
(2019) 09 CAL CK 0192

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 16552 (W) Of 2019

Md. Masud Alam

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 11-09-2019

Acts Referred:

Management Of Recognized Non-Government Madrasah (Aided And Unaided), Rules 2002 — Rule 17, 18

Citation : (2019) 09 CAL CK 0192

Hon'ble Judges : Shampa Sarkar, J

Bench : Single Bench

Advocate : Atarup Banerjee, Suchismita Chakraborty, A. P. Lahiri, Anita Shaw, Sirsanya Bandapadhyay, Sudeshna Das Mazumder

Judgement

Shampa Sarkar, J

This writ petition has been filed challenging an order dated August 8, 2019 of the Secretary of West Bengal Board of Madrasah Education. The relevant portion whereof is quoted below:

'DECISION WITH REASON:

1) Rule 17 and Rule 18 of the Management of Recognized Non-Government Madrasah (aided and unaided),. Rule 2002 states as follows..

"17. Special Meeting....

A meeting of the committee shall be convened by the Secretary within a fortnight when a requisition of such meeting is made by not less than 50% of the total member of the Committee. Notice of not less than seven days for such meeting shall be given.

18. Special Meeting convened by requisition....

If the Secretary fails to convene a special meeting the requisitionists shall refer

the matter to the President who shall convene the meeting. In the event the President fails to convene the meeting within ten days after reference to him, the requisitionists, being above 50% of the total number of the members, shall have the power to convene the meeting giving seven days notice."

In the above matter during the hearing and documents submitted by the parties, it appears that the member of the M.C made requisition to the Secretary namely Masud Alam for call a meeting for no confidence and the Secretary did not receive the said letter and thereafter failed to call a meeting. Therefore the burden of non calling of a special meeting shall lie on the shoulder of the Secretary of the M.C. and any meeting called thereby by the President himself on the requisition of majority members of Managing Committee ignoring the Secretary of the M.C is valid one in the eye of law.

2) It also appears from the hearing that the meeting vide Resolution no. 001/18 dated 04-06-2018 in which the Secretary namely Masud Alam was removed and thereafter vide Meeting no. 003/18 dated 30-07-2018 (sic 2018) in which Jharu Sk was appointed both are held as per the guidelines under Rule 17 and Rule 18 of the Management of Recognized Non-Government Madrasah (aided and unaided),. Rule 2002, therefore both meetings are valid in the eye of law.

3) It also appears from the hearing that the President called a meeting without informing the Secretary of Managing Committee of the Madrasah vide Meeting no. 002/18, in which Md Ataur Rahaman was removed from the post of Teacher in Charge and the Md Nejamuddin was appointed as Teacher in Charge was held as per law.

ORDER

After considering all the aspects and facts of submission and documents submitted by all the parties in the matter and as per decision of the Board, it is ordered and declared that the prayer of Alauddin, the President of the Managing Committee of Raninagar High Madrasah (H.S) dated 02.07.2019 regarding approval of new Secretary of Managing Committee namely Jharu Sk is hereby approved. It also ordered and declared that the selection of Teacher in charge namely Md Nejamuddin was done as per law. The Managing Committee headed by Alauddin as President and Jharu Sk as Secretary shall continue its function till the rest valid tenure or until further order from this Board whichever is earlier.

This order shall be take immediate effect. All the concerned may accordingly be informed.

Secretary,

West Bengal Board of Madrasah Education'

Mr. Banerjee, the learned advocate for the petitioner, submits that admittedly the petitioner who was the Secretary of the Managing Committee of the madrasah, did not receive the notice issued upon him for calling a requisition meeting.

Although the members requested the petitioner to call a requisition meeting and had given him 15 days' time, such notice was never received by the petitioner because at the relevant point of time the petitioner was not available due to a pending investigation arising out of a criminal case. This situation could not be taken advantage of, according to Mr. Banerjee, and be treated to be a valid service of notice when, the addressee of the said notice was not present at the relevant address. Mr. Banerjee further submits that his contention before the Secretary, West Bengal Board of Madrasah Education, to the above effect was also not considered while passing the order impugned. According to Mr. Banerjee, this was an indirect way of removing an elected secretary from his position and his absence could not be taken advantage of and be treated as an intentional refusal to accept the notice.

It is contended by Mr. Bandyopadhyay, learned Jr. Standing counsel, that as reflected from the order impugned, the Secretary of the Board on perusal of the documents had arrived at a conclusion that the letter dated May 2, 2018 was sent to the petitioner and subsequently the criminal case was initiated on May 6, 2018. Thus the plea of the petitioner that he was absent from his residence because of the on going investigation cannot be accepted. Mr. Bandyopadhyay further submits that the prayer for an interim order as reflected from the writ petition cannot be granted inasmuch as the same would amount to granting the main relief.

Mr. Lahiri, the learned advocate appearing on behalf of the managing committee of the school has handed over documents to show that the petitioner was sought to be served with the notice dated May 2, 2018 but the same was refused. In support of such contention he has pointed out the endorsement of Maruti Courier services, overleaf the notice, where it has been written in hand "not received".

Under such circumstances, on the disputed questions of facts, in the absence of the proper evidence, the interim order sought for at this stage cannot be granted. The parties are directed to file their respective affidavits. The affidavits to be filed by the managing committee of the school should be accompanied with documents to show that the requisitionists had actually sent a proper letter through the courier service and/or personally through the peon, to the petitioner. Evidence of refusal of service by the petitioner as available should be annexed. Track reports from the website of the concerned courier service should be annexed and if the courier service does not have the portal or website where the movement of the documents can be tracked, the contention of the courier service with regard to the tendering of the notice dated May 2, 2018 should be annexed to the affidavit.

Apart from these documents, such other documents which are relevant for decision of the dispute should be annexed to the affidavit to be filed by the madrasah.

Learned advocate-on-record for the State respondents will also file an affidavit

with regard to the contentions of the petitioner as also with regard to the fate of the criminal case initiated against the petitioner.

Let such affidavit be filed within three weeks, reply, if any, be filed within one week thereafter.

List the matter in the monthly list of November, 2019 fairly at the top.