

76 24.7.2023
Sc Ct. no.22

WPA 6396 OF 2020
with
I.A. No. CAN 1 OF 2020
(Old No. CAN 4997 OF 2020)
with
I.A. No. CAN 2 OF 2021

Nurpur Islamia Darul Huda
Senior Madrasah
Vs.
The State of West Bengal & Ors.

Mr. Prosenjit Mukherjee
Ms. Madhurima Sarkar
Mr. Munshi Ashiq Elahi
Ms. Jaya chowdhury.

... For the Petitioner

Mr. Supriyo Chattopadhyay
Ms. Sayantee Bhattacharjee.

... For the Respondent
Nos. 1 and 5

Mr. Nadeem Sulaiman

... For the Respondent
Nos. 3 & 4

Affidavit-of-service, filed in Court today, is taken on record.

This is a hearing matter.

Office report dated December 14, 2020, showed that despite direction being passed on September 9, 2020, no affidavit-in-opposition was filed.

Considering the issue involved in the writ petition and considering the pendency of the issue since **2009**, this court proceeded to consider this writ petition for its final disposal as any further pendency of the writ petition shall not serve any useful purpose.

Mr. Prosenjit Mukherjee, learned counsel appeared for the petitioner.

The petitioner sought for conversion and recognition of an unaided madrasah, viz. ***Nurpur Islamia Darul Huda Senior Madrasah, North 24-Parganas*** to an aided madrasah. On this issue, the petitioner also travelled before in the writ jurisdiction of this court and pursuant to a ***direction dated may 11, 2017*** passed by a coordinate Bench in the previous writ petition, ***W.P. No.36057 (W) of 2013*** the respondent no.2 passed its reasoned order dated ***December 12, 2019, Annexure-P12 at page 71 to the writ petition.*** The said reasoned order is impugned in this writ petition.

Referring to an application dated ***December 30, 2009, Annexure-P2 at page 25 to the writ petition*** Mr. Prosenjit Mukherjee, learned counsel for the petitioner submitted that, the application was submitted before the appropriate authority in ***2009*** hence, ***the said application ought to have been decided in the light of the rules, regulations and law prevailing as on the date of filing of that application and not otherwise.***

Referring to the impugned order, ***Annexure-P12 at page 71*** to the writ petition, Mr. Mukherjee, learned counsel for the petitioner also submitted that, while deciding the issue, the respondent no.2 had erred in referring to a Government Order bearing ***G.O. No.1802-MD/O/5M-34/13 dated October 7, 2013*** and ***rejected***

the case of the petitioner for being considered as Madrasah Siksha Kendra (M.S.K.). In support of his contention Mr. Mukherjee submitted that, ***the issue had already been decided by a coordinate Bench*** in its judgment dated ***May 11, 2017*** rendered in ***W.P. No. 36057 (W) of 2013, In the matter of : Nurpur Islam Darul Huda Senior Madrasah –Vs.- The State of West Bengal & Ors.***

Mr. Nadeem Sulaiman, learned counsel appeared for the respondent nos. 3 and 4.

Mr. Supriyo Chattopadhyay, learned Additional Government Pleader appeared for the respondent nos.1 and 5.

After considering the submissions made on behalf of the parties and upon perusal of the materials on record, this court, at the out set, thought it fit to quote the relevant observation made by the coordinate Bench ***In the matter of : Nurpur Islam Darul Huda Senior Madrasah (supra) :***

“(13) In view of the aforesaid, the impugned memo is set aside. The matter is remanded back to the respondent no.2 for fresh consideration and decision in accordance with the applicable Rules/Regulations/Notifications /Government Orders which were in operation as on the date of the petitioner’s application. The respondent no.2 shall take a reasoned decision in the matter within a period of eight weeks from the date of the communication of this order after giving an opportunity of hearing to the petitioner’s authorised representatives.”

The parties submitted and confirmed that, the Hon'ble Division Bench had also upheld the said judgment of the coordinate Bench.

Sitting in judicial review in exercise of its limited power under Article 226 of the Constitution of India, this court then proceeded to assess the **impugned order dated December 12, 2019** passed by the respondent no.2, **Annexure-P12 at page 71** to the writ petition. While assessing the decision making process of the respondent no.2 in passing the said impugned order, it appeared to this Court that, the respondent no.2 had proceeded on the basis of the said Government Order dated **October 7, 2013** as referred to above. This *ex facie* demonstrated that, the said impugned order dated December 12, 2019 was full of infirmity and bad on the face of it. The respondent no.2 had mis-directed himself while passing the said impugned order by placing reliance on the said **Government Order dated October 7, 2013** though **the application of the petitioner was filed in 2009** on which the impugned order was passed. This clearly went contrary to the observation made by the coordinate Bench **In the matter of : Nurpur Islam Darul Huda Senior Madrasah (Supra).**

For the foregoing discussions and reasons the said impugned order dated December 12, 2019

cannot sustain in law. The said ***impugned order dated December 12, 2019, Annexure-P12 at page 71 to the writ petition stands set aside and quashed.***

The ***respondent no.2 is once again directed to revisit the issue on the basis of the materials available before it and decide the application of the petitioner dated December 30, 2009, Annexure-P2 at page 25*** to the writ petition strictly in compliance of the observation and direction made by the coordinate Bench ***In the matter of : Nurpur Islam Darul Huda Senior Madrasah (supra)*** as quoted above and then pass the reasoned order strictly in accordance with law.

The entire exercise shall be carried out and completed by the respondent no.2 ***positively*** within a period of ***four weeks*** from the date of communication of this order considering the fact that the issue is pending since 2009.

The respondent no.2 then shall communicate its reasoned order to the petitioner within a ***further period of two weeks*** from the date of the reasoned order to be passed.

On the above terms this writ petition, ***WPA 6396 of 2020 stands allowed.***

Consequently, the connected applications stand disposed of.

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

(Aniruddha Roy, J.)