

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7854 of 2023

Md. Amir Hussain, Son of Late Abdul Khalique, Resident of Bishanpur Tola, Dhoomgarh, Police Station- Korha, District- Katihar, cum The Secretary of Managing Committee of Madrsa Faizul Ghorba at Dhumngarh, Semapur, Katihar, (Madarsa No. 656)

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Special Secretary, Education Department Cum-Appellate Authority, Government of Bihar, Patna.
3. The Bihar State Madarsa Education Board, Patna through its Chairman, Haroon Nagar, Sector-II, Phulwari Sharif, Patna.
4. The Chairman of Bihar State Madarsa Education Board, Haroon Nagar, Sector-II, Phulwari Sharif, Patna.
5. The Secretary of Bihar State Madarsa Education Board, Haroon Nagar, Sector-II, Phulwari Sharif, Patna.
6. The District Education Officer, Katihar.
7. The District Program Officer, Katihar.
8. The Block Education Officer, Korha Block, District-Katihar.
9. Head Maulvi of Madrsa Faizul Ghorba At Dhumngarh, Semapur, Katihar (Madarsa No. 656).
10. Md. Najmul Hooda, Son of Late Md. Mohsin Azad, Dismissed Head Maulvi of Madarsa, Resident of Bishanpur Tola, Dhoomgarh, Police Station- Korha, District- Katihar.
11. Abdur Rahman, Son of Afazuddin, R/o vill. Bandh Tola, Bishanpur, P.S. Korha, District Katihar.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Md. Helal Ahmad, Advocate
For the Respondent/s	:	Mr. Kameshwar Kumar, GP-17
For the Board	:	Mr. Shahzad Hassan Khan, Advocate
		Mr. Md. Aslam Ansari, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 03-07-2023 Heard learned counsel for the petitioner and learned counsel for the Bihar State Madarsa Education Board (hereinafter referred to as the 'Board') as also learned counsel for the State.



2. Petitioner in this case is aggrieved by and dissatisfied with the communication as contained in Letter No. 82 dated 07.03.2023 issued by the Secretary of the Board by which the petitioner has been called upon to constitute the Managing Committee of the Madarsa within a period of six months in consonance with the Resolution No. 396 dated 19.04.2022 Education Department, Government of Bihar and make available the papers for approval.

3. Learned counsel for the petitioner submits that earlier a Managing Committee of the Madarsa in question was constituted on 09.07.2019 but the same was challenged in Appeal No. 43 of 2019. The said appeal was allowed and the Madarsa was directed to reconstitute a Managing Committee and the Chairman of the Board passed a fresh order on 29.01.2022 by which he granted approval to the same Managing Committee. A copy of the order contained in Memo No. 723 dated 29.01.2022 has been brought on record as Annexure '5' to the writ application.

4. This Court has been informed that Annexure '5' is under challenge in Appeal No. 72 of 2022 before the Special Secretary-cum-Appellate Authority, Education Department, Government of Bihar. There is no interim order in the said



appeal, however, the petitioner has been communicated vide Letter dated 07.03.2023 to constitute a Managing Committee within a period of six months and submit the papers.

5. Learned counsel for the petitioner submits that a Managing Committee of the Madarsa remains in existence for a period of three years from the date of approval of the same by the Board. In this regard, he has relied upon Rule 6 of the Bihar State Non-Government Recognized Aided Madarsa Managing Committee Constitution Rules, 2022 (hereinafter referred to as the 'Rules, 2022'). It is submitted that the Rule clearly provides that the Managing Committee constituted properly and approved by the Board shall not be dissolved before next three years.

6. His submission is that in fact the matter relating to approval of the Managing Committee has not been placed before the Board till date, therefore, the Managing Committee which was constituted on 09.07.2019 and continued by virtue of the order dated 29.01.2022 is yet to get approval of the Board. In such circumstance, the submission is that a period of three years cannot be counted with effect from 09.07.2019.

7. On the other hand, Mr. Shahzad Hassan Khan, learned counsel for the Board has, however, drawn the attention



of this Court towards the order dated 29.01.2022 as contained in Annexure '5' to the writ application. It is submitted that on a bare perusal of Annexure '5', it would appear that the Managing Committee constituted on 09.07.2019 has got approval of the Chairman. By virtue of this order as contained in Annexure '5', the Managing Committee remained in existence and functioned as a validly constituted committee for a period of three years.

8. Mr. Shahzad Hassan Khan, learned counsel has placed before this Court a copy of the judgment of the Hon'ble Division Bench of this Court in **LPA No. 346 of 2016** (The Bihar State Madarsa Education Board and Ors. Vs. The Managing Committee Madarsa Quasimululoom and Ors.) to submit that the Hon'ble Division Bench of this Court has repeatedly held that the approval of the constitution of the Managing Committee by the Chairman is valid and such approvals have been approved by judicial pronouncements.

9. Having heard learned counsel for the petitioner and the Board as also on perusal of the records, this Court is of the considered opinion that the Managing Committee constituted on 09.07.2019 having remained in existence since its constitution, enjoying the status of the Managing Committee cannot be allowed to take a plea at this stage that its constitution is yet to



be approved by the Board, therefore, the three years tenure cannot be counted with effect from 09.07.2019. Such plea would not be available to the petitioner for further reason that in the entire writ application, the petitioner has not made any averment that after 09.07.2019 or 29.01.2022, the petitioner ever approached the Board seeking approval of the decision of the Chairman. Moreover, the petitioner is contesting the Appeal No. 72 of 2022 brought by the other side against the order of approval dated 29.01.2022 (Annexure '5').

10. For all these reasons, this Court finds no substance in the submission of learned counsel for the petitioner that the Board's approval having not been received, the Managing Committee constituted on 09.07.2019 is yet to get the approval of the Board, so it cannot be said to have completed its tenure.

11. The relevant parts of the judgment of the Hon'ble Division Bench in LPA No. 346 of 2016 are quoted hereunder for a ready reference:-

“In the matter of action taken for approval of a Managing Committee of a Madarsa, the learned Writ Court has held that the decision taken by the Chairman giving recognition to a Managing Committee of the Madarsa is beyond his power, this power can be exercised only by the Board and the Chairman cannot be treated as a Board. Keeping in view the aforesaid, the writ petition in



question has been decided and the action taken by the Chairman interfered with.

However, today while hearing the matter, our attention is invited to a resolution of the Board which is available on record delegating certain powers by the Board to the Chairman with reference to certain action to be taken by the Board under Section 7(2) of the Bihar State Madarsa Education Act, 1982 and a judgment rendered by a Bench of this Court in the case of **Abdul Azeem Haidri Versus The State of Bihar & Ors** reported in 2001 (3) BLJ 83, wherein after taking note of this resolution dated 29.08.1983, it is observed that the Chairman can take action in the matter. That apart, another judgment by another Bench in CWJC No.4901 of 1997 (Managing Committee of Madarsa Islamia Vs. The State of Bihar & Ors.) decided on 13.07.2010, based on the same resolution, has been brought to our notice wherein also placing reliance on the judgment in the case of **Abdul Azeem Haidri** (supra), similar action for approving the constitution of the Managing Committee by the Chairman has been approved.

It is seen that while deciding the said writ petition, all these facts and judgments were not brought to the notice of the learned Writ Court and therefore, it is a fit case where the appeal should be allowed, order passed by the learned writ Court set aside, the writ petition restored to its original file and the matter remanded back to the learned Writ Court for reconsideration afresh in accordance with law.

Accordingly, the Letters Patent Appeal stands allowed and disposed of.”



12. This Court, therefore, finds no merit in this writ application. It is accordingly dismissed.

13. So far as the appeal pending before the Special Secretary-cum-Appellate Authority is concerned, if so advised, the petitioner may seek hearing and disposal of the said appeal before the Appellate Authority within a reasonable period.

(Rajeev Ranjan Prasad, J)

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