

(2020) 02 CAL CK 0089

In the Calcutta High Court

Case No : Temporary Number (AST) No. 13 Of 2020

Md. Mujibur Rahaman

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 27-02-2020

Acts Referred:

Government Madrasah (Aided And Unaided) Rules, 2002 — Rule 10, 10(4), 19, 27(3) (i), 33

Citation : (2020) 02 CAL CK 0089

Hon'ble Judges : Rajasekhar Mantha, J

Bench : Single Bench

Advocate : Saptangsu Basu, Tarun Kumar Das, Golum Mohiuddin, Tapan Kumar Mukherjee, Saheli Mukherjee

Judgement

Rajasekhar Mantha, J

The writ petitioner is aggrieved by an order of suspension dated February 15, 2020 as resolved in an extraordinary general meeting of an Ad hoc

Committee of the Madrasah being resolution no. 43 held on February 14, 2020.

By the impugned order, various allegations have been levelled against the petitioner i.e. filing false affidavits before this Court, criminal proceedings

pending in the form of complaints and FIRs lodged against him; attempting to illegally engage two persons as employees of the Madrasah and non-

furnishing of accounts of mid-day meal for a period of 18 months. There are other allegations also against the petitioner.

Learned Counsel for the petitioner Mr. Basu would argue before this Court firstly that the notice of extraordinary meeting was not given to all

members and secondly, that the ad hoc committee managing the Madrasah comprised in about nine members and only two are attended on February

14, 2020. He refers to the definition of Committee under 2(f) of the Rules for Management of recognized Non-Government Madrasahs (Aided and Unaided), 2002, particularly, Rule 10 thereof. It is specifically mentioned in Sub-Rule (4) of Rule 10 that the quorum of a Committee must be fifty per cent of its members. While he submits that an ad hoc / Managing Committee of a Madrasah in terms of Rule 27(3)(i) is empowered to suspend a teacher or employee, he argues that since the Committee did not have a required quorum, the order of suspension and resolution based on which it was issued, is ex facie without jurisdiction.

Per contra, learned Senior Counsel appearing for the State relies upon Rule 19 of the said 2002 Rules and Rule 33 of the said 2002 Rules. He submits that Rule 19 prescribes for emergency procedure for conduct of the affairs of the Madrasah where only 24 hours' notice is prescribed. He also submits that in terms of Rule 33 of the said 2002 Rules, the petitioner has an alternative and efficacious remedy of appeal against the order of suspension to the Board of Madrasah Education and hence, the writ petition is itself not maintainable.

This Court has considered the rival contentions of the parties.

The first argument of Mr. Basu is by reference to a Division Bench judgment of this Court in MAT 455 of 2019 i.e. orders dated April 1, 2019 and August 2, 2019. In the said orders, the Division Bench of this Court had granted liberty to the Madrasah to bring any new allegation against the Teacher-in-Charge, petitioner, to the notice of the Single Bench of this Court who shall be entitled to pass appropriate orders unfettered the views of the Division Bench in the said MAT. He therefore argues that without the leave of the Single Bench, the orders could not have been passed.

This Court notices that the subject matter of the instant writ application is completely different from the subject matter of the writ application that resulted in MAT 455 of 2019. The order of suspension impugned herein cannot otherwise be fettered by any other parallel proceeding or by the order of the Division Bench referred to by Mr. Basu. The first argument of the petitioner, therefore, cannot be countenanced.

There is, however, some force in the second argument of the learned Counsel for the petitioner. Indeed, the quorum of the Managing Committee / ad hoc Committee which passed a resolution on February 14, 2020 was not as per

the Rules of 2002, particularly, Rule 10(4) thereof.

This Court at this stage cannot enter into the question as to whether the 24 hours notice for emergency meeting was complied with by the

Managing Committee or not.

Ex facie it appears to this Court that the quorum for holding such meeting was not available. There is clearly a violation of statute and hence, the

alternative remedy of appeal available to the petitioner cannot stand in the way of the writ application being entertained.

This Court, however, considering the seriousness of the charges against the petitioner, does not wish to interfere with the suspension of the petitioner

from duties. The petitioner would remain suspended from duty and a Teacher-in-Charge shall be appointed by the Managing Committee forthwith

after following the due process of law and the relevant Rules. The resolution dated February 14, 2020 shall be placed before a regular ad hoc

Committee for due consideration and decision, within a period of 10 days from date. The suspension of the petitioner shall abide by the result of an y

formal resolution that the regular Ad hoc Committee shall adopt.

The petitioner and/or State and/or the Madrasah shall issue notice of the proposed meeting to be held as directed herein above.

Since, the Madrasah has not yet been served, let this matter stand adjourned and be listed 2 weeks hence under the heading "motion" when this

Court shall receive submissions from all parties as regards the events that may have transpired in the formal meeting of the ad hoc Committee of the

Madrasah that has been directed herein above.