

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) No.340 of 2020

ABU SOHEL

PETITIONER

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

ORDER

This petition under Article 32 of the Constitution of India has been filed praying for following principal relief:-

“(a) declare that the West Bengal Madrasah Service Commission Act, 2008 and rules framed thereunder is void and ultra vires to the Constitution of India.”

Mr. Salman Khurshid, learned Senior Advocate appearing for the petitioner has invited our attention to Section 11 of the National Commission for Minority Educational Institutions Act, 2004 (“the Act” for short) in support of his submission that the provisions of the West Bengal Madrasah Service Commission Act, 2008 (“the State Act” for short) are void and *ultra vires* of the Constitution of India. The grounds taken in the petition submit that the entire field relating to appointment of teachers in minority educational institution is occupied by the provisions of the Act and, as such, the State Act would be hit by Article 254 of the Constitution of India.

Section 11 of the Act is as under:

“Section 11. Functions of Commission. - Notwithstanding anything contained in any other law for the time being in force, the Commission shall—

(a) advise the Central Government or any State government on any question relating to the education of minorities that may be referred to it;

(b) enquire, *suo motu* or on a petition presented to it by any Minority Educational Institution, or any person on its behalf into complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating to affiliation to a University and report its finding to the appropriate Government for its implementation;

(c) intervene in any proceeding involving any deprivation or violation of the educational rights of the minorities before a court with the leave of such court;

(d) review the safeguards provided by or under the Constitution, or any law for the time being in force, for the protection of educational rights of the minorities and recommend measures for their effective implementation;

(e) specify measures to promote and preserve the minority status and character of institutions of their choice established by minorities;

(f) decide all questions relating to the status of any institution as a Minority Educational Institution and declare its status as such;

(g) make recommendations to the appropriate Government for the effective implementation of programmes and schemes relating to the Minority Educational Institutions; and

(h) do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission.”

The functions entrusted to the Commission under Section 11 of the Act do not in any manner inhibit the power to appoint teachers in Madrasahs under the provisions of the State Act. It cannot, therefore, be said that the entirety of the field concerning the power to appoint teachers in minority educational institutions stands occupied by the Parliamentary legislation. We, therefore, reject the submission.

The writ petition is, accordingly, dismissed.

With the dismissal of the writ petition, no orders are called for in Interlocutory Application No.111573 of 2020, which also stands disposed of.

.....J.
[UDAY UMESH LALIT]

.....J.
[VINEET SARAN]

.....J.
[S. RAVINDRA BHAT]

NEW DELHI;
NOVEMBER 16, 2020.

ITEM NO.23

COURT NO.3
(HEARING THROUGH VIDEO CONFERENCING)

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No.340/2020

ABU SOHEL

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA No.111573/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS)

Date : 16-11-2020 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE VINEET SARAN
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

Counsel for the Parties:

Mr. Salman Khurshid, Sr. Adv.
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Mr. Santanu Ghosh, Adv.
Mr. K. Subba Rao, Adv.
Mr. Satya Prakash, Adv.
Mr. Nikhil Jain, AORMr. Tushar Mehta, SG
Mr. Kush Chaturvedi, Adv.
Mr. Kanu Agrawal, Adv.
Mr. Bhuran Mishra, Adv.
Mr. Arvind Kumar Sharma, Adv.Mr. Tushar Mehta, SG
Mr. B.V. Balaram Das, AOR
Mr. Kanu Agrawal, Adv.
Mr. Bhuvan Mishra, Adv.
Mr. Kush Chaturvedi, Adv.

Mr. Zoheb Hossain, AOR

UPON hearing the counsel the Court made the following
O R D E R

The Writ Petition is dismissed, in terms of the Signed Order.

With the dismissal of the Writ Petition, no orders are called for in Interlocutory Application No.111573 of 2020, which also stands disposed of.

Pending applications, if any, also stand disposed of.

(MUKESH NASA)
COURT MASTER

(BEENA JOLLY)
BRANCH OFFICER

(Signed Order is placed on the File)