inspector of Schools by issuing Memo dated 8th February, 2018 appointed Administrator in the said Madrasah pursuant to the direction of the respondent no.3 as contained in

his decision dated 29th January, 2018. It further appears that the Administrator being the Sub-Inspector of Schools, Kariali Circle, Malda in terms of the Memo dated 8th February, 2018 issued by the concerned District Inspector of Schools assumed charge of 16th February, 2018 as the Administrator of the said Madrasah.

That notice of this Court has also been drawn to one Memo dated 6th April, 2018 issued by the Secretary of the Board whereby decision was taken by the Board to postpone the election for reconstitution of the Managing Committee of Madrasahs in view of declaration of panchayat election in West Bengal and on extension of the term of the Managing Committee thereof. According to the petitioners such decision of the Board as emanates from 6th April, 2018 memorandum confers right upon the said Madrasah to function on extension of life of the Managing Committee as well as to hold election accordingly.

Lastly, it has been submitted upon placing reliance on paragraph 11 of the writ petition that in similar situation another Madrasah obtained approval of election programme for reconstitution on extension of its term.

The State respondents, respondent nos. 7 & 8 as well as the Headmaster of the said Madrasah being respondent no.6 are represented by the learned advocates.

The Board is also represented by Mr. Sulaiman, learned advocate.

The learned advocates representing the aforementioned respective respondents have made submissions opposing the contention of the petitioners excepting respondent no.6 who has defended the election programme.

On behalf of the private respondent nos.7 & 8, it has been submitted that they are the guardians of the said Madrasah who threw challenge to the election for reconstitution of the said Madrasah held on 3rd December, 2017 and approached this Hon'ble Court by presenting writ petition being WP 29075 (W) of 2017 (Md. Tojibur Rahaman & Anr. -vs- District Primary School Council & Ors.) which was disposed of vide order dated 18th December, 2017 and a coordinate Bench directed the respondent no.3 to take decision on the fate of the election held on 3rd December, 2017.

It has been submitted jointly on behalf of

the respondents that pursuant to such decision of the coordinate Bench dated 18th December, 2017 the respondent no.3 took decision dated 29th January, 2018 declaring the said election null and void and directed the authorities to appoint Administrator in the said Madrasah.

It is also the common contention on behalf of the respondents that normal life of the Managing Committee expired on 31st December, 2016 and vide general Circular dated 16th December, 2016 the life of the Managing Committee of the said Madrasah was extended up to 15th May, 2017 whereas on behalf of the said Madrasah approach was made to the authorities of the Board on 27th July, 2017 seeking extension of life of the Madrasah as well as approval of the election programme framed by the Headmaster.

On indicating these facts, it has been submitted that before the date of making application to the Board on 27th July, 2017 by the said Madrasah the life of the Managing Committee expired therefore, that Managing Committee had no authority to approach the Board seeking extension of its life and approval of election programme which was framed after expiry of the life. It has been

submitted on behalf of the respondents that there is no anomaly in the decision taken by the respondent no.3 on the fate of the election held on 3rd December, 2017.

However, the Headmaster of the said Madrasah being the respondent no.6 being representing by Mr. Das, learned advocate has supported the election programme prepared for reconstitution of the Managing Committee in Form 3 (MC) pursuant to the resolution adopted by the Managing Committee of the said Madrasah on 3rd July, 2017 and based on which the letter dated 27th July, 2017 was forwarded to the Board seeking extension of the life of the said Madrasah.

This Court has heard the learned advocates representing the parties and perused the relevant materials available on record.

As per Rule 13 of the Management of Recognized Non-Government Madrasah (Aided and unaided), Rules 2002, (hereinafter referred to as the said Rules of 2002) the term of the Managing Committee is of three years subject to the approval of the Board. For better understanding, the said Rule 13 is quoted below:

“ 13. Term of Committee-

- (i) *Subject to the approval by the Board, the term of the Committee shall be for three years from the date of taking over of the charge after completion of constitution or reconstitution of the Committee or from the date of expiry of the term of the previous Committee whichever is later.*
- (ii) *On expiry of the term, the committee shall cease to function.*
- (iii) *The Board, on an application for extension of the term of the Committee, may extend the term by a period not exceeding one year if in its opinion the reason furnished by the Committee is satisfactory.*
- (iv) *The Board may, by order, further extend the term of the committee by a period not exceeding six months at a time. The total period however, shall not exceed two years. In exceptional circumstances, the term may be extended for such period as the Board may deem fit.”*

In the present case the normal life of the Managing Committee in terms of the said Rule 13 stood expired on 31st December, 2016. However, the said Madrasah got the benefit of the general Circular dated 16th December, 2016 whereby

subject to certain conditions life of the Managing Committee was extended up to 15th May, 2017. In order to get the benefit of such general Circular dated 16th December, 2016 as per appreciation of this Court said Madrasah Authority ought to have approached the Board for extension of life beyond 15th May, 2017 and approval of proposal for holding election for reconstitution of Managing Committee before 15th May, 2017 which has not been done in the present case.

It is clear as crystal from mere reading of this general Circular dated 16th December, 2016 that the life of the Managing Committee was extended up to 15th May, 2017 and not beyond that. Therefore, the Madrasah Authority ought not to have adopted resolution on 3rd July, 2017 and made application to the Board for extension of life of the Managing Committee on 27th July, 2017 since indisputably in the month of July, 2017 the Managing Committee had no life. Therefore, from the above narration of facts, it transpires that after 15th May, 2017 the Managing Committee of the said Madrasah became defunct and it had no authority to adopt resolution on 3rd July, 2017 and subsequently, approach the Board by letter dated

27th July, 2017.

In this regard reliance has been placed on the judgment of a coordinate Bench, reported in **1972 CLJ page 148 (Saktipada Karmakar -vs- West Bengal Board of Secondary Education & Ors.)**. In the said judgment the coordinate Bench has succinctly held that term of the Managing Committee of a school having been expired, the said Committee was not entitled to function as such and any act purported to be done by such Managing Committee is ineffectual and void. Borrowing inspiration from **Saktipada Karmakar (supra)** it can safely be held that the election held on 3rd December, 2017 have no sanctity since such election was held under the aegis of a defunct Managing Committee and the election programme was framed in the meeting of the said Managing Committee by adopting resolution on 3rd July, 2017, admittedly on which date the said Managing Committee did not have life.

In aforesaid backdrop, this Court is tasked to examine the validity and legality of the order of the respondent no.3 dated 29th January, 2018. The respondent no.3 while adjudicating the issue whether the said Managing Committee could

conduct such election came to the finding that after 15th May, 2017 the Managing Committee had no life therefore the election held on 3rd December, 2017 cannot be approved. Since the statutory life of the Managing Committee expired in the year 2016 and subsequently by virtue of general Circular dated 16th December, 2016 the life of the said Committee was extended up to 15th May, 2017; by no stretch of imagination it can be presumed that said Managing Committee was authorised to take decision and hold election at the time when it became defunct.

Accordingly, this Court does not find any flaw in the decision of the respondent no.3 dated 29th January, 2018.

Though reliance has been placed on one Memo dated 6th April, 2018 issued by the Board for postponement of election for reconstitution of Managing Committee in view of declaration of panchayat election in West Bengal but this Court fails to understand how such memorandum dated 6th April, 2018 comes in aid of the petitioners keeping view of the fact that the life of the Managing Committee expired after 16th May, 2017.

A point of discrimination has been raised

on behalf of the petitioners by referring to an instance of another similarly circumstanced Madrasah wherein it has been decided by the concerned respondent authorities to grant extension of tenure of Managing Committee for holding election for reconstitution, upon placing reliance on the averment made in paragraph 11 of the writ petition. It is trite law that if anything has been done relating to extension of tenure as well as approval of election as decided by the authorities in favour of another Madrasah, *ipso facto* such acts of the authorities do not confer any right upon the present petitioners to get the same treatment if the statutory provision does not permit such benefit to be extended in favour of the petitioners.

In view of aforesaid discussion, this Court finds that the decision of the respondent no.3 as contained in order dated 29th January, 2018 is not contrary to the statutory provisions as well as the general Circular of the Board dated 16th December, 2016 and therefore, the same ought not to be interfered with.

Accordingly, the writ petition stands dismissed.

In view of dismissal of this writ petition, the interim order passed by a coordinate Bench on earlier occasion on this writ petition stands vacated.

It appears from the submissions made on behalf of the Headmaster of the said Madrasah that Sub-Inspector of Schools, Kariali Circle, Malda, though was appointed as an Administrator of the said Madrasah but in terms of the said interim order passed by this Court on earlier occasion, has only been permitted to act as drawing and disbursing officer.

In view of the order passed by this Court today the Sub-Inspector of Schools, Kariali Circle, Malda is permitted to function as Administrator of the said Madrasah till the reconstitution of the Managing Committee of the School.

The Administrator is directed to hold the election and complete the process of reconstitution in accordance with law within the period of four months from date.

After reconstitution of the Managing Committee of the said Madrasah, said Administrator is directed to report to the President

of the Board on such reconstitution within 15 days thereafter.

However, There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)