

(2018) 01 GAU CK 0135
In the Gauhati High Court
Case No : 6324 of 2017

MD. MUJIBUR RAHMAN and ORS.

APPELLANT

Vs

THE STATE OF ASSAM and ORS.

RESPONDENT

Date of Decision : 05-01-2018

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2018) 01 GAU CK 0135

Hon'ble Judges : Achintya Malla Bujor Barua

Bench : Single Bench

Advocate : A K AZAD, K. Uddin, N. Sarma, S.P. Hussain

Final Decision : Disposed

Judgement

1. Heard Mr. K. Uddin, learned counsel for the petitioners, Mr. N. Sarma, learned Standing Counsel for the Secondary Education Department as

well as Ms. S.P. Hussain, learned counsel appearing for the respondent Nos. 6 to 15.

2. The petitioners Nos. 1 to 9 claim to be the teaching and non teaching staffs of Kankharchak Pre-Senior Madrassa, Taltola in the district of

Karimganj. The petitioners Nos. 10 to 19 are the villagers of the locality of the said Madrassa, who claim to have established the Madrassa for

imparting education to their children. Out of the petitioner Nos. 10 to 19, some of them are also the guardians, whose sons and daughters are

presently being imparted education in the concerned Madrassa.

3. The petitioners state that their services were provincialised by an order dated 27.12.2013 under the Assam Venture Madrassa Educational

Institution (Provincialisation of Services) Act, 2011 and since then they are

discharging their duties to the satisfaction of all concerned. The petitioners rely upon an enquiry report dated 02.02.2000 as well as an order of recognition dated 17.01.2001 to establish that the concerned Madrassa in which they are working, is the original Madrassa and it was established sometime in the year 1996. In paragraph-6 of the writ petition, it is stated that the then Secretary of the Madrassa Sri Jamal Uddin without the knowledge of the local people and for his own personal interest, had managed to shift the Kankharchak Pre-Senior Madrassa from village Taotola to village Bagbari, which is located at a distance of about 10 km. It is stated that the said shifting was managed by showing certain false recommendations of the then Parliamentary Secretary and also by showing certain false particulars of lands etc. Thus started a dispute between the petitioners and the respondent Nos. 6 to 19 as to which is the original Madrassa.

4. In this respect, several enquiry reports are available on record from time to time. The dispute ultimately resulted in the brief note dated 06.08.2016 issued by the Chairman DSC Karimganj cum Additional Deputy Commissioner, Karimganj, which is annexed as Annexure-20 to the writ petition. As per the said brief note, it was concluded that the Kankharchak Pre Senior Madrassa at Taltola does not have DISE Code and also could not show any original copy of the permission/recognition and that, the said Kankharchak Pre Senior Madrassa has now been shifted from village Taltola to village Bagbari with due permission of the Director of Madrassa Education, Assam and therefore, the staffs/teachers of the Kankharchak Pre Senior Madrassa at Taltola village cannot be provincialised. The brief note also states that the Kankharchak Pre Senior Madrassa at Bagbari had DISE Code from 2007-08 to 2014-15 and were also able to produce the original copy of permission/ recognition and also that the Madrassa at Bagbari had received financial assistance from the Government from 2007 to 2017.

5. In this writ petition, the said brief note dated 16.08.2016 of the Additional Deputy Commissioner cum Chairman, DSC, Karimganj has been assailed. The petitioners raise a claim that the Kankharchak Pre Senior Madrassa at village Taltola is the original Madrassa and therefore, the provincialisation ought to have been made in their favour and also the contents

of the brief note are incorrect and contrary to the record. But, however, the present position is that pursuant to the said brief note, the Pre Senior Madrassa at Bagbari village has in the meantime been provincialised. The order of provincialisation dated 20.09.2017 has also been assailed in this writ petition.

6. Considered the rival submissions of the parties. The core issue called upon to be decided in this writ petition is as to whether the contents of the brief note dated 16.08.2016 is factually correct or incorrect. Depending on such answer, the further consideration as to whether which of the two

Pre Senior Madrassas are to be provincialised can be adjudicated.

7. In the considered view of this Court, the answer as to which of the two Madrassas i.e. Kankharchak Pre-Senior Madrassa at village Taltola or

the Kankharchak Pre Senior Madrassa at village Bagbari is the original Madrassa is a question of factual dispute and the submission of the

petitioners in this writ petition as to the incorrectness of the brief note dated 16.08.2016 also cannot be adjudicated in a writ petition under Article

226 of the Constitution of India. Further, this Court is also of the view that the question as to which of the two Madrassas is the original Madrassa

is a dispute between the parties at the preprovincialisation stage i.e. when both the Madrassas were at their venture stage.

8. In such view of the matter and also considering the Full Bench judgment of this Court dated 19.03.2015 rendered in WP(C) No.4612/2011

and other writ petitions as well as the notification dated 03.12.2015 of the Government of Assam, it is deemed appropriate that such a disputed

question of fact would appropriately be decided by the Educational Tribunal for the district of Karimganj.

9. Accordingly, this writ petition stands closed by directing the petitioners to approach the Educational Tribunal at Karimganj, if so advised and

upon such approach being made, the learned Tribunal shall decide the dispute between the petitioners and the respondent Nos. 6 to 19 as to

which of the two Madrassas i.e. Kankharchak Pre-Senior Madrassa at village Taltola or the Kankharchak Pre-Senior Madrassa at village

Bagbari is the original Madrassa. The learned Tribunal is requested that the aforesaid decision be made within a period of six months from the

date of submission of the application by the petitioners. It is further provided

that as the services of the Kankharchak Pre-Senior Madrassa at village Bagbari had been provincialised in the meantime, the same status shall be retained till the decision by the learned Tribunal and any such subsequent order that the learned Tribunal may pass upon adjudication, would prevail over all other orders passed in this respect by any of the authorities. The learned Tribunal while deciding the matter, shall allow both the parties to adduce their evidence and also produce all relevant materials that they may desire to produce and shall also take into consideration of such enquiry reports that had been submitted in course of the events. In terms of the above, the writ petition stands disposed of.