

(2019) 12 PAT CK 0210

In the Patna High Court

Case No : Letters Patent Appeal No. 2312 Of 2016 In Civil Writ Jurisdiction Case No. 6243 Of 2016

Md. Tauheed Alam

APPELLANT

Vs

Principal Secretary And Ors

RESPONDENT

Date of Decision : 13-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 12 PAT CK 0210

Hon'ble Judges : Ashwani Kumar Singh, J;Prakash Chandra Jaiswal, J

Bench : Division Bench

Advocate : Bijay Shankar Choubey, Ashutosh Ranjan Pandey

Final Decision : Dismissed

Judgement

1. This appeal under Clause 10 of the Letters Patent is directed against the order dated 01.12.2016 passed by the learned Single Judge in CWJC No. 6243 of 2016 whereby the writ petition filed by the appellant has been dismissed.

2. The writ petition was filed for the following reliefs :-

"For the issuance of an appropriate writ/writs, Order/Orders, Direction/Directions in the nature of the writ of Certiorari for setting aside the order dated 06.01.2012 containing memo no. 519 passed by District Education Officer, Kisanganj, whereby and whereunder he has tried to legalized the Madarsa of private respondent and has recommended to the Bihar State Madarsa Board, Patna, to not consider the earlier report of D.E.O. Kisanganj, dated 10.6.2011 containing memo no. 204, and also for issuing direction on respondents to give effect of the earlier report of D.E.O. dated 10.6.2011 containing memo no. 204, and for the other necessary relief/reliefs to the basis of the facts and circumstances of the case."

3. It is the contention of the appellant that the order dated 06.01.2012 passed by the District Education Officer , Kisanganj is arbitrary and with malafide

intention only to provide undue benefit to the private respondent ignoring the materials and records produced by the appellant as well as ignoring the earlier report of the District Education Officer, Kisanganj dated 10.06.2011. The Madarsa of the appellant is bonafide which fulfills all the criteria as well as guidelines issued by the Bihar State Madarsa Board and a large number of students of the locality are being benefited by the said Madarsa and also appearing in Vastania Chaharum (Class -8) Board examination.

4. It is contended that the learned Single Judge failed to appreciate the materials on record. He also failed to appreciate that the earlier report was sent in favour of the appellant and the subsequent report was based on the manipulation made by the Mukhiya of the Gram Panchayat. The further contention is that the real fact is that the Madarsa of the appellant, namely, Madarsa Tauhidiya Tolla Tangi is situated in Tolla Tangi of Andadhur village under Baliya Panchayat. However, the learned Single Judge did not appreciate the fact that the private respondent with the help of false and fabricated application of the villagers of the said village as well as in collusion of the Mukhiya of the Panchayat made false and fabricated application to the District Education Officer, Kisanganj claiming himself as a Secretary of the Madarsa of the appellant.

5. The State has contested the matter. It has contended that the State Government had issued a circular dated 15.02.2011 wherein a policy decision was taken to provide financial assistance to all those Madarsas whose name appeared in the list of 2459 Madarsas affiliated by the Board subject to the condition that such Madarsa must fulfill the criteria as laid down in circular no. 1090 dated 29.11.1980 and this direction was issued to all the District Education Officers of the State to enquire into the matter and submit their report to the Madarsa Board in the prescribed format within the stipulated period. Pursuant to the said direction of the State Government, an enquiry was made of all the Madarsas situated within the district of the appellant in the year 2011 and the report of all the Madarsas was sent to the Madarsa Board in the prescribed form on 10.06.2011.

6. The State has further contended that it is true that the report dated 10.06.2011 was in favour of the appellant. However, a public petition recommended by the Mukhiya of Panchayat Raj Balia was received by the District Education Officer, Kisanganj in which it was alleged that the earlier enquiry report sent by the District Education Officer was fake and far from truth as the said Madarsa was not existing in the Balia Gram Panchayat whereafter a spot enquiry of the Madarsa was conducted and in the said enquiry it was found that the allegation made in the public petition was correct. An opportunity to produce the documents etc. was also given to the Madarsa of the appellant, but they did not produce any original paper concerning registration of the said Madarsa or the documents relating to landed property of the old Madarsa.

7. The contention of the State is that based on aforesaid findings in the spot enquiry, subsequent report was sent whereby the enquiry report dated

10.06.2011 was cancelled.

8. Mr. Ashutosh Ranjan Pandey, learned counsel appearing for the State submitted that in the background of the facts stated above, the writ Court vide impugned order dated 01.12.2016 rightly dismissed the writ petition filed by the appellant.

9. We have heard the parties and perused the record.

10. While passing the order dated 01.12.2016 in CWJC No. 6243 of 2016, the learned Single Judge has observed that the High Court under Article 226 of the Constitution of India cannot decide as to which is the real Madarsa and which is the fake especially when the real Madarsa has already been given recognition and status by an earlier decision by the authorities after due enquiry. The writ Court has held that the nature of dispute raised by the appellant can only be established by a civil court of competent jurisdiction where evidences can be led by the contesting parties and appreciated and such disputed question of fact cannot be resolved in a summary proceeding in extraordinary jurisdiction under Article 226 of the Constitution of India.

11. Considering the facts and circumstances of the case, as discussed hereinabove, in our opinion, the learned Single Judge has rightly dismissed the writ petition. We are also of the view that if the earlier report by the District Education Officer was submitted without holding any spot enquiry and on public representation on subsequent spot enquiry, it was noticed by the authorities that the earlier report was a table work without looking into the documents as well as the physical status of the Madarsa, there is no illegality in the subsequent action whereby the earlier report dated 10.06.2011 was cancelled. Thus, we are of the opinion that the learned Single Judge rightly dismissed the writ petition.

12. The appeal, being devoid of any merit, is dismissed.