

(1995) 02 PAT CK 0048**Patna High Court****Case No:** C.W.J.C. No. 6931 of 1994

Md. Daud Hassan

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision: Feb. 8, 1995**Final Decision:** Allowed**Judgement**

@JUDGMENTTAG-ORDER

S.N. Jha, J.

The Petitioner has challenged the validity of the office order dated July 26, 1994 issued in the light of the order of the Chairman of the Bihar State Madarsa Education Board, dated July 22, 1994, according approval to a new managing committee of Madarsa Noorul Basat Gangadda in the district of Sahebganj (now Pakur). The order has been challenged on the ground that in terms of the provisions of Section 7(2)(n) of the Bihar State Madarsa Education Board Act, 1981 (in short, The Act"), it is the Madarsa Board constituted under the said Act which is competent to accord approval to the managing committee of a Madarsa and not the Chairman.

2. Counsel for the Madarsa Board as also Respondent No. 8 submitted that section 13(3) of the Act empowers the Chairman to make inspection of a Madarsa or other institution affiliated with the Board and pass appropriate orders. It was stated that in the instant case the impugned order was passed on the complaint in regard to illegal, and improper appointments of ineligible and unsuitable persons by an illegally constituted managing committee. Counsel for the Respondents, curiously enough, as a matter of fact, took the stand that in view of the decision of the Supreme Court in Bihar State Madarsa Education Board, Patna Vs. Madarsa Hanfia Arabic College Jamalia and Others, holding the provisions of Clause (n) of Section 7(2) of the Act to be ultra vires, strictly speaking, the Board itself has no such power. It was stated that the Managing Committee of a Madarsa is to be constituted by the residents of the locality in which the Board and/or the Chairman has no discretion. Managing Committees are approved by the Board in a routine manner.

3. Section 13 of the Act provides for the powers and functions of the Chairman. Sub-section (5) thereof lays down that the Chairman shall have the power to visit and inspect the Madarsa and other institutions affiliated with the Board or cause such inspection to be made by persons as may be authorised by him. In my opinion, the power vested in the Chairman u/s 13(3) can be exercised only for effectuating the objects of the Act. But it is limited to making inspection etc. It does not authorise him to pass final orders. Sub-section (4) of Section 13, no doubt, confers power upon the Chairman to take such action as he deems fit but that can be done only when he is satisfied that an emergency has arisen requiring him to take immediate action involving exercise of the power vested in the Board by the Act. Even in such a situation he has to report the action taken by him to the Board for its approval in the next meeting. It may be stated here that the counsel for neither the Madarsa Board nor Respondent No. 8 took shelter of provisions of section 13(4).

4. Coming to the other point urged on behalf of the Respondents, the provisions of Clause (n) of Section 7(2) of the Act may be noticed which runs as follows:

(n) To get the Managing Committee of Madarsa constituted in a manner such as to include the Head Maulvi, two "guardians" representatives and one member nominated by the Board and two other persons interested in Madarsa education or Islamic studies to be composed by the above seven members.

The power to dissolve the Managing Committee shall vest in the Board.

The clause consists of two parts. One part empowers it to dissolve the Managing Committee. In the case cited above, as would appear from paragraph 6 of the judgment, the question for consideration was whether Section 7(2)(n); conferring power upon the Board to dissolve the managing committee of an aided and unrecognised Madarsa Institution violates the mandate of Article 30(1) of the Constitution. The question was answered in these words:

Section 7(2)(n) is clearly violative of constitutional right of minorities under Article 30(1) of the Constitution in so far as it provides for dissolution of managing committee of a Madarsa.

The decision cannot be read as an authority on the point of power of the Madarsa Board to approve or disapprove the Managing Committee.

5. Counsel for the Respondents submitted that Section 7(2)(n), in terms, does not provide for approval. It only lays down the pattern on which the Managing Committee is to be constituted. Having regard to the express words of the clause "to get the Managing Committee of Madarsa constituted", it is not possible to agree with the said submission. It is true that the first part of Clause (n) prescribes the pattern or the mode in which the Managing Committee of a Madarsa is to be constituted. It does not mention about approval. However, if the Board is empowered to get the Managing Committee constituted in a particular manner or

pattern it is expected of it to see as to whether the constitution made by the local residents is in accordance with the said pattern or not. If it is not, obviously such a Managing Committee cannot be said to be duly constituted and in such situation it would be certainly open to the Board to intervene. The power of the Madarsa Board to approve or not to approve the Managing Committee, thus, in my opinion, is implicit. If this power is not conceded to the Board then the mandate of the statute "to get the Managing Committee of Madarsas constituted" cannot be given effect to that make the provision nugatory.

6. The impugned decision having been taken by the Chairman and not by the Madarsa Board, in the absence of any express power conferred upon the Chairman to do so, the order of approval must be held to be without jurisdiction. Although, as indicated above, counsel for the Respondents did not rely on the provision of section 13(4), I would like to mention that the said provision is couched in almost the same language as Section 22(5) of the Bihar Intermediate Education Council Act, 1991. While interpreting the provisions of Section 22(5) of that Act this Court in at least two decisions, namely, Sri Ram Sevak Thakur and Ors. v. The State of Bihar and Ors. C.W.J.C. No. 2364 of 1994 and The Governing Body of Shri Krishna Mahavidyalaya, Lohanda, Sikandra, district Jamui and Anr. v. State of Bihar and Ors. C.W.J.C. No. 8540 of 1993 held that the constitution of Governing Body (which stands on the same footing as Managing Committee) cannot be said to be such an emergent situation as to justify the exercise of powers by the Chairman (of the Intermediate Council). The decisions aforesaid apply on all fours to the cases of purported approval of the constitution of Managing Committees of Madarsas by the Chairman of the Madarsas Board u/s 13(4) of the Madarsa Act as well.

7. For the reasons stated above, the impugned order dated July 26, 1994, as contained in Annexure-1 is set aside, and the application is allowed. It will be open to the Bihar State Madarsa Education Board to take appropriate decision in the matter in accordance with law as early as possible and preferably within three months.