

33 30.3.2023
Sc Ct. no.22

WPA 6995 OF 2023

The Managing Committee,
Ulum Qudsia Akra Senior Madrasah
& Anr.

Vs.

The State of West Bengal & Ors.

Mr. Soumen Dutta
Mr. Abu Sohel.

....For the Petitioners

Ms. Chaitali Bhattacharya
Mr. Subhendu Roy Choudhury.

....For the State

Mr. Nedeem Sulaiman
Ms. Sunita Guha.

....For the Madrasah
Board

The first petitioner claimed to be the alleged **Managing Committee of Darul Ulum Qudsia Akra Senior Madrasah, District – South 24-Parganas** (hereafter referred to as ‘the said Madrasah’). The second petitioner claimed to be the Secretary of the first petitioner. The petitioners through this writ petition had challenged the impugned decision dated **March 16, 2023, Annexure – P3 at page 164 to the writ petition** passed by the respondent no.5 appointing an Administrator over and in respect of the affair of the said Madrasah.

Referring to an order of a coordinate Bench dated **July 17, 2019** passed in a previous writ petition being **W.P. No.12468 (W) of 2019, Annexure – P2 at page 161 to the writ petition**, Mr. Soumen Dutta, learned counsel appearing for the petitioner submitted that, the said previous writ petition was filed by the then Managing Committee of the selfsame Madrasah challenging the *vires* of the various provisions under the **Management and Recognised Non-Government (Aided and Unaided) Rules, 2002** (for short the said 2002 Rules). In the said previous writ petition, the said interim order was passed on **July 17, 2019** and the coordinate Bench observed as under :

“ Under such circumstances, it is directed that the existing managing committee will continue to function with regard to managing the day-to-day affairs of the Madrasah so that the curriculum does not suffer and the students do not suffer. They will not take any policy decision or major financial decision except those which are required for the day-to-day functioning. However, this interim protection will not be extended to those members, who belonged to the Guardian category and whose ward/wards have either left the Madrasah or have been sent up for the school leaving examination.”

The said interim order is still subsisting as submitted by Mr. Soumen Dutta, learned counsel. Mr. Dutta contended that, in view of the existence of the said

interim order passed by the coordinate Bench, the said impugned decision of appointment of Administrator dated March 16, 2023 should not have been taken by the respondent no.5. He submitted that, the respondent no.5 was aware of the said interim order passed by the coordinate Bench dated **July 17, 2019**.

Per contra, Mr. Nadeem Sulaiman, learned counsel appearing for the respondent nos. 3, 4 and 5 submitted that, the conduct of the existing Managing Committee being the petitioners herein was such, that the running of the affair of the relevant Madrasah had virtually become in a deadlock and the affair was being run in such a manner that the interest of the Madrasah and its students were in jeopardy. There were serious allegations against the Managing Committee of the said Madrasah to the extent that, the existing Managing Committee had illegally constructed shop rooms and thereby constructed, in fact, a market place within the premises of the said Madrasah and sold diverse shop rooms on the premises of Madrasah and collected at least a sum of Rs.5 crores, totally unaccounted for.

These submissions of Mr. Sulaiman were denied and disputed by Mr. Soumen Dutta, learned counsel appearing for the petitioner.

Mr. Sulaiman further submitted that it was really an immediate requirement for appointment of an Administrator by exercising the statutory power vested

with the respondent no.5 to protect the interest of the Madrasah and its students and accordingly, the appointment of Administrator was done by the respondent no.5 on March 16, 2023. He submitted that, there were no illegality in the appointment of Administrator, even though, the said previous writ petition is still pending and the interim order is subsisting. In support of his contention, Mr. Sulaiman had relied upon an order passed by the coordinate Bench dated **December 22, 2021** in **WPA 20654 of 2021 (Managing Committee, Enayetpur Rameswar Siddiquia Ashrafia Sr. Madrasah & Anr. – v. – The State of West Bengal & Ors.)** and submitted that under the identical set of facts and circumstances the said order was passed when the coordinate Bench had held that since the *vires* of the **Madrasah Service Commission Act, 2007** (for short, the Act of 2007) was upheld by the Hon'ble Supreme Court, the said writ petition, in which the coordinate Bench passed the order, had lost its force challenging the *vires* of the said Act of 2007 and, as such, pendency of that writ petition or any order had no effect on the order of appointment of the Administrator by the Board.

Mr. Sulaiman also submitted taking support from this order that, in the facts and circumstances also the decision for appointment of an Administrator dated **March 16, 2023** should not be interfered with.

After considering the rival contentions raised on behalf of the parties and upon perusal the materials on record, it appeared to this Court that, the subject-matter of this writ petition and the subject-matter of the previous writ petition in which the coordinate Bench passed the said interim order dated **July 17, 2019** relate to the selfsame Madrasah. In the said previous writ petition being **WP No. 12468 (W) of 2019** in which the said interim order was passed on July 17, 2019, the *vires* of the various provisions of the said 2002 Rules was under challenge and the same issue is also pending before the Hon'ble Supreme Court awaiting final decision. Hence, it cannot be said at this stage, that the said previous writ petition had lost its force.

Therefore, the said interim order dated July 17, 2019 which is still in operation shall definitely hold the field relating to the selfsame Madrasah in which the Administrator had been appointed by the Board which is impugned in this writ petition. Since the said interim order is in existence, the Madrasah Board ought not to have taken the said impugned decision for appointment of Administrator dated **March 16, 2023, Annexure – P3 at page 164 to the writ petition** without obtaining a prior leave and direction from this Court in the said pending **W.P. No.12468 (W) of 2019**.

For the foregoing reasons and discussions, this Court is of the firm opinion that, the said impugned order

for appointment of an Administrator dated **March 16, 2023, Annexure – P3 at page 164 to the writ petition** is not tenable in law and cannot sustain. Consequently the same stands set aside and quashed.

It is further made clear that, this order shall not preclude the respondent no.5 to take steps in accordance with law after obtaining necessary direction and/or order and/or leave in the said **W.P. 12468 (W) of 2019** to take appropriate steps against the said Managing Committee of the said Madrasah.

It is further made clear that, this Court has not gone into the merits of the allegation of the respondent no.5 against the Managing Committee of the said Madrasah in any manner whatsoever.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

It is made clear that this order shall not create any equity or right in favour of the Managing Committee of the said Madrasah and/or the petitioners herein in the pending previous writ petition, **W.P. 12468 (W) of 2019** in any manner.

Considering the nature of the reliefs claimed in this writ petition and in view of this order, nothing further survives in the writ petition. Resultantly, this writ petition **WPA 6995 of 2023** stands disposed of, without any order as to costs.

Photostat certified copy of this order, if applied for,
be furnished expeditiously.

(Aniruddha Roy, J.)