

(2008) 09 PAT CK 0034
In the Patna High Court
Case No : CWJC No. 12803 of 2008

Dr. Manir Hussain

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-09-2008

Acts Referred:

Constitution of India, 1950 — Article 30

Citation : (2009) 1 PLJR 13

Hon'ble Judges : R.M. Lodha, C.J;Kishore K. Mandal, J

Bench : Division Bench

Advocate : Alim Jung Khan, for the Appellant; A. Amanullah for State and Mr. Rashid Alam, for the Respondent

Judgement

1. We heard the counsel for the petitioner and respondents No. 1 to 4. Sections 7(2)(n) and 24 of the Bihar State Madarsa Education Board Act, 1981 have already been declared unconstitutional and violative of Article 30 of the Constitution of India. The Apex Court in its order dated 30th March, 1993 observed thus:-

"This appeal by the Bihar State Madarsa Education Board, which is a creature of the Bihar State Madarsa Education Board Act, must fail for the reason that it is an effort merely to have the two provisions mentioned hereafter, struck down by the High Court as violative of Article 30 of the Constitution, read down to be suitably operable.

Those two provisions are Section 7(2)(n) and section 24 which are mentioned hereafter:-

"S. 7(2). Subject to the provisions of this Act and the Rules and Regulations made thereunder, the Board shall have the powers to direct, supervise and control Madarsa Education and in particular have the powers.-(n) To get the Managing Committee of Madarsa constituted in a manner so as to include the Head Maulvi, two donor representatives, one teacher representative, and one

member nominated by the Board and two other persons interested in Madarsa Education or Islamic Studies co-opted by the above seven members."

"S.24. Services of teachers and non teaching staff--The services of the approved teachers and non-teaching staff of a recognized Madarsa shall be under the supervision of the Board. Subject to the regulations prescribed under this Ordinance their services shall be controlled by the Board/or Madarsa Managing Committee. No teacher of the Madarsa shall be discharged or dismissed from services without the prior approval of the Board."

The reasons adduced by the High Court for striking down these two provisions appear to us unexceptionable as these provisions are patently violative of Article 30 of the Constitution. As is evident, tremendous control is put in the hands of the Board to meddle with the affairs of the minority institutions. Such control is inconceivable in the scheme of things and specially in the context of Article 30 of the Constitution. In the situation, it is for the State Legislature to consider and examine whether it would be prudent and fessible to redraft these two provisions in the manner in which the Board-appellant is attempting to have these provisions read down. We do not think that this would be healthy and prudent in the facts and circumstances to redraft legislation by means of judicial interpretation. If the Board wants to assume some power in the context, it may have to request the Government to introduce legislation in the spirit of Article 30 of the Constitution to carry out the aims and objects of the Act."

2. Obviously, in view of declaration of law by the Supreme Court, Sections 7(2) (n) and 24 of the Bihar State Madarsa Education Board Act, 1981 are in-operable and cannot be applied in any manner by the State Government until it chooses to bring an appropriate legislation in conformity with Article 30 of the Constitution of India to carry out the aims and object of the Act. With the aforesaid observation, the writ petition is disposed of.