

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 1976 of 2023

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Madrasa Anjuman Islamia, Motihari (Madrasa No. 66), District - East Champaran, through its Secretary Dr. Md. Perwez Aziz, aged about 68 years, Male, Son of Late Dr. Md. Azizur Rahman, resident of 291 A, Bhawanipur, Zirat, Post Office and Police Station - Motihari, District - East Champaran (Motihari).

... .. Petitioner/s

Versus

1. The Bihar State Madrasa Education Board Patna through the Chairman.
2. The Secretary, Bihar State Madrasa Education Board, Patna.
3. The District Education Officer, East Champaran, District - East Champaran.
4. The Special Secretary cum Appellate Tribunal, Education Department, Government of Bihar, Patna.
5. Mohibbul Haque, son of Inamul Haque, resident of Ward No. 24, near Bazar Samiti, Janpul Chowk, P.O. and P.S. Motihari, District - East Champaran, the Ex-secretary, Madrasa Anjuman Islamia, Motihari (Madrasa No. 66), District - East Champaran (Motihari).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Syed Masleh Uddin Ashraf, Advocate
For the Madarsa Board	:	Mr.Shahzad Hassan Khan, Advocate
		Md. Aslam Ansari, Advocate
		Mr.Sanjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

3 17-02-2023 The petitioner assails the composite order passed by the Special Secretary-cum-Appellate Authority dated 19.12.2022.

2. Learned counsel submits that the Managing Committee was performing its functions in terms of an order passed by the Chairman dated 16.07.2021 and there was no occasion for the Special Secretary to make observations relating to the order dated 16.07.2021, while examining a case of



transfer of an individual appellant. The petitioner-committee has been stopped from functioning on the basis of observations made in the order dated 19.12.2022.

3. On perusal of the record, this Court finds that the Special Secretary-cum-Appellate Authority had passed order dated 01st April, 2021 in Appeal No.20/2020, filed by one Mahibul Haque against the Bihar Madarsa Board, holding that both the Managing Committees claiming control on the Madarsa would be restrained from functioning.

4. The petitioner admittedly did not challenge the order dated 01.04.2021 before this Court or any other authority, however, it seems that the Chairman, Madarsa Education Board, vide order dated 16th July, 2021 held that the petitioner-committee could be allowed to function.

5. It is apparent that a subordinate authority i.e. Chairman has changed the order of the appellate authority and set it at naught, which could not have been done. The order passed by the Chairman, Madarsa Education Board dated 16.07.2021 has been noticed by the Special Secretary while passing the impugned order dated 19.12.2022 and it has been observed that the Chairman could not have set aside or modified order of the appellate authority.



6. In the opinion of this Court, the order passed by the Chairman dated 16th July, 2021 is *non est* as it seeks to set aside the order passed by its Appellate authority. In view thereof, the order is to be held *void ab initio* and the Special Secretary while passing order dated 19.12.2022 has rightly made observations that the petitioner-committee could not have been functioning in the teeth of the order passed earlier by order dated 1.4.2021.

7. The writ petition is found to be wholly misconceived and the same is accordingly dismissed.

(Sanjeev Prakash Sharma, J)

Chn/-
Item No.9

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