

IN THE HIGH COURT OF JUDICATURE AT PATNA

Managing Committee of Madarsa Madarstul Banat Azizul Uloom Madarsa

Vs.

State of Bihar and Others

Letters Patent Appeal No.216 of 2022

In

Civil Writ Jurisdiction Case No. 165 of 2022

28 November, 2022

(Hon’ble Mr. Justice Ashutosh Kumar and Hon’ble Mr. Justice Nawneet Kumar Pandey)

Issue for Consideration

1. Whether judgment passed in Civil Writ Jurisdiction Case No. 165 of 2022 is correct or not?

Headnotes

Bihar State Madarsa Board Rules, 1981—Sections 7 and 28—Withdrawal of Affiliation—affiliation of Madarsa Madarstul Banat Azizul Uloom withdrawn by Chairman of the Bihar State Madarsa Education Board—appellant challenged the order without availing statutory appellate remedy under Section 28—learned Single Judge dismissed the writ petition on ground of availability of alternative remedy and held that opportunity of hearing was granted to the appellant—appellant contended that withdrawal of affiliation could only be done by the Board and not unilaterally by the Chairman—no material on record to show that the decision of the Chairman was ratified by the Board as required under Rule 7(4) of the 1981 Rules.

**Held:** Chairman is not synonymous with the Board—power to withdraw affiliation vests with the Board and not with the Chairman acting individually—absence of ratification by the Board renders the order of withdrawal non-est in law—availability of appellate remedy under Section 28 does not cure the defect of jurisdiction—procedure prescribed under the Rules must be followed—impugned order of the learned Single Judge set aside—Board directed to take fresh decision after giving opportunity of hearing to the appellant—appeal allowed.

(Paras 3 to 5)

Case Law Cited

NONE

List of Acts

Bihar State Madarsa Board Rules, 1981

List of Keywords

Madarsa, Chairman, ratification by the Board, availability of appellate remedy, Affiliation.

Case Arising From

From withdrawal of affiliation of a Madarsa by the Chairman of the Bihar State Madarsa Education Board without ratification by the Board.

Appearances for Parties

**For the Appellant:** Mr. Helal Ahmad, Advocate.

**For the Respondents:** Mr. Ajay Kr. Rastogi (AAG10).

**For the Madarsa Board:** Mr. Aslam Ansari, Advocate.

Headnotes Prepared by Reporter: Abhas Chandra.

**Judgment/Order of the Hon’ble Patna High Court**

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.216 of 2022**  
**In**  
**Civil Writ Jurisdiction Case No.165 of 2022**

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Managing Committee of Madarsa Madarstul Banat Azizul Uloom Madarsa No. 609/467 at Jamwara, P.O.-Pothraita, P.S. Sheikhpura, District-Sheikhpura through its Secretary Syed Sadique Hussain age 69 Years (M) Son of Late S. Ashique Hussain, Resident of Village-Jambara, Post Pathraita, P.S. Sheikhpura, District-Sheikhpura. At Present Resident of Magistrate Colony, Road No. 2B, P.O. Ashiana Nagar, P.S. Rajiv Nagar, District-Patna.

... .. Appellant/s

Versus

1. The State of Bihar through Additional Chief Secretary Education Department, Bihar, Patna.
2. The Bihar State Madarsa Education Board, Bihar, Patna through Chairman, Bihar State Madarsa Education Board, Patna Apex Tower Haroon Nagar, Sector-2, Phulwari Sharif, Patna-801505.
3. Chairman, Bihar State Madarsa Education Board, Patna Apex Tower Haroon Nagar, Sector-2, Phulwari Sharif, Patna-801505.
4. Secretary, Bihar State Madarsa Education Board, Patna Apex Tower Haroon Nagar, Sector-2, Phulwari Sharif, Patna-801505.
5. The District education Officer, Sheikhpura.

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Helal Ahmad, Adv.  
For the Respondent/s : Mr. Ajay Kr. Rastogi (AAG10)  
For the Madarsa Board : Mr. Aslam Ansari, Adv.

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**  
**and**  
**HONOURABLE MR. JUSTICE NAWNEET KUMAR**  
**PANDEY**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

**Date : 28-11-2022**

Learned counsel for the appellant presses I.A.

No. 01 of 2022, seeking condonation of delay of four days  
in preferring this appeal.



For the reasons stated in this application, the delay is condoned.

The application stands allowed.

Heard Mr. Helal Ahmad, learned advocate for the appellant/Managing Committee of the Madarsa (Madarsatul Banat Azizul Uloom) and Mr. Md. Aslam Ansari for the Bihar State Madarsa Education Board.

The affiliation granted to the Madarsa in question was withdrawn by the Chairman of the Board and not by the Board.

The learned Single Judge, while hearing the challenge, found that any decision by the Board or the Chairman is appealable before the Special Secretary cum Appellate Authority within a period of sixty days. Since this statutory provision was not exhausted, the challenge was not sustained.

Apart from this, it has been submitted that the learned Single Judge based his decision on an ancillary issue that an opportunity of hearing had been given to the



Secretary of the Management Committee before taking a decision and, therefore, there was no cause for the appellant to grieve when the affiliation was withdrawn in view of the findings of the Chairman that no teaching work was going on in the Madarsa for the last two years.

Mr. Helal Ahmed, learned counsel for the appellant has submitted that the power to withdraw affiliation rests with the Board as would appear from Section 7 of the Bihar State Madarsa Board Rules, 1981.

The Chairman of the Board is not synonymous with the Board and any decision taken in his personal capacity as Chairman would be non-est in the eyes of law. For this reason, there was no necessity for the appellant to have preferred an appeal before the Special Secretary cum Appellate Authority regardless of the provision contained in Section 28 of the Rules, which provides a forum of appeal against the order passed by the Board or the Chairman of the Board. The reason for saying so is that there are certain powers which can be exercised by the Chairman of



the Board in his individual capacity and under exceptional circumstances but, such decisions are to be ratified by the Board in its next meeting.

Nowhere in the Rules is there any exemption of the requirement of such decisions like withdrawal of affiliation or grant of affiliation, to be made by the Board only and not by the Chairman.

Apart from this, it has been submitted that the learned Single Judge did not advert itself to the issue that once the affiliation to the Madarsa was granted by the Board, it could only have been withdrawn by the Board and not by the Chairman.

There is nothing on record to indicate that such decision of the Chairman was ratified by the Board in accordance with Section 7(4) of the 1981 Rules.

It is axiomatic that when a procedure has been provided in the Rules, that must be followed.

Considering the aforementioned arguments on behalf of the appellant, we set aside the order passed by the



learned Single Judge and direct the Madarsa Board to take an appropriate decision afresh, for which notice shall be given to the appellant within a period of thirty days from the date of receipt/production of a copy of this order and after hearing all the concerned parties, a decision shall be taken by the Board regarding the Madarsa in question within a further period of sixty days.

The appeal stands allowed to the extent indicated above.

(Ashutosh Kumar, J)

( Nawneet Kumar Pandey, J)

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