

In the Supreme Court of Bangladesh  
High Court Division  
(Special Original Jurisdiction)

**Present**

**Madam Justice Kashefa Hussain**

**And**

**Madam Justice Fatema Najib**

**Writ Petition No. 13822 of 2019**

**In the matter of:**

An application under Article 102  
read with Article 44 of the  
Constitution of the People's  
Republic of Bangladesh.

-And-

**In the matter of:**

Md. Mostafijur Rahman

..... Petitioner.

Vs.

The Government of Bangladesh  
and others.

.....Respondents.

Ms. Sarker Tahmeena Begum Sandha, Advocate

.....for the petitioner.

Mr. Noor Us Sadik Chowdhury, D.A.G

with Mr. Md. Awlad Hossain, A.A.G

with Mr. Rashedul Islam, A.A.G

.... for the respondents.

**Heard on: 05.04.2022, 07.04.2022 and**

**judgment on: 10.04.2022.**

**Kashefa Hussain, J:**

Rule nisi was issued calling upon the respondents to show  
cause as to why the letter Memo No. Bamashibo/Ric/Ulipur/Kurigram  
dated 20.10.2019 refusing to give recognition/permission of মাদ্রাসার  
স্থগিতকৃত পাঠদান, স্বীকৃতি নবায়ন ও বেতন ভাতাদি (সরকারি অংশ) সহ যাবতীয় কার্যক্রম in  
the Velur Khamer Keramotia Balika Dakhi. Madrasha Ulipur,

Kurigram should not be declared to have been issued without lawful authority and is of no legal effect and further to show cause as to why the respondents should not be directed to give the recognition/permission of মাদ্রাসার স্বীকৃত পাঠদান, স্বীকৃতি নবায়ন ও বেতন ভাতাদি (সরকারি অংশ) in the said Velur Khamer Keramoti a Balika Dakhi. Madrasha Ulipur, Kurigram and /or such other or further order or orders passed as to this court may seem fit and proper.

The petitioner is a superintendent of Velur Khamer Keramoti Balika Dakhil Madrasha, Ulipur, Kurigram. The petitioner's case in inter alia is that the Velur Khamer Keramotiya Balika Dakhil Madrasha is in the District of Kurigram Upozilla Ulipur and there is no Balika Madrasha within the area of 6 k.m and now there are 330 students. The said madrasha obtained recognition/ permission to open Dakhil Class IX and the permission to hold Public Examination in the said Madrasha as Centre vide memo 13/phobi/5-4/2007/826/827 dated 27.07.2008. Thereafter it was cancelled on 28.01.2009 by the authorities. Thereafter the petitioner filed an application for restoration of recognition/permission and pursuantly the Board gave an order for inspection in the said Madrasha as regards fitness and successfully completed the inspection. That the Madrasha Board earlier submitted report as such. Thereafter the Madrasha Board further directed to forward another inspection on 16.06.2019 which was completed successfully but that till today the petitioner has been kept in the dark regarding the decision on the inspection report as well as recognition/ permission to open Dakhil Class IX in accordance with the terms and conditions of the Madrasha Board. That the said

Madrasha is gradually improving its condition and its academic results have been satisfactory within the year such as 2010-2019.

The writ petitioner applied for recognition/permission to open Dakhil Class IX and centre of the public Examination in accordance with the terms and condition for recognition of the Madrasha under letter dated 02.09.2019 with satisfactory grounds and the Madrasha Board replied by a letter with refusal order for not giving the recognition/permission of মাদ্রাসার স্বীকৃতি নবায়ন ও বেতন ভাতাদি (সরকারি অংশ) সহ যাবতীয় কার্যক্রম on the ground that show cause notice was sent but the petitioner did not reply. That thereafter it went to the Education Ministry for scrutiny which is illegal and mala fide and not tenable in law. The petitioner then filed an application dated 21.10.2019 to the Education Ministry for remedy but they did not reply and as such the Madrasha Board did not restore the recognition / permission of the said Madrasah although the petitioner completed all the procedure steps by step successfully and hence filed the writ petition.

The respondent Nos. 1-10 (1.The Secretary,Ministry of Education , Madrasha and Technical Education, Bangladesh Secretariat Ramna, Dhaka. 2. Director General, Secondary and Higher Secondary Education Bhaban, Ramna, Dhaka. 3. Deputy Director, Secondary and Higher Secondary Education Ramna Area. 4. Registrar, Bangladesh Madrasha Education Board, Orphanage Road No. 2, Bokshibazar, Dhaka. 5.Controller of Public Examination, Bangladesh Madrasha Board, Dhaka. 6. Inspector, Bangladesh Madrasha Education Board, Dhaka. 7. Deputy Commissioner,

Kurigram. 8. District Education Officer, Kurigram. 9. Upozilla Nirbahi Officer, Ulipur, Kurigram. 10. Upzilla Secondary Education Officer, Ulipur, Kurigram) are public authorities and while the respondent No. 11 is the Velur Khamer Keramotia Balika Madrasha, Ulipur, Kurigram.

Learned Advocate Ms. Sarker Tahmeena Begum Sondha appeared on behalf of the petitioner while learned D.A.G Mr. Noor Us Sadik Chowdhury with Mr. Md. Awlad Hossain, A.A.G along with Mr. Rashedul Islam, A.A.G appeared for the respondents.

Learned Advocate for the petitioner submits that the impugned letter dated 20.10.2019 refusing to restore the recognition/permission of the concerned Madrasha is without lawful authority affecting the fundamental rights of the petitioner under the constitution and therefore the impugned letter ought to be declared unlawful and without lawful authority. Upon elaborating her submissions she argues that although eventually after initial suspension of the functions of the Madrasha subsequently there was an inspection by the concerned authority and the inspection report is in favour of the petitioner but however the authorities upon ignoring the report of the inspector unlawfully refused to restore the functions of the Madrasha which conduct is unlawful. She draws attention to Annexure B and B-1 of the main writ petition. She draws attention to Annexure B and points out to the report under the signature of the UNO dated 16.06.2019. She particularly points out to the observation and comments of the UNO and shows that from the said comments and observation it is clear that the substantive report of the authority upon

inspecting the Madrasha was subsequently satisfactory. She reiterates that therefore the refusal to restore the functions of the Madrasha is absolutely illegal and unlawful adversely affecting the fundamental rights of the petitioner Madrasha which has the lawful right to be restored for performing its function thereto. She next draws attention to Annexure 'C' in the supplementary affidavit to a reply of the respondents referring to a writ petition filed in the High Court Division regarding the disposal of the application of the petitioner. She submits that the respondents claim that they issued a show cause notice upon the petitioner as to why the MPO of the Madrasha shall not be cancelled previously to the suspension and further claimed that however the petitioner did not give reply to the show cause notice. She points out that although the respondents claim that they issued show cause previously to the suspension of the function of the Madrasha in the year 2009 but however they could not produce any copy of the show cause notice nor they could not by any other manner show service of show cause notice. He submits that therefore the respondents resorting to their plea of no reply to show cause is only a malafide tactics taken by the respondent which has no factual basis. She argues that therefore the Madrasha whose functions have been stopped since 2009 having subsequently upon filling the pre-requisites and which is evident from the positive report of the UNO which is annexure-B of the main petition, consequently the respondents refusal to recognize them as a Madrasha is without lawful authority and needs interference in Writ Jurisdiction. She concludes her submissions upon

assertion that the Rule bears merits ought to be made absolute for ends of justice.

On the other hand the learned Assistant Attorney General appearing for the respondents opposes the Rule. Upon a query from this bench however regarding the claims of the respondents that show cause notice was being issued upon the petitioner the learned A.A.G submits that the concerned UNO informed him he has been newly transferred therefore he could not show any papers of the show cause notice. No affidavit in opposition was however filed by the respondents. He however submits that the Rule bears no merits and ought to be discharged for ends of justice.

We have heard the learned counsels for both sides, perused the writ petition including the supplementary affidavit and the annexures annexed thereto including perusal of the related laws. It appears that originally the permission for Madrasha was cancelled in the year 2001 and it is seen that at some stage its functions was restored. During 2007 and 2008 however the function of the Madrasha was again halted vide memo No. শাঃ১৩/ফবি/৫-৪/২০০৭/৮২৬ ও ৮২৭ তারিখ-২৭/০৭/২০০৮. Thereafter its functions was suspended on 28.01.2009 by the authority. It appears from Annexure-B of the writ petition that pursuant to suspension there was an enquiry conducted by the relevant authority and which is reflected Annexure – B and B1 of the writ petition. We have particularly examined Annexure B1 of the writ petition which is the concerned UNO report pursuant to the inspection. Some of the comments of the UNO report are reproduced below:

“ছাত্র/ছাত্রীর সংখ্যাঃ ভর্তি রেজিস্টার অনুযায়ী মোট ছাত্র/ছাত্রীর সংখ্যা ২৮৫ জন। তন্মধ্যে ২২৩ জন ছাত্র/ছাত্রী উপস্থিত পাওয়া গেল। মাদরাসার পাঠদান ও স্বীকৃতি বাতিল থাকায় শিক্ষা মন্ত্রণালয়ের স্বারক নং- শাঃ ১৩/ফবি/৫-৪/২০০৭/৮২৬ ও ৮২৭, তারিখ : ২৭/০৭/২০০৮ খ্রিঃ মোতাবেক ২০১০ সাল হতে অদ্যাবদি পর্যন্ত এবতেদায়ী সমাপণি পরীক্ষায় নিজ মাদরাসার নামে, দাখিল, অষ্টম ও দশম শ্রেণির পাবলিক পরীক্ষায় নিকটস্থ তনুরাম ছিদ্দিকিয়া দাখিল মাদরাসার নামে, দাখিল অষ্টম ও দশম শ্রেণির পাবলিক পরীক্ষায় নিকটস্থ তনুরাম ছিদ্দিকিয়া দাখিল মাদরাসা হতে অংশ গ্রহণ করিয়া আসিতেছে। ফলাফল সন্তোষজনক। তাহার টটলিষ্ট ও ফলাফল সীট প্রেরণ করা হলো।”

Upon perusal of this report it is clear that pursuant to the inspection of the Madrasha the report is satisfactory and there are no negative comments in the report. Therefore we are of the considered view that there is no legal bar under the relevant laws nor under any Rules for functioning of the Madrasha to be restored.

We have also examined Annexure C of the supplementary affidavit filed by the petitioner pursuant to the Rule. Annexure C of the writ petition is the respondent's reply to the petitioner's application for the restoration of the functioning of the Madrasha pursuant to the positive satisfactory report of the UNO dated 16.06.2019. It appears that the respondent No. 6 being the Inspector, Bangladesh Madrasha Education Board, Dhaka in his reply while refusing to restore the functions of the Madrasha however claims that a 'show cause' notice was issued upon the petitioner before suspending the functions of the Madrasha and further claims that the petitioner did not reply to the said show cause notice. Apparently not

replying to a show cause notice is the primary and only reason he assigns for refusing to restore the functions of the Madrasha.

It is clear from the materials on record before us and also from the submissions of the learned A.A.G that although the respondents claim that a show cause was issued upon the petitioner but however the respondents could not produce any copy of such show notice ever been issued.

Therefore in absence of any documents supporting the issuing of show cause notice it may be presumed that no show cause was ever received upon the petitioner.

We are inclined to draw conclusion that, no show cause notice was ever issued upon the petitioner and the inspection report submitted pursuant to conducting an inspection of the Madrasha after suspension in 2009, such inspection report appears to be satisfactory. Therefore we are of the considered view that there is no reason for the authorities refusal to restore the functions of the Madrasha. The refusal to restore the function of the Madrasha pursuant to the report of the UNO dated 16.06.2019 such refusal is arbitrary and without lawful authority and needs interference under Article 102 of the Constitution.

We have also perused the স্বতন্ত্র এবতেদায়ী মাদ্রাসা স্থাপন, স্বীকৃতি, পরিচালনা, জনবল কাঠামো এবং বেতন-ভাতাদি/অনুদান সংক্রান্ত নীতিমালা-২০১৮ which contemplates the conditions under which a Madrasha may be restored. Upon perusal of clause 22(ka), 22(Kha) and 22(ga) we are of the considered opinion that the Madrasha having satisfied the conditions laid down for restoration as per the provisions of clause No. 22, consequently the



refusal to restore the Madrasha is completely without lawful authority infringing the fundamental rights of the petitioner guaranteed under the constitution.

Under the facts and circumstances and upon hearing the learned counsels of both sides and upon examination of the documents before us which were marked as annexures, we find merit in this Rule.

In the result, the Rule is made absolute and the letter Memo No. Bamashibo/Ric/Ulipur/Kurigram dated 20.10.2019 refusing to give recognition/permission of মাদ্রাসার স্থগিতকৃত পাঠদান, স্বীকৃতি নবায়ন ও বেতন ভাতাদি (সরকারি অংশ) সহ যাবতীয় কার্যক্রম in the Velur Khamer Keramotia Balika Dakhi. Madrasha Ulipu, Kurigram is hereby declared to have been issued without lawful authority and is of no legal effect.

Communicate this judgment at once.

.....  
(Kashefa Hussain, J)

I agree.

.....  
(Fatema Najib, J)

Arif(B.O)