

**Court No. 8
14.08.2025**

**Item No. 43
PA (Chamber)**

WPA (P) No. 273 of 2024

SK. ISLAM UDDIN & ORS.

Vs.

THE STATE OF WEST BENGAL & ORS.

Mr. Soumen Kumar Dutta,
Mr. Subham Dutta,
... for the Petitioners.

Mr. Sk. Md. Galib,
Mr. Abu Siddiqu Mallik
..... for the State.

1. In this PIL filed by the doners of Madrasah it is prayed that State Government be directed to frame rules inconsonance with Article 26 and 30 of the Constitution of India in terms of Rule 46 of the Management of Recognized Non-Government Madrasahs (Aided and Unaided) Rules, 2002.
2. The main contention of learned counsel for the petitioner is that a Notification dated 12.10.2007 was issued by Government of West Bengal. At that point of time, the Gazette Notification dated July 22, 2002 were not considered. Clause 46 of this Notification needs to be translated into reality and for this a writ of mandamus may be issued so that the constitutional protection given by Article 26 of the Article 30 of the Constitution may apply.
3. The prayer is opposed by the other side by contending that there is no element of public interest involved in the present petition. This Court cannot direct the

State Government to enact rules on a particular subject, by a writ of mandamus or otherwise. The reliance is placed on a Three-Judge Bench judgment of the Supreme Court reported in **(2024) 3 SCC 1 (State of Uttar Pradesh & Ors. vs. Association of Retired Supreme Court & High Court Judges at Allahabad & Ors.)**.

4. We have heard the parties. In nutshell, the petitioner is praying for issuing a writ of mandamus against the State Government for the purpose of framing of rules for Madrasahs. Rule 46 on which heavy reliance is placed reads thus:

“46. Power of the State Government to frame further rules for certain Madrasahs

Nothing in these rules shall affect the power of the State Government to frame to which the provisions of article 26 or article 30 of the Constitution of India may apply, further or other rules for the composition or class of Madrasahs.”

5. A minute reading of this provision shows that this Clause 46 is only an enabling provision. This provision nowhere makes it mandatory/obligatory on the part of the State Government to frame the rules. It is the prerogative of State Government to exercise its rule-making power flowing from Clause 46 aforesaid. We find force in the argument, learned counsel for the State that in the light of the judgment of the Supreme Court in **State of Uttar Pradesh (supra)**. No such mandamus can be issued. It is apposite to reproduce the relevant paragraph which reads thus:

“28. Further, the High Court’s conduct on the judicial side in the impugned orders was also erroneous. The High Court, acting under Article 226 of the Constitution, cannot usurp the functions of the executive and compel the executive to exercise its rule-making power in the manner directed by it. Compelling the State Government to mandatorily notify the Rules by the next date of hearing, in the first impugned order, virtually amounted to the High Court issuing a writ of mandamus to notify the Rules proposed by the Chief Justice. Such directions by the High Court are impermissible and contrary to the separation of powers envisaged by the Constitution. The High Court cannot direct the State Government to enact rules on a particular subject, by a writ of mandamus or otherwise.”

6. In this view of the matter, no case is made out for interference and for issuing any such direction, PIL *sans* substance and accordingly dismissed.

(SUJOY PAUL, J.)

(SMITA DAS DE, J.)