

Supreme Court of India

Bihar State Madarsa Education ... vs Anjuman Ahle-Hadces on 30 March, 1993

Equivalent citations: 1994 SCC, Supl. (2) 509

Author: M Punchhi

Bench: Punchhi, M.M.

PETITIONER:

BIHAR STATE MADARSA EDUCATION BOARD

Vs.

RESPONDENT:

ANJUMAN AHLE-HADCES

DATE OF JUDGMENT 30/03/1993

BENCH:

PUNCHHI, M.M.

BENCH:

PUNCHHI, M.M.

BHARUCHA S.P. (J)

CITATION:

1994 SCC Supl. (2) 509

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. This appeal by the Bihar State Madarsa Education Board, which is a creature of the Bihar State Madarsa Education Board Act, must fail for the reason that it is an effort merely to have the two provisions mentioned hereinafter, struck down by the High Court as violative of Article 30 of the Constitution, read down to be suitably operable.

2. Those two provisions are Section 7(2)(n) and Section 24 which are mentioned hereafter.

"7. (2) Subject to the provisions of this Act and the Rules and Regulations made thereunder, the Board shall have the powers to direct, supervise and control Madarsa Education and in particular have the powers:

(n) to get the Managing Committee of Madarsa constituted in a manner so as to include the Head Maulvi, two donor representatives, one teacher representative, two guardians' representatives and one member nominated by the Board and two other persons interested in Madarsa Education or Islamic Studies co-opted by the above seven members."

"24. Services of teachers and non-teaching staff.- The services of the approved teachers and non-teaching staff of a recognised Madarsa shall be under the supervision of the Board. Subject to the regulations prescribed under this Ordinance their services shall be controlled by the Board/or Madarsa Managing Committee. No teacher of the Madarsa shall be discharged or dismissed from service without the prior approval of the Board."

3. The reasons adduced by the High Court for striking down these two provisions appear to us unexceptionable as these provisions are patently violative of Article 30 of the Constitution. As is evident, tremendous control is put in the hands of the Board to meddle with the affairs of the minority institutions. Such control is inconceivable in the scheme of things and specially in the context of Article 30 of the Constitution. In the situation, it is for the State Legislature to consider and examine whether it would be prudent and feasible to redraft these two provisions in the manner in which the Board-appellant is attempting to have these provisions read down. We do not think that this would be healthy and prudent in the facts and circumstances to redraft legislation by means of judicial interpretation. If the Board wants to assume some power in the context, it may have to request the Government to introduce legislation in the spirit of Article 30 of the Constitution to carry out the aims and objects of the Act. For these reasons, we dismiss this appeal. No costs.