
(2018) 05 CAL CK 0167
In the Calcutta High Court
Case No : W.P.No.21200(W) of 2017

Gaffar Mondal & Anr.

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 10-05-2018

Acts Referred:

Management Rules for Recognised Nongovernment Madrasahs (Aided and Non-aided),
2002 — Rule 2(k)
Constitution of India, 1950 — Article 226

Citation : (2018) 05 CAL CK 0167

Hon'ble Judges : PROTIK PRAKASH BANERJEE, J

Bench : Single Bench

Advocate : Kamalesh Bhattacharya, Bidhan Biswas, Suranjan Basu, Susanta Pal,
Ananda Dulal Sarkar, Rabiul Islam

Judgement

The short point involved in this Article 226 petition is whether the seventh and eighth respondents are entitled to be elected as guardian representatives

in terms of Rule 2(k) of the Rules of Management Rules for Recognised Nongovernment Madrasahs (Aided and Non-aided), 2002.

The writ petitionersâ?? specific case is that during lifetime of the ninth and tenth respondents â?? the fathers of the respective wards in whose cases

â?? their uncles, seventh and eighth respondents respectively, have been elected as guardiansâ?? representatives, â?? and not were all validly elected

at all.

On several prior occasions the matter was taken up and none appeared on behalf of the private respondents (respondents no.7, 8, 9 & 10). The

affidavit of service filed does not show the service on the above-mentioned respondents. It shows service only on the State respondents. Therefore, so

far as the seventh-tenth respondents are concerned, at best, it is an affidavit of

dispatch. Therefore, I cannot hold that the service on these respondents is complete.

Though Mr Bhattacharya appearing on behalf of the writ petitioners ably assisted by Mr Basu submits that the Aadhaar card of the ninth respondent

â?" the father of one of the wards â?" has been disclosed in a supplementary affidavit on behalf of the petitioner which shows that the father is alive,

in the absence of proof of service, this is a mere allegation, supported by a record, not yet tested.

I am of the view that this matter cannot be decided without, at least, giving an opportunity of being heard to the seventh to tenth respondents. On

behalf of the State it is submitted that no copy of the supplementary affidavit has been served on it. On behalf of the first and sixth respondents it is

alleged that no copy of the supplementary affidavit has been served on them.

Mr Basu learned advocate-on-record of the petitioner has been requested to make available the copies of the supplementary affidavit so that the said

respondents may deal with it. Already there was a direction for filing of affidavit which the respondents have not complied with as yet.

Therefore, let a fresh service by speed post with AD be effected on the seventh to tenth respondents and each of them and let the affidavit of service

be filed before May 18, 2018 in the department and the filing number of such affidavit be supplied to the principal officer of this court. Such service is

to be effected on behalf of the petitioner.

In the event the supplementary affidavit is served on the appearing respondents through their learned advocates and a copy of the supplementary

affidavit is served on each of the seventh-tenth respondents, the respondents and each of them shall be entitled to file a combined affidavit-in-

opposition to both the writ petition and the supplementary affidavit within a period of two weeks after the ensuing summer vacation; reply, if any,

within a period of one week thereafter.

The writ petition shall appear under the heading â??for ordersâ?? on June 20, 2018 at 2 p.m. It is made clear, if on the returnable day the opposition

is not filed for any reason, or if there is absence of any of the parties, the matter shall be taken up on merits without requiring the assistance of such

parties.

I further record my finding at present tentatively that the seventh and eighth respondents are not entitled to offer themselves their candidates in the category of guardiansâ?? representatives within the meaning of Rule 2(k) as referred to above, while the fathers of their respective wards are still alive. Question shall be re-visited next day.