

(1968) 10 PAT CK 0001
In the Patna High Court
Case No : C.W.J.C. No. 139 of 1967

Md. Abu Sayeed Ahmad Khan and Another	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 30-10-1968

Acts Referred:

Constitution of India, 1950 — Article 226, 29, 30

Citation : (1969) 17 BLJR 343

Hon'ble Judges : U.N. Sinha, J;Kanhaiyaji, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Kanhaiyaji, J.—In this case, the petitioners have obtained a rule from this Court directing the respondents to show cause why a writ in the nature of certiorari quashing the letter of respondent No. 2, the Secretary, Board of Secondary Education, Bihar, as contained in Annexure "A" should not be issued under Article 226 of the Constitution and also for a writ in the nature of mandamus commanding respondents 3 to 5 not to take over charge of the school named Muslim High School, Bhagalpur.

2. Cause has not been shown by the respondents, to whom notices of the rule were ordered to be given.

3. The Muslim High School was founded by one late Qazi Mohammad Zafar sometime in the year 1938 in which only Muslim students were admitted. Subsequently, the number of students increased, and more teachers were appointed and it was affiliated up to the Matriculation standard in the year 1941. Sometime in the year 1943, the Muslims of Bhagalpur at a meeting decided to reorganise the said school under the Presidentship of late Syed Abul Hasan, Barrister-at-law. In the year 1964, the Board of Secondary Education, Bihar, started taking interest in the internal administration and the management of the school. On the 10th January, 1965, the Managing Committee by its resolution

decided that since it was a minority school, the authorities had no justification to interfere with the affairs of the said school and a copy of the resolution was sent to respondents 2 and 3 and others. It appears that a series of correspondence passed between the said school and the authorities, and, as a result, on the 7th February, 1965, the Managing Committee was reconstituted and five more members were elected to the said Committee. On the 18th December, 1965, the Managing Committee was again reconstituted; and, a deputation on behalf of the committee met the Education Minister, Bihar, and placed all the facts before him. On the 25th January, 1968, the Managing Committee was again reconstituted, and, petitioner No. 1 Md. Abu Sayeed Ahmad Khan became the President and petitioner No. 2 Md. Mansur Khan was appointed the Secretary of the said school. On the 3rd February, 1966, respondent No. 2, the Secretary, Board of Secondary Education, Bihar, by his letter objected to the formation of the new Managing Committee without the permission of the Board of Secondary Education, to which a suitable reply was sent by the Managing Committee that since it was a minority school, it had every right to expand the Managing Committee of the school.

4. The Secretary, Board of Secondary Education, sent a letter dated the 16th December, 1966 (Annexure "A") to the petitioners informing them that an ad hoc committee consisting of respondents 3 to 5 had been constituted with respondent No. 4 as President and respondent No. 3 as Secretary, and, the petitioners were asked to make over charge to the new committee. The petitioners were further informed that the question whether the said school was a minority school or not was under consideration. The petitioners came to Patna and met the Secretary to the Government of Bihar, Education Department, and respondent No. 2 and requested them to declare the school as a minority school and direct the ad hoc committee not to take charge of the school. On the 16th January, 1967, the Secretary, Board of Secondary Education, Bihar (respondent No. 2) sent a letter to the petitioners informing them that the Muslim High School, Bhagalpur, had been declared a minority school. The said letter is Annexure "B" to the petition; the full text whereof is as follows :

Adhyakchh, Madhyamik Shikchha Parshad, Bihar ke aadeshansar Muslim Uchh Vidyalaya, Bhagalpur (Bhagalpur) ko alp sankhyak dwara Santatra Sanchalit Vidyalaya ghoshit kiya jata hai.

It appears that in spite of this letter, the District Education Officer, respondent No. 3, wrote a letter on the 27th January, 1967, asking the petitioners to make over the charge of the school to the ad hoc committee at an early date. On the 4th February, 1967, the Secretary, Board of Secondary Education (respondent No. 2), again asked the petitioners to send a reply immediately for making over the charge of the school to him (vide Annexure "D"). Respondent No. 2 also sent a letter on the same day to respondents 4 and 5 to come to the school on the 7th February, 1967, in order to take over charge of the school (vide Annexure "E"). On the 7th February, 1967, petitioner No. 2 sent a letter to respondent No.

3 requesting him that since the school has already been declared a minority school, the ad hoc committee should not be thrust upon him (vide Annexure "F"). On the similar line, another letter was also sent to respondent No. 2 with a request to direct respondent No. 3 not to take over charge of the said school (vide Annexure "G"). In spite of the two letters written by petitioner No. 2, referred to above, respondent No. 3 had been asking the petitioners to make over the charge to the newly formed ad hoc committee.

5. The case of the petitioners is that the order of the Secretary, Board of Secondary Education (respondent No. 2) constituting an ad hoc committee for taking over the management of the school is unconstitutional, illegal and ultra vires. The petitioners, accordingly, pray that a writ in the nature of certiorari should be issued to quash the order contained in the letter dated the 16th December, 1966, by which the Secretary, Board of Secondary Education, Bihar, has constituted an ad hoc committee and also for a writ in the nature of mandamus against the respondents commanding them not to give effect to the orders contained in Annexure "A". The application is not opposed by the State of Bihar and other respondents,

6. In my opinion, the constitution of an ad hoc committee, as indicated in Annexure "A", is illegal and ultra vims. The Secretary, Board of Secondary Education, Bihar, by his letter dated the 16th January, 1967 (Annexure "B") declared the school as a minority school, and, therefore, the minority community had a right to administer the educational institution without interference by the authorities. Any interference in the administration of the minority school by the Board of Secondary Education, Bihar, must be held to be unconstitutional since it will be a violation of the guarantees contained in Articles 29(1) and 30 of the Constitution.. Article 29(1) is in the following terms :

Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same." Article 30 states :

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

7. The order of the Board of Secondary Education, Bihar, contained in the letter dated the 16th January, 1967, (Annexure "B") is a clear acceptance of the case of the petitioners, namely, that the school was founded by the minorities, and that the management and control of the school are vested in them. Therefore, in the present case, the action of the respondents in imposing the ad hoc committee, I think, infringes the constitutional protection guaranteed under Articles 29(1) and 30 of the Constitution.

8. Mr. Sarwar Ali, learned Counsel appearing for the State of Bihar, submitted before us that he has been instructed not to oppose the application in view of the declaration made by the Board of Secondary Education, Bihar, as per Annexure "B".

9. For the reasons stated above, I am of the opinion that the order of the Board of Secondary Education, Bihar, imposing the ad hoc committee on the Muslim High School, Bhagalpur, is unconstitutional, void and inoperative. I am also of the opinion that all steps taken by the respondents compelling the petitioners to hand over the management of the school to the ad hoc committee are illegal and ultra vires. Therefore, this application is allowed and the petitioners are granted a writ in the nature of mandamus commanding the respondents not to give effect to the orders of the Board of Secondary Education, Bihar, contained in Annexure "A" of the application. As there is no opposition on behalf of the respondents, there will be no order for costs.

U.N. Sinha, J.

10. I agree.