
(2009) 05 AHC CK 0726

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 20510 and 55955 of 2008

Teacher Association Madaris Arabia and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-05-2009

Acts Referred:

Uttar Pradesh Board of Madarsa Education Act, 2004 — Section 3(3)(a), 3(3)(k)

Citation : (2009) 05 AHC CK 0726

Hon'ble Judges : Ashok Bhushan, J and Ram Autar Singh, J

Final Decision : Allowed

Judgement

Ashok Bhushan, J.—These two writ petitions raises same issues and have been heard together. Counter and rejoinder affidavits have been exchanged in both the writ petitions and with the consent of the learned counsel for the parties, the writ petitions are being finally decided.

2. Both the writ petitions have been filed praying for issue of writ of quo warranto against two private respondents namely Haji Rizwanul Haque and Gyasuddin Nadvi not to function as Chairperson and Member of U.P. Board of Madrasa Education.

3. First writ petition has been filed by the Teacher Association (a registered Society) questioning the nomination of respondent Haji Rizwanul Haque as Chairperson of the Madarsa Board and Gayasuddin Nadvi as Member of the Madarsa Board. Prayer has also been made to quash the Gazette Notification dated 14th December, 2007, by which both the respondents have been nominated by the State Government as Chairperson and Member of the Board.

4. The petitioner's case in the writ petition is that under U.P. Board of Madarsa Education Act, 2004, (hereinafter referred to as "the Act") the State is empowered to constitute the Board under Section 3 of the Act. Section 3(3) of the Act provides qualification for being nominated in the Board as Chairperson or member. It is contended that both the private respondents do not possess the

qualification as required under Section 3(3) of the Act and hence, a writ be issued commanding them not to function in the aforesaid office and the Notification, nominating them in the Board, be quashed.

5. Pleadings in both the writ petitions being complete, it is sufficient to refer to pleadings in Writ Petition No. 55955 of 2008 for deciding the issues raised in both the writ petition. A counteraffidavit has been filed in both the writ petitions by Haji Rijwanul Haque, who has been nominated as Chairperson of the Board as well as by the State of U.P. defending the issuance of the Notification, nominating both the respondents as Chairperson and Member of the Board.

6. In the first writ petition, Sri N.A. Khan, learned counsel has appeared for the petitioner, Sri R.N. Yadav, learned counsel has appeared on behalf of Uttar Pradesh Board of Madarsa Education, Lucknowrespondent No. 2 Sri M.A. Qadeer, learned Senior Counsel has appeared on behalf of Haji Rijwanul Haq. In second writ petition, the petitioner has appeared in person. For Haji Rijwanul Haque, Sri Ashok Khare, learned Senior Counsel assisted by Sri M.S. Yadav has appeared and has filed a counteraffidavit. Sri Wasim Alam, learned Standing Counsel has been heard for the Staterespondent in both the writ petitions.

7. Gayasuddin Nadvi has been issued notice in both the writ petitions and service of notice, in first writ petition, is deemed to be sufficient by order of the Court dated 20th April, 2009. In second writ petition also notices were issued by order of the Court dated 24.10.2008 and the registered notice were sent by 7th November, 2008. No appearance has been put up by Sri Gayasuddin Nadvi. The service is deemed sufficient against respondent No. 6 in second writ petition also.

8. The petitioner's case in the writ petition is that Uttar Pradesh Board of Madarsa Education Act, 2004 prescribes qualification for appointment of Chairperson and Member of the Board, which is not fulfilled by both the private respondents, hence, their nomination by the State of Uttar Pradesh vide notification dated 14.12.2007 deserves to be quashed and writ of quo warranto be issued against both the private respondents.

9. Submission is that Section 3(3)(a) of the Act requires a renowned Muslim "educationist" in the field of traditional Madarsa Education, nominated by the State Government.. Further submission is that the respondent No. 5 Haji Rijwanul Haque is not a renowned educationist in the field of Madarsa Education, hence, was not eligible for being nominated as Chairperson. With regard to respondent No. 6 Gayasuddin Nadvi, the case is that he has been appointed as member under Section 3(3)(k) of the Act, which requires one Science or Tibb teacher of an institution nominated by the State Government. The petitioner's case is that respondent No. 6 is not Science or Tibb teacher of an institution. "Institution" has been defined under the Act as the institution recognized by the Board. The case is that the respondent No. 6 is not a teacher of Tibb in the institution hence also do not fulfil the eligibility for nomination.

10. Learned Standing Counsel as well as learned Senior Advocate appearing for

Haji Rizwanul Haque has submitted that it is the discretion of the State Government to treat a person as renowned educationist in the field of traditional Madarsa Education, which cannot be made subject matter in issue in proceedings under Article 226 of the Constitution of India.

11. From the submission of the learned counsel for the parties, as noticed above, the dispute in the writ petition lie in a very narrow campus. The question for consideration is, as to whether the private respondents fulfil the eligibility criteria, as required for nomination under Section 3(3)(a) and 3(3)(k) of the Act or not.

12. Before proceeding further, it is necessary to have a look over the scheme of the Uttar Pradesh Board of Madarsa Education Act, 2004 under which the nomination is made. The Board has been established with the aim and object of removing the difficulties in running the Madarsas, improving the merits therein and to give best facilities to the students studying therein. Section 2(f) of the Act defines an institution and Section 2(h) of the Act defines Madarsa Education. Section 2(f) and 2(h) of the Act, 2004 are quoted therein below:

(f) "institution" means the Government Oriental College, Rampur and includes a Madarsa or an Oriental College established and administered by Muslim Minorities and recognised by the Board for imparting Madarsa Education.

(h) "Madarsa Education" means education in Arabic, Urdu, Persian, Islamic studies, Tibb Logic, Philosophy and includes such other branches of learning as may be specified by the Board from time to time.

Section 3(3) of the Act of 2004 provides for constitution of the Board which are quoted below:

(3) The Board shall consist of the following members, namely:

(a) a renowned Muslim educationist in the field of traditional Madarsa Education, nominated by the State Government who shall be the Chairperson of the Board;

(b) the Director, who shall be the Vice Chairperson of the Board;

(c) the Principal, Government Oriental College, Rampur;

(d) one Sunni Muslim Legislator to be elected by both houses of the State Legislature;

(e) one Shia Muslim Legislator to be elected by both houses of the State Legislature;

(f) one representative of National Council for Educational Research and Training;

(g) two head of institution established and administered by Sunni Muslim nominated by the State Government;

(h) one head of institution established and administered by Shia Muslim

nominated by the State Government;

(i) two teachers of institutions established and administered by SunniMuslim nominated by the State Government;

(j) one teacher of an institution established and administered by ShiaMuslim nominated by the State Government;

(k) one Science or Tibb teacher of an institution nominated by the State Government;

(l) the Account and Finance Officer in the Directorate of minority Welfare, Uttar Pradesh;

(m) the Inspector;

(n) an officer not below the rank of Deputy Director nominated by the State Government, who shall be the member Registrar.

13. As noticed above, the plea of petitioner is that Haji Rijwanul Haq is not a renowned Muslim educationist in the field of Madarsa Education, hence, was not eligible for nomination, which contention has been disputed by the respondents. It is necessary to refer to pleadings in the writ petition and reply filed in the counteraffidavit regarding the aforesaid issue. The petitioner's case is that respondent No. 5, Haji Rijwanul Haq is an advocate, enrolled with Bar Council of Uttar Pradesh and cannot be said to be educationist nor he has done any work in the field of education. The pleading in this contest is contained in paragraph 17(a) to 17(e) (2nd writ petition) which is quoted herein below:

"17(a) The respondent No. 5 is an Advocate and was practicing in Wakf Board only, therefore, he cannot be said to be a renowned Muslim Educationist in the field of traditional Madarsa Education as prescribed under Section 3(3)(a).

17(b) The respondent No. 5 have passed only the "Alim examination" of the Board which is equivalent to Intermediate (12th standard) as per government order dated 21.3.1995. A copy of the government order dated 21.3.1995 is being annexed as Annexure 2 to this writ petition. It is further submitted that the respondent No. 5 had appeared in Fazil Examination of the Board (equivalent to post graduate degree) in the year 2007 and was declared failed, therefore, in this view also he cannot be said to be a renowned Muslim Educationist in the field of traditional Madarsa Education as prescribed under Section 3(3)(a). A copy of the marksheet of respondent No. 5 of Fazil examination is being annexed as Annexure 3 to the writ petition.

17(c) The respondent No. 5 is not possessing any qualification above than 12th standard in Madarsa Education, therefore, in this view also he cannot be said to be a renowned Muslim Educationist in the field of traditional Madarsa Education as prescribed under Section 3(3)(a).

17(d) As per legal glossary published under the Authority of Government of India

the word Educationist means "a specialist in the theory and methods of education". It is clear from the qualification possessed by the respondent No. 5 that he is not a specialist in the theory and method of education, therefore, he cannot be said to be a renowned Muslim Educationist in the field of traditional Madarsa Education as prescribed under Section 3(3)(a). A photocopy of extract of legal glossary is being annexed as Annexure 4 to this writ petition.

17(e) The respondent No. 5 neither is nor was a teacher in any recognized institution in any Madarsa Education subject. It is further submitted that the respondent No. 5 neither has adapted any methodology in Madarsa Education, nor he has done any written work in this field, therefore, he cannot be said to be a renowned Muslim Educationist in the field of traditional Madarsa Education as prescribed under Section 3(3)(a)."

14. The State has filed a counteraffidavit in which paragraph 17 of the writ petition has been replied in paragraph 10 of the counteraffidavit. Paragraph 10 of the counteraffidavit filed by the State is quoted herein below:

"10. The contents of paragraph 17(a)(b)(c)(d)(e) of the writ petition are incorrect and misconceived as stated, hence are denied, in reply therefore, it is respectfully submitted that the respondent No. 5 being a practicing advocate have also worked in the field of Madarsa Education and he is a renowned Muslim Educationist in the field of Madarsa Education and he fulfills and the requirements of the Act and due to this the State Government has appointed/nominated to him as Chairman of the Board. And it is further clarified that the post of Chairman of the Board cannot be claimed as a post of employment as the petitioner claimed to be appointed. And so far being failed in Fazil examination to the respondent No. 5 is concerned that cannot be made a basis for disqualification to be nominated/appointed a chairman of the board and it is again clarified that the Annexure 4 which has been annexed with the writ petition to show the definition of educationist is concerned that is related to appointment of Chairman of the University Grant Commission and so far the appointment of the Chairman to the Board is concerned regard to that the provisions of Section 3(3)(a) has been given."

15. The respondent No. 5 has also filed a counteraffidavit in which also paragraph 17 has been replied in paragraph 7 of the counteraffidavit. Paragraph 7 of the counteraffidavit filed by the respondent No. 5 is quoted below:

"7. That in reply to the contents of paragraphs 13, 14, 15, 16, 17, (a), (b), (c), (d), (e) of the writ petition, it is respectfully submitted that the deponent is fully qualified to be appointed as Chairman and with all respect he is deserved to be held the post of chairman of the Madarsa Board and also fulfills the requisite qualifications of an educationist of Madarsa Education within the meaning of Section 3(iii)(a) of the Act and it is further respectfully submitted that the appointment/nomination of deponent and other members of the board are in accordance with law and it is respectfully submitted that the Gazette had been

issued in accordance with law and does not suffer any illegalities. The allegations contrary to it made in paragraphs under reply is emphatically denied hence are not admitted."

16. The respondent No. 5, in his counteraffidavit, has annexed his biodata of qualifications as Annexure CA1A and the counsel for the respondent No. 5 contended that he has passed High School, Intermediate, B.A. and Law and has also passed Alim (private examination) in the year 2005 from the Board of Arabic and Persian Examination Uttar Pradesh, Lucknow. Two other qualifications have also been referred namely Religious Education from Madarsa Deen Dunia Atala Maszid, Jaunpur and second is the degree of Fazilat in the year of 1977 from Madarsa Hanafia Ahlesunnat Bahrululoom, Maunathbhanjan Azamgarh. The petitioner appeared in the next higher qualification in Fazil and failed in the year 2007. Annexure 3 to the writ petition is the marksheet of Haji Rijwanul Haque appearing in Fazil Exam in which he had declared failed by the Board of Arabic and Persian Examination, Uttar Pradesh, Lucknow.

17. With regard to petitioner's qualification, as claimed, it is contended by the petitioner that he has passed FazileTib, which is a post graduate degree in Madarsa Education recognised by Board of Arabic and Persian Examination, Uttar Pradesh, Lucknow.

18. With regard to degree of Fazilat, which is claimed by the respondent No. 5 to have obtained in the year 1977, it is submitted that in 1977, he has shown to have passed intermediate (private) and the degree is shown to have been issued in 1977 and further the Religious Teaching Certificate, which has been filed, is a private certificate given by Madarsa Deen Dunia Atala Maszid, Jaunpur. With regard to degree of Fazilat, which has been passed in 1977 by the respondent No. 5, it is submitted that the said institution was not recognised by the Board of Arabic and Persian Examination, Uttar Pradesh, Lucknow and is not a recognised institution. It is not necessary to express any opinion on the contention raised by the petitioner that the degree of Fazilat obtained in 1977 was unrecognized or was not at all issued or as to what is the effect of certificate issued by Deen Dunia Atala Maszid, Jaunpur, filed as Annexure 2 to the counteraffidavit by respondent No. 5. We, for the purpose of writ petition, proceed accepting the degrees and certificate as claimed by the respondent No. 5.

19. From the materials on record, it is clear that the respondent No. 6 appeared in two examination recognised by the Board i.e. Alim, which is said to be equivalent to Intermediate and passed in the year 2005 as a private candidate and in 2007, the respondent No. 5 appeared in Fazil exam and failed. The respondent No. 5 passed High School and Intermediate from U.P. Board, B.A. from Gorakhpur University and Law from Lucknow University. It is not even claimed that in the aforesaid examination's, respondent No. 5 have received any education pertaining to traditional Madarsa Education. According to the own case of respondent No. 5, he has passed Fazilat in 1977 and Alim in 2005. Alim is equivalent to intermediate and Fazil is equivalent to degree next to it and can be

treated as degree equivalent to graduate. Section 3(3)(a) of the Act does not prescribe any educational qualification for nomination of a person as Chairperson. The key word used in Section 3(3)(a) of the Act is renowned Muslim Educationist in the field of traditional Madarsa Education.

20. Person who has received education in traditional Madarsa Education cannot be treated as educationist. The word used in statute is "Educationist". The question to be answered as to who can be treated as educationist. Although, Madarsa Education has been defined in Section 2(h) of the Act of 2004 but word Educationist has not been defined in the Act. For understanding the true/plain meaning of the Educationist, it is necessary to refer to dictionary meaning of the word educationist. Reliance has been placed on Legal Glossary which defines educationist as follows:

Educationist a specialist in the theory and methods of education. Chambers Dictionary also defines Educationist in following manner:

Educationist.a person skilled in methods of educating or teaching; a person who promotes education.

Law Lexicon also defines educationist as "A specialist in the theory and methods of education.

21. A person, who receives an education cannot be treated as educationist unless he is specialist in theory and methods of teaching. The petitioner has specifically pleaded that respondent No. 5 is not an educationist since he is neither involved in any kind of teaching nor has done any work on education. Both the State and respondent No. 5 has filed counteraffidavit. The State having nominated the respondent No. 5 as Chairperson under Section 3 of the Act, it was necessary that the State in the counteraffidavit should satisfy that the respondent No. 5 fulfils the qualification under Section 3(3)(a) of the Act of 2004 as an educationist. It is not even suggested by the respondent No. 5 or the State that the respondent No. 5 have any special knowledge of theory and methods of teaching. Admittedly, the respondent No. 5 is an enrolled advocate and has never been in profession of teaching. The word educationist is also prefixed by word renowned. The word renown and renowned has been defined in Webster Comprehensive Dictionary Encyclopedic Edition which are as under:

renown.Exalted reputation; celebrity; the state of being widely known for great achievements or merits; fame.

renowned.Having renown; famous.

22. The achievements and merits have to be in the field of traditional Madarsa Education. Section 3(3)(a) of the Act of 2004 provides the requirement of Chairperson being a renowned educationist in traditional Madarsa Education. The function of the Board have been laid down in Section 9 of the Act. The Board function are to prescribe course of instructions, textbooks, other books and instructional material, if any, for various courses, as provided in Section 9 of the

Act. Section 9 (a), (b) and (c) of the Act is quoted below":

"9. Subject to the other provisions in this Act the Board shall have the following functions, namely:

(a) to prescribe course of instructions, textbooks, other books and instructional material, if any, for Tahtania, Fauquania, Munshi, Maulavi, Alam, Kamil, Fazil and other courses;

(b) prescribe the course books other books and instructional material of courses of Arbi, Urdu and Pharsi for classes upto High School and Intermediate standard in accordance with the course determined there for by the Board of High School and Intermediate Education;

(c) to prepare manuscript of the course books, other books and instructional material referred to in clause (b) by excluding the matters therein wholly or partially or otherwise and to publish them."

23. The respondent No. 5 appeared in Fazil examination conducted by the Board in the year 2007 and had failed. The marksheet of respondent No. 5 declaring him fail is filed as Annexure 3 to the writ petition, which fact has not been denied by the respondent No. 5 or by the State. There is no pleading or any material in the counteraffidavit filed by the State and the respondent No. 5 to indicate that the respondent No. 5 has any knowledge of theory or method of teaching. There being no pleadings at all, the Court is fully convicted with the case of the petitioner that the respondent No. 5 cannot be said to be renowned educationist in traditional Madarsa Education.

24. The submission of Sri M.A. Qadeer and Sri Ashok Khare appearing for respondent No. 5 that it is for the State Government to treat a person a renowned educationist. Even if it is the discretion of the State Government to treat a person educationist, the State Government has to satisfy itself that the person, who has been sought to be nominated, fulfils the qualification under Section 3(3) of the Act or not. But for forming the opinion, which is in the domain of the State Government, that a person is a renowned educationist, there has to be some material and basis. When the decision is questioned, it was for the respondent to have dispelled the doubt by bringing on record the material in support of the opinion formed. The respondents have been harping only on the qualification i.e. Adil and Fazilat which has been obtained by the respondent No. 5 and relied in the counteraffidavit. The mere possession of qualification cannot treat a person as educationist. A person, may or who may not hold qualification or higher degrees in traditional Madarsa Education and still may be recorded as renowned educationist provided he has special knowledge of theory and method of teaching. A person, without any higher qualification, may acquire special knowledge of theory and practice of teaching by his learning and work, however, the necessary factor for treating a person to be educationist is having special knowledge of theory and methods of teaching. It is not even pleaded that the respondent No. 5 has some special knowledge of theory and practice of teaching.

It is also a coincident that in 2007, the respondent No. 5 appeared in Fazil examination conducted by Board and failed and in the same year he was appointed Chairperson of the Madarsa Board.

25. In *A.N. Shashtri v. State of Punjab and others*, 1988 (Supp) SCC 127, wherein challenge was made to the qualification for appointment of the post of Director of Ayurvedic Medicines, the Court, after noticing the qualification of the appellant, held that appellant fulfils the qualification. Hence, the writ petition, challenging the appointment of the appellant as Director, was held to be without any basis and the order of the High Court allowing the writ petition was set aside. The said case as on its own fact.

26. The scope and principles, on the basis of which the writ of quo warranto can be issued, has been laid down by the Supreme Court in *University of Mysore v. C.D. Govinda Rao and another*, AIR 1965 SC 491. Following was laid down by the Apex Court in paragraph 7:

"7.....Broadly stated, the quo warranto proceedings affords a judicial enquiry in which any person holding an independent substantive public office or franchise, or liberty, is called upon to show by what right he holds the said office, franchise, or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the Courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the Court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not."

27. Thus, in view of the law laid down by the Apex Court, when challenge is made with regard to holding of a public office, the Court has necessarily to enquire as to whether the appointment of the alleged usurper has been made in accordance with law or not.

28. Now, comes the case of respondent No. 6 Gayasuddin Nadvi, who was appointed as Member. Specific pleading with regard to respondent No. 6 are

contained in paragraph 18 of the writ petition, which is quoted below:

"18. That the nomination of the respondent No. 6 as Member of the board is wholly illegal, unjust, against the provisions of the Act and is liable to be quashed for following reasons:

(f) As per provisions of Section 3(3)(k) of the Act, a Science/Tibb Teacher of an "institution" will be nominated as member of the Board. The respondent No. 6 is not a teacher of Tibb in an "institution" as defined under Section 2(f) of the Act, therefore he cannot be said to be a teacher of the institution and cannot be nominated as Member of the Board as prescribed under Section 3(3)(k) of the Act.

(g) The word "Institution" has been defined under Section 2(f) of the Act and "Institution" means "Government Oriental College, Rampur and includes the Madarsas or Oriental Colleges established by the Muslim Minority Community and recognized by the Board for Madarsa Education". The respondent No. 6 is working as a Teacher in Takmilut Tibb, Tibiya College, Jhawai Tola, Lucknow which is not a recognized institution by the Board but it is a College affiliated with Chatrapati Sahuji Maharaj Kanpur University of Kanpur and is imparting education in Unani system of Medicine, therefore the respondent No. 6 cannot be said to be a teacher of Tibb/Science in the institution as prescribed under Section 2(f) of the Act and therefore his nomination as a Member of the Board is contrary to the provisions of Section 3(3)(k) of the Act."

29. The State has filed counteraffidavit replying paragraph 18 in paragraph 11 of the counteraffidavit, which is quoted below:

"11. That the contents of the paragraph 18(f)(g) of the writ petition is incorrect and misconceived as stated, hence are denied, in reply of it, it is respectfully submitted that the respondent No. 6 has been appointed/nominated as per the provisions of the Act, it is farther submitted that the appointment/nomination of the respondent No. 6 is a discretion of the State Government which has been made in view of the provisions given in the Act, which cannot be assessed in writ jurisdiction."

30. The categorical allegation in the writ petition is that respondent No. 6 is not a teacher in any "institution". Institution has been defined in the Act. In reply, it is not even mentioned as to in which institution recognised by the Board the respondent No. 6 is a teacher. It is further alleged in writ petition that respondent No. 6 is working as a teacher in Takmilut Tibb, Tibiya College, Jhawai Tola, Lucknow which is not a recognized institution by the Board, but is a college affiliated with Chatrapati Sahuji Maharaj Kanpur University, Kanpur and imparting education in Unani system. The word "institution" has a specific meaning under the Act i.e. the Government Oriental College, Rampur and includes a Madarsa or an Oriental College established and administered by Muslim Minorities and recognised by the Board. The institution, where the respondent No. 6 is teaching, is not recognised by the Board. There is a purpose and object for providing nomination to a teacher of an institution recognised by the Board. In the

counteraffidavit, the said averments made in paragraph 18 of the writ petition have not been specifically denied. Thus, the Court has no option except to accept the case of the petitioner that respondent No. 6 does not fulfil the qualification, as is prescribed under Section 3(3)(k) of the Act.

31. In view of the foregoing discussions, we are of the considered opinion that both the respondents No. 5 and 6 do not fulfil the eligibility for being nominated as Chairperson and member of the Board. Petitioner have made out a case for issuance of writ of quo warranto against respondents No. 5 and 6 as well as a writ quashing the notification dated 14th December, 2007 in so far as nomination of Haji Rijwanul Haque and Gayasuddin Nadvi as Chairman and Member is concerned. It is clear that the respondents No. 5 and 6 are not eligible to hold office of Chairperson and member and they are directed not to function as Chairman and Member of the Board. Notification dated 14th December, 2007 is quashed so far as respondents No. 5 and 6 are concerned.

32. Writ petitions are allowed accordingly. Parties shall bear their own cost.