BIHAR STATE MADARASA EDUCATION BOARD, PATNA, THROUGH ITS CHAIRMAN

v.

MANAGING COMMITTEE OF MADARASA HANFIA ARABIC COLLEGE JAMALIA AND ORS.

DECEMBER 5, 1989

[K.N. SINGH AND N.M. KASLIWAL, JJ.]

Bihar State Madarasa Education Board Act, 1982: S. 7(2)(n)—Board's power to dissolve managing committee of Madarasa institution—Whether ultra vires Article 30(1) of the Constitution.

Constitution of India, 1950: Article 30(1)—Bihar Madarasa Education Board—Power to dissolve managing committee of Madarasa institution—Constitutionality of—S. 7(2)(n), Bihar State Madarasa Education Board Act, 1982.

Section 7(2)(n) of the Bihar State Madarasa Education Board Act, 1982 confers power on the State Madarasa Education Board to dissolve the managing committee of an aided and recognised Madarasa institution. The committees of management of the respondent institutions established by the Muslim minority community failed to comply with the directions issued by the Board with regard to payment of salary to teachers, whereupon the Board in exercise of its power under s. 7(2)(n) of the Act dissolved the said committees.

The respondents filed writ petitions under Article 226 of the Constitution assailing s. 7(2)(n) of the Act as violative of Article 30(1) on the ground that it interfered with their right of management of institutions. The High Court declared s. 7(2)(n) unconstitutional. It, however, observed that the majority of members of the Madarasa Education Board and its Chairman may not belong to minority community, therefore, the Board's constitution will not be in consonance with the minorities constitutional right under Article 30 of the Constitution.

Dismissing the appeals by the Board, the Court,

HELD: 1. Article 30(1) of the Constitution protects the right of minorities to establish and administer educational institutions of their choice. The rights so granted are, however, not absolute. Minorities have no right to malaminister. The State has power to impose regula-

A **tions made in the interest of efficiency of institution's discipline, health, sanitation and public order even though such regulations may indirectly impinge on the exclusive right of administration and management of the institution. The State has, however, no power to completely take over the management of a minority institution under the guise of regulating the educational standards by superseding or dissolving managing com-**
B **mittee or by appointing *ad hoc* committees in place thereof. [403D-F; 404C-E]**

In the instant case, s. 7(2)(n) of the Bihar State Madarasa Education Board Act, 1982 in so far as it provides for dissolution of the managing committee of a Madarasa is, clearly violative of constitutional right of minorities under Article 30(1) of the Constitution. [404E-F]

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In re Kerala Education Bill 1957, **[1959] SCR 995;** *Sidharajbhai* **v.** *State of Gujarat,* **[1963] 3 SCR 837;** *State of Kerala* **v.** *Very Rev. Mother Provincial etc.,* **[1971] 1 SCR 734;** *Ahmedabad St. Xaviers College Society* **v.** *State of Gujarat,* **[1975] 1 SCR 173;** *Lilly Kurian* **v.** *Lawina,* **[1979] 1 SCR 820 and** *All Bihar Christian Schools Assn.* **v.**
D *State of Bihar,* **[1988] 1 SCC 206, referred to.**

2. Article 30(1) of the Constitution does not contemplate that an autonomous Educational Board entrusted with the duty of regulating efficiency in the aided and recognised minority institutions, should be constituted exclusively by persons belonging to the minority commun-
E **ity. In the instant case, the constitution of the Board under s. 3 of the Act ensures that its members are only those who are interested in teaching and research in Persian, Arabic and Islamic studies. This provision fully safeguards the interest of Madarasa of the Muslim community. The observations made by the High Court are contrary to the scope of Article 30(1) of the Constitution. [404H; 405A, B-C]**

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CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 463 and464 of 1986.

From the Judgment and Order dated 6.11.1984 of the Patna High
G Court in Civil Writ Jurisdiction Case No. 3489 of 1981 & 601 of 1982.

M. Qamaruddin and Mrs. M. Qamaruddin for the Appellant.

S.N. Misra, M.K. Jha and P.C. Kapur for the Respondent.

H The Judgment of the Court was delivered by

SINGH, J. These two appeals are directed against the judgment and order of High Court of Patna dated November 6, 1989, quashing the order of the Bihar State Madarasa Education Board dissolving the Managing Committee of the respondent's institution.

The State Legislature of Bihar enacted the Bihar State Madarasa Education Board Act (Act 32 of 1982) providing for the constitution of an autonomous Board for development and supervision of Madarasa education in the State of Bihar. "Madarasa" as defined by Section 2 means an educational institution providing instructions in Islamic, Arabic and Persian studies and recognised as such by the Board. The 'Board' means the Board established under Sec. 3 of the Act. Section 3 provides for the constitution of State Madarasa Education Board which is a body corporate with perpetual succession and a common seal. The Board consists of a Chairman appointed by the State Government, Director of Education (Incharge of Oriental Education), Director, Institution of Post-graduate Studies and Research in Arabic and Persian, Patna, the Principal, Madarasa Islamia, Shamsul Hoda, Patna, Chairman, Bihar Sunni Wakf Board, Patna, Chairman, Bihar Shia Wakf Board, Patna, two members of the State Legislature nominated by the Government having interest in Madarasa Education or Islamic studies, two senior teachers of recognised Madarasa nominated by the State Government, and three other members nominated by the State Government who have interest in Madarasa education or Islamic studies. The Board is invested with powers and functions to provide for instruction and research in Arabic, Persian and Islamic studies and to advise the State Government on all matters relating to Madarasa education. The Act empowers the Board to direct, supervise and control Madarasa education, to grant recognition to Madarasas in accordance with the regulations framed by it, to conduct different Madarasa examination, to publish results, to make regulations prescribing conditions of employees of the Board, to provide for the constitution of the Managing Committee, to constitute academic committee, recognition commitee, examination committee, and for carrying on its powers and functions in regulating the education in Madarasa institutions. The Board is headed by a Chairman nominated by the State Government under Sec. 10(2) of the Act, it lays down that no person shall be eligible for appointment as Chairman unless he holds adequate administrative experience under the Central or State Government and he has teaching or research experience for not less than 10 years in post-graduate educational institutions or he is regarded scholar in Arabic, Persian, Islamic studies and he is interested in Madarasa education. The Board as constituted by the

A Act is an autonomous body entrusted with the duty to grant recognition, aid, supervise and control the academic efficiency in the Madarasa institutions, aided and recognised by it. The members of the Board consist of those persons who are connected with or interested in the teaching and research of Arabic, Persian and Islamic studies, and interested in the Madarasa education. The Legislature has enacted B the Act with the primary purpose of providing an autonomous educational authority for regulating the efficiency of Madarasa institutions where studies are carried on in Arabic, Persian and Islamic studies.

The Hanfia Arabic College Jamalia and Madarasa Shamsul Uloom the respondent's institutions are Madarasa institutions aided and recognised by the Board under the provisions of the Act, as such C the respondent's institutions are subject to the provisions of the Act and the regulations framed by the Board in matters relating to their management and administration. The Committees of Management of the two respondent institutions failed to comply with the directions issued by the Board with regard to payment of salary to teachers, D whereupon the Board in exercise of its power under Section 7(2)(n) of the Act dissolved the Managing Committee of the respondent's institution and appointed *ad hoc* Committee to manage the institutions. The outgoing Managing Committee of the respondent's institutions and some of the affected members of the Committee filed writ petitions before the High Court of Patna under Article 226 of the Constitution E challenging the Order of the Board, dissolving the Committee of Management and appointing *ad hoc* Committee. Before the High Court, the respondents submitted that Sec. 7(2)(n) of the Act which confers power on the Board to dissolve Managing Committee of a Madarasa is violative of Article 30(1) of the Constitution as it interfered with their right of management of institutions. The High F Court upheld the respondent's plea and declared Sec. 7(2)(n) unconstitutional as it confers power on the Board to dissolve Committee of Management of a Madarasa. The Board has preferred this appeal by leave against the aforesaid judgment of the High Court.

Section 7(2)(n) reads thus:

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> "7. Power and functions of the Board: (1) It shall be the duty of the Board to provide for instruction and research in Arabic, Persian and Islamic studies and such other branches of knowledge including vocational courses and training which the Board thinks fit and to advise the State Government on all other matters relating to Madarasa Education.

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(2) Subject to the provisions of this Act and the Rules and Regulations made thereunder the Board shall have the power to direct, supervise and control Madarasa Education and in particular have the powers

. . . . . .

(n) To get the Managing Committee of Madarasas constituted in a manner such as to include the Head Maulvi, two guardians' representatives and one member nominated by the Board and two other persons interested in Madarasa Education or Islamic studies to be composed by the above seven members. The power to dissolve the Managing Committee shall vest in the Board."

The above provision confers power on the Board to provide for constitution and dissolution of Managing Committee of a Madarasa. There is no dispute that the respondent Madarasas are educational institutions established by the Muslim minority community. Article 30(1) of the Constitution protects the right of minorities to establish and administer educational institutions of their choice. The Article in terms grants all minorities two rights (i) the right to establish and (ii) the right to administer educational institution of their choice. The rights so granted are, however, not absolute, a minority institution obtaining financial aid and recognition is subject to reasonable restrictions to ensure excellence in the institution. While minorities have a constitutional right to establish and to administer educational institutions of their choice, they have no absolute right to maladminister, the State has right to impose regulations made in the interest of efficiency of institution's discipline, health, sanitation and public order even though such regulations may indirectly impinge on the exclusive right of administration and management of the institution. A minority institution seeking aid and recognition must be subject to regulatory provisions which are reasonable and consistent with Article 30(1) of the Constitution. A minority institution which does not seek aid or recognition from the State or the Education Board need not be subject to regulatory provisions. These principles have been settled by this Court in *re Kerala Education Bill* 1957, [1959] SCR 995, *Sidharajbhai* v. *State of Gujarat*, [1963] 3 SCR 837, [1971] 1 SCR 734, [1975] 1 SCR 173, [1979] 1 SCR 820 and [1988] 1 SCC 206.

The question which arises for consideration is whether Section 7(2)(n) which confers power on the Board to dissolve the managing

committee of an aided and recognised Madarasa institution violates the minorities constiutional right to administer its educational institution according to their choice. This Court has all along held that though the minorities have right to establish and administer educational institution of their own choice but they have no right to maladminister and the State has power to regulate management and administration of such institutions in the interest of educational need and discipline of the institution. Such regulation may have indirect effect on the absolute right of minorities but that would not violate Art. 30(1) of the Constitution as it is the duty of the State to ensure efficiency in educational institutions. The State has, however, no power to completely take over the management of a minority institution. Under the guise of the regulating the educational standards to secure efficiency in institution, the State is not entitled to frame rules or regulations compelling the management to surrender right of administration. In *State of Kerala* v. *Very Rev. Mother Provincial etc.*, [1971] 1 SCR 734, Section 63(1) of the Kerala University Act, 1969 which conferred power on the Government to take over the management of a minority institution on its default in carrying out the directions of the State Government was declared *ultra vires* on the ground that the provisions interfered with the constitutional right of a minority to administer its institution. Minority institutions cannot be allowed to fall below the standard of excellence on the pretext of their exclusive right of management but at the same time their constitutional right to administer their institutions cannot be completely taken away by superseding or dissolving managing committee or by appointing *ad-hoc* committees in place thereof. In the instant case Section 7(2)(n) is clearly violative of constitutional right of minorities under Article 30(1) of the Constitution in so far as it provides for dissolution of managing committee of a Madarasa. We agree with the view taken by the High Court.

We have upheld the view taken by the High Court with regard to the validity of Section 7(2)(n) of the Act but we do not agree with the observations made by the High Court in paragraphs 9 and 10 of its judgment with regard to the constitution of the Board and appointment of its Chairman. The High Court has observed that the majority of the members of the Board and its Chairman may not belong to minority community, therefore the Board's constitution will not be in consonnance with the minorities constitutional right under Article 30 of the Constitution. In our opinion, the view taken by the High Court is not correct. Article 30(1) does not contemplate that an autonomous Educational Board entrusted with the duty of regulating the aided and

recognised minorities institution, should be constituted only by persons belonging to minority community. Article 30(1) protects the minorities right to manage and administer institutions established by them according to their choice, but while seeking aid and recognition for their institutions there is no constitutional obligation that the Board granting aid or recognition or regulating efficiency in minority institution should consist of members exclusively belonging to minority communities. In the instant case the constitution of the Board under Section 3 of the Act ensures that its members are only those who are interested in teaching and research of Persian, Arabic and Islamic studies. This provision fully safeguards the interest of Madarasa of the Muslim community. We therefore hold that observations made by the High Court in paragraphs 8 and 9 of its judgment are contrary to the scope of Article 30(1) of the Constitution.

With these observations we agree with the view taken by the High Court in quashing the order of the Board dissolving the managing committee of the respondent's institutions and appointing *ad-hoc* committee. The appeals fail and are accordingly dismissed. There will be no order as to costs.

P.S.S. Appeals dismissed.