

(2007) 07 PAT CK 0128

In the Patna High Court

Case No : LPA No's. 747 and 776 of 1998

All Bihar Madarsa Teachers Association and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-07-2007

Acts Referred:

Constitution of India, 1950 — Article 30

Citation : (2007) 3 PLJR 776

Hon'ble Judges : Rekha Kumari, J; Barin Ghosh, J

Bench : Division Bench

Advocate : Hemant Kr. Jha in 747, M/s. Shyama Pd. Mukherjee, Jagannath Singh and Durga Nand Jha in 776, Md. Rashid Alam, for the Appellant; A. Amanullah, for the Respondent

Final Decision : Dismissed

Judgement

Barin Ghosh and Rekha Kumari, JJ.—Since common questions of law and fact are involved in both the appeals, as mentioned above, they have been heard together and are being disposed of by this common judgment. Heard Learned Counsel for parties.

2. Bihar State Madarsa Education Board Act, 1981 came into force with effect from 17.1.1981. Prior thereto the State Government recognized Madarsas established by private persons as private schools for imparting education to the children of the State. On and from the date of coming into force of the said Act, the Madarsa Education Board constituted thereby took upon itself the onerous duty of ascertaining whether the facilities available at Madarsas set up by private individuals are conducive for imparting education to the children of the State, for the purpose of granting recognition to such Madarsas.

3. As a result of such recognition, the recognised Madarsas became entitle to impart education to students enrolled by them for the purpose of appearing at public examinations conducted by Universities/Boards constituted under the

appropriate State laws for that purpose. Inasmuch as it was and still is one of the obligations of the State to ensure establishment of healthy educational system, the State through its grant-in-aid provided appropriate grant to the Madrasas so recognised. The grant-in-aid varied from time to time.

4. On 20.2.1990 a decision was taken by the Government to give salaries to the teacher of the institutions imparting education in the manner and to the extent as indicated in the said decision. A look at this decision would show that the intent thereof was to accord salaries, as mentioned therein, to the teachers of recognised Madarsas also and accordingly it was held out that the grant-in-aid to such recognised Madarsas would stand increased to that extent. Principally, for the purpose of enforcing this decision, the petitioners approached the Writ Court by filing the writ petition which has been dismissed by a learned Single Judge of this Court by the judgment and order under appeal.

5. In the counter affidavit filed to the writ petition it was brought on record by the State that the true intent of the said decision dated 20.2.1990 was not to include the teachers of Madarsas and accordingly the same was clarified by amending the said decision dated 20.2.1990 by a later decision 8.11.1990. The principal claim in the writ petition thus, therefore, stood concluded.

6. However, it was urged on behalf of the writ petitioners before the learned Single Judge that the Government has decided in November, 1993 to give salaries at par with Government School teachers to the teachers of declared minority institutions and inasmuch as Madarsas have been established by minority community, the petitioners are covered by the said decision of the Government taken in November, 1993. When this contention was urged, it was stated by the State before the Writ Court that the decision which was taken in November, 1993 applies only to declared minority institutions and whichever institution has been so declared, they are getting appropriate grant-in-aid in order to pay salaries to their teachers to the extent as mentioned in the said decision of November, 1993. It was contended that the institutions in which the petitioners are working have not been so declared and accordingly this resolution is not applicable to the petitioners. The Writ Court found that in order to be declared as a minority institution, one is required to take certain steps in the manner prescribed and also noted the fact that despite several affidavits filed, the petitioners have not brought on record anything, which would suggest that any of the institutions in which the petitioners are working has been so declared or any application has been filed by any of them for the purpose of obtaining such declaration.

7. The petitioners thought that recognition of a Madarsa is equal to declaration of such a Madarsa as a minority institution. It is unfortunate that this thought of the petitioners, despite an elaborate judgment rendered by the Writ Court, could not be clarified to the petitioners.

8. As aforesaid, recognition is granted to an educational institution, when it is

found that the said educational institution is competent, on its available infrastructure, to impart education in the manner, the same is required to be imparted. Because members of a minority community have established a Madarsa, it would not be deemed to be a minority institution, inasmuch as grant of minority status would not., depend upon taking into account the proportionality of such community in comparison to the entire population of the country, but to the proportion of the population of the State. Therefore, while a Madarsa in Jammu & Kashmir may not be declared as a minority institution, the same may be declared as such in Bihar but, for that purpose, one is required to apply for obtaining such status and on the basis of the principles of law laid down by various judgments of this Court and Hon"ble Supreme Court, such application is required to be decided. Once such an application is decided in favour of the applicant, it gets the status of a minority institution and once such status is declared, as submitted by the State before the Writ Court, the teachers of such institution would automatically become entitled to the benefits of the decision of the Government taken in November, 1993. Unfortunately, instead of requesting the institutions, where the petitioners were then working, to apply for obtaining such status and to come within the four corners of the said decision of the Government taken in November, 1993, the petitioners were unjustly advised to prefer the present appeal.

9. The one and the only contention before the learned Single Judge was, as has been repeated before us, is that by giving recognition to a Madarsa by the State of Bihar, it automatically give a declaration that the institution is a minority institution, as has been held by the Division Bench of this Court in the case of *Anjuman Ahale Hadees vs. The State of Bihar*, reported in (1985) BBCJ 495 : 1985 PLJR 837. In that case, the Division Bench was concerned with the vires of certain provisions of the Bihar State Madarsa Education Board Act, 1981. The Court found that certain provisions of the said Act are violative of Article 30 of the Constitution of India. The Court proceeded on the basis that Madarsas are established by minority community in the State of Bihar and accordingly all Madarsas established in Bihar are minority institutions and accordingly certain provisions of the said Act, if are applied to Madarsa, the same will infringe the guarantees given to minority institutions under Article 30 of the Constitution of India. The Court, however, did not say that a recognised Madarsa should be deemed to be a declared minority institution. A Madarsa established by the minority community may not seek any recognition at all while imparting education. In such situation it may not be allowed to send up students to appear at the examinations to be conducted by the Madarsa Board, but it would not lose its constitutional guarantee.

10. Despite there being provisions for applying for obtaining declaration that the Madarsas in which the petitioners are working as teachers are minority institution and despite the same having been pointed out in the judgment under appeal, it is unfortunate that no step was taken by the petitioners to have their Madarsas declared as such. In the result the appeal fails and the same is dismissed without

costs with the observation that it shall be open to the Madarsas where the appellants are working to apply for and obtain the status of minority institution in the prescribed manner and thereupon to claim benefits as the Government has decided to grant in terms of its decision taken in November, 1993.