

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) No._____ OF 2020

UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

IN THE MATTER OF:

1. The Managing Committee,
Contai Rahamania High Madrasah,
office at Village & P.O.- Darua, P.S.- Contai,
District- Purba Medinipur, Pin- 721401, West Bengal,
represented by its Secretary

Namely Sk. Mahammad Abdur Rahaman

2. Sk. Mahammad Abdur Rahamna,
son of Late Mahammad Sk. Ajijur Rahaman,
residing at Vill.- Khagrabani, P.O.- Darua,
P.S.- Contai, District- Purba Medinipur,
Pin- 721401, West Bengal

...PETITIONERS

Versus

1. State of West Bengal service
Through The Principal Secretary,
Minority Affairs and Madrasah Education Department,
Government of West Bengal, Nabanna,
Howrah- 711102

2. The Director of Madrasah Education,
Government of West Bengal,
Office at Bikash Bhawan,
Salt Lake, Kolkata- 700091
3. The Secretary,
West Bengal Madrasah Service Commission,
office at Bikash Bhawan, Salt Lake City,
Kolkata- 700091
4. The Chairman,
West Bengal Madrasah Service Commission,
Office at Bikash Bhawan, Salt Lake City,
Kolkata- 700091

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA**

To
The Hon'ble Chief Justice of India
And His companion Justices of the
Supreme Court of India

The Humble petition of the
Petitioner above named

MOST RESPECTFULLY SHOWETH:

1. The present writ petition under Article 32 is preferred
by the Petitioners herein since the Petitioners are
aggrieved by the judgment and order dated

06.01.2020 passed in Civil Appeal No. 5808 of 2017, as the same is completely contradictory and in conflict with the judgment passed in TMA Pai Foundation Vs. State of Karnataka reported in 2002 (8) SCC page 481 and also completely contradictory and in conflict with the judgment dated 25.9.2019 passed in Civil Appeal No. 2858 of 2007 in the case of Chandana Das (Malakar) vs. State of West Bengal & Ors. In a self same State there are other community who have been given the privilege of article 30 of the constitution but leaving aside those community the court cannot treat a particular community, belonging to the minority community as step son by curtailing a right which is already given under article 30 showing the National interest. Thereby the Petitioners are seeking the issuance of a writ of certiorari or any other appropriate writ to declare the judgment and order dated 06.01.2020 passed in Civil Appeal No. 5808 of 2017 to be tested by the Larger Bench as the observation and the findings of the said judgment virtually distinguished the judgment passed by the Constitution Bench in TMA Pai Foundation case and also the

judgment passed by 3 Judges Bench in Civil Appeal No. 2858 of 2007 on 25.9.2019 for being in violation of Article 30 (1) of the Constitution of India and this is also hit the provisions article 12, 14 and 21 of the Constitution of India.

1A. The details of the Petitioner No.2 filing the present Writ Petition are as follows:

- a) The First Petitioner is a Government aided recognized Madarasa governed under the West Bengal Board of Madarasa Education Act, 1994.
- b) Petitioner No.2 is the Secretary of the Managing Committee of the Petitioner No.1 i.e. the concerned Madarsah and he is the permanent resident of Vill.- Khagrabani, P.O.- Darua, P.S.- Contai, Dist.- Purba Medinipur, Pin- 721401, West Bengal.

1B. The Petitioner has no other equally efficacious remedy except to approach this Hon'ble Court by way of present Writ Petition. All annexures annexed to the Writ Petition are true copies of their respective originals.

- 1C. The Petitioners have not filed any other Petition either before this Hon'ble Court or any other High Court for seeking same or similar relief.

FACTS OF THE CASE

2. The All Aided Recognized Madrasahs in West Bengal are governed and/or recognized by a statutory body framed under the West Bengal Board of Madrasah Education Act, 1994.
3. The State of West Bengal duly introduced an Act i.e. West Bengal School Service Commission Act, 1997 came into force on and from 01.04.1997 for the purpose of selection process of the teachers for all type Government Aided schools including Madrasahs till the commencement of West Bengal Madrasah Service Commission Act, 2008.
4. The Department of Minorities' Development & Welfare & Madrasah Education, Government of West Bengal duly issued a memo being No. 1465-MD/07 dated 12.10.2017 notifying *inter-alia* that -

“..... in accordance with the above consideration and in pursuance of the Article 30 of the Constitution of India the Government is pleased, hereby, to declare that all the recognized and aided Madrasahs under control of this Government and those Madrasahs which will be recognized on similar lines in future, as Minority Educational Institutions. These institutions will also be allowed in consequence, to have the following effects as agreed upon by the State Government.

- i) They will continue to get financial assistance as before from the State Government.
- ii) Reservation policy for employment etc. shall not apply in case of appointment of teachers and non-teaching staff in these Madrasahs.
- iii) Selection of teacher may continue to be done by West Bengal School Service Commission through separate panel.”

5. The self same authority by way of a Memo being No. 1778-MD dated 28.12.2007 indicating *inter-alia* that -

“... Consequent upon publication of the Notification No.1465-MD/07 dated 12.10.2007 conferring minority status on all the recognized and Government aided Madrasahs, under Article 30(1) of the Constitution the matter of selection of teachers for recognized and aided Madrasahs of this State has gone out of the purview of the existing West Bengal School Service Commission Act, 1997. As such the West Bengal School Service Commission is not in a position to conduct Selection Test for those candidates who have applied for the posts of Assistant Teachers lying vacant in the above said Madrasahs. It has been decided by the Government that the said Selection Test of these candidates will be held some-time in the month of February 2008 and the test will be conducted by a separate body to be constituted by the State Government shortly. The admit cards will be issued in due course by the said body and the exact date for holding the test will be declared latter.”

6. On or after the commencement of the notification dated 12.10.2007 the aided recognized Madrasahs throughout the West Bengal have got the right to enjoy the provisions as enshrined in the Article 30 of the Constitution of India.
7. On 22.10.2008, the Government of West Bengal duly notified and/or enacted the West Bengal Madrasah Service Commission Act, 2008 in which Section 8, 10, 11 and 12 speaks as follows:-

“...8. Notwithstanding anything contained in any other law for the time being in force or in any contract, custom or usage to the contrary, it shall be the duty of the Commission to select and recommend persons to be appointed to the vacant posts of teachers in accordance with the provisions of this Act and the rules made thereunder.

“... 10. Notwithstanding anything contained in any other law for the time being in force or any contract custom or usage to the contrary, the Managing Committee, the ad-hoc Committee or the Administrator, as

the case may be shall be bound to appoint the candidate recommended by the Commission to the post of teacher in the Madrasah concerned as per vacancy report.

Provided that in the absence of the Managing Committee, ad-hoc Committee or the Administrator, the Headmaster or the Headmistress or the Teacher-in-Charge is empowered to issue appointment letter to

the candidate recommended by the Commission, Such matter should be ratified at the next available meeting of the Managing Committee, ad-hoc Committee or by the Administrator, as the case may be:

Provided further that the Managing Committee, ad-hoc Committee, the Administrator or the Headmaster or the Headmistress or the Teacher-in-charge as the case may be, shall, if any error is detected in the recommendation,

immediately bring it to the notice of the Commission for removal of such error.

.....11. Any appointment of a teacher made on or after the commencement of this Act in contravention of the provision of this Act shall be invalid and shall have no effect and teacher so appointed shall not be a teacher within the meaning of clause (s) of section 2.

.....12. (i) If the Managing Committee, the ad-hoc Committee or the Administrator of a Madrasah, as the case may be, refuses, fails or delays to issue appointment letter to the candidate recommended by the Commission within the period stipulated in the letter of recommendation by the Commission, without any reasonable ground, the State Government may direct the Board to dissolve the Managing Committee or the ad-hoc Committee, or discharge the Administrator, as the case

may be, or stop all financial assistance to such Madrasah recording reasons thereof and may also issue direction upon the Board or Council, as the case be to withdraw recognition or affiliation of such Madrasah.

(ii) In case of failure to issue appointment letter to the candidate recommended by the Commission is on the part of the Superintendent, the Headmaster, the Headmistress or the Teacher-in-charge of a Madrasah, he shall be subject to such disciplinary proceedings as may be prescribed.”

8. The petitioners Challenging those provisions of the West Bengal Madrasah Service Commission Act, 2008 preferred an application under Article 226 of the Constitution of India being W.P. No. 20650 (W) of 2013. The Single Bench of the High Court at Calcutta and after hearing the respective parties on 12.03.2014 passed a judgment and order declaring the Sections 8, 10, 11 and 12 of the said Act, 2008 are

ultra-virus to the Constitution as the provisions in the said Act is really against the freedom guaranteed in Article 30 of the Constitution of India.

The judgment and order dated 12.03.2014 was challenged in three Intra Court Appeal, preferred by (i) State of West Bengal, (ii) Sk. Md. Rafique & Ors. and (iii) West Bengal Madrasah Service Commission being A.S.T. 192 of 2014 (Sk. Md. Rafique & Ors. –Versus- Managing Committee, Contai Rahamania High Madrasah & Ors.), A.S.T. No. 130 of 2014 (Secretary, West Bengal Madrasah Service Commission & Anr. – Versus- Managing Committee, Contai Rahamania High Madrasah & Ors.) and M.A.T. 473 of 2014 (State of West Bengal & Ors. –Versus- Managing Committee, Contai Rahamania High Madrasah & Ors.) and the same were heard analogously by the Division Bench and finally affirmed the Judgment and Order of the Single Bench by its order dated 09.12.2015.

9. The Hon'ble Court has already laid down and/or settled the law in a case of TMA Pai Foundation Vs. State of Karnataka reported in 2002 (8) SCC 481 in which it

has been specifically held that the statutory provision regulating the facets of administration are concerned, in case of minority educational institution, the regulatory measures of control should be very minimal and the condition of recognition as well as condition of affiliation to a Board have to be complied with but the matter of day to day management like appointment of staff, teaching and non-teaching and administrative control over them, the Management should have the freedom and there should not be any external controlling agency.

10. In a case of Civil Appeal No. 2858 of 2007 the Hon'ble Court duly passed a judgment and order dated 11.12.2014 in which the Court duly observed that it is unnecessary to multiply decisions on the subject for the legal position is well settled. Linguistic institution and religious are entitled to establish and administer their institutions. Such right of administration includes the right of appointing teachers of its choice but does not denude the state of its power to frame regulations that may prescribe the conditions of eligibility for appointment of such teachers. The regulations can

also prescribe measures to ensure that the institution is run efficiently for the right to administer does not include the right to maladministration. While grant in aid is not included in the guarantee contained in the Constitution to linguistic and religious minorities for establishing and running their educational institutions, such grant cannot be denied to such institutions only because the institutions are established by linguistic or religious minority. Grant of aid cannot, however, be made subservient to conditions which deprive the institution of their substantive right of administering such institutions. Suffice it to say that once respondent No.4 institution is held to be a minority institution entitled to the protection of Articles 26 and 30 of the Constitution of India the right to appoint teachers of its choice who satisfy the conditions of eligibility prescribed for such appointments under the relevant rules is implicit in their rights to administer such institutions. Such rights cannot then be diluted by the State or its functionaries insisting that the appointment should be made only with the approval of the Director or by following the mechanism generally

prescribed for institutions that do not enjoy the minority status. Due to the difference of opinion, the same was referred to the larger Bench and ultimately on 25.9.2019 the Hon'ble Court comprising 3 Judges Bench affirmed the view of the judgment of Hon'ble Justice Thakur as the same is correct in law.

A copy of the judgment dated 11.12.2014 in Civil Appeal No. 2858 of 2007 is produced and annexed herewith as **ANNEXURE P-1 (pages**

A copy of the judgment dated 25.09.2019 in Civil Appeal No. 2858 of 2007 is produced and annexed herewith as **ANNEXURE P-2 (pages**

11. Challenging the order of the High Court of Calcutta, several Special Leave Petitions have been preferred and after hearing all the parties, this Hon'ble Court duly passed the judgment and order on 06.01.2020 in Civil Appeal No. 5808 of 2017. The issues in question in respect of all the Civil Appeals are same and identical. More so, there are two cases i.e. Civil Appeal No. 2858 of 2007 as well as Civil Appeal No. 5808 of 2017 have been brought from the self same State in

which the issuing questions are same and identical. It is not in dispute that in both the cases the parties are covered under Article 30 of the Constitution of India but the views of two courts of this Hon'ble Court is completely contradictory as well as the TMA Pai Foundation case has been virtually distinguished by this Hon'ble Court in Civil Appeal No. 5808 of 2017.

A copy of the judgment dated 06.01.2020 in Civil Appeal No. 5808 of 2017 is produced and annexed herewith as **ANNEXURE P-3 (pages**

12. In a similar issue, in the case of Indore Development Authority versus Manohar Lal this Hon'ble Court formed a Constitutional Bench to examine the correctness of decisions of Two 3 Judges Bench and in the instant case the same thing has happened in respect of Civil Appeal No. 2858 of 2007 and Civil Appeal No. 5808 of 2017 wherein the Two Judges Bench in Civil Appeal No. 5808 of 2017 differs the decisions of the Three Judges Bench in Civil Appeal No. 2858 of 2007.

13. Thus being aggrieved, the Petitioners with leave of this Hon'ble Court are filing the present writ petition under Article 32 of the Constitution of India on inter-alia the following grounds:-

GROUND

A) The judgment and order dated 06.01.2020 passed in Civil Appeal No. 5808 of 2017, as the same is completely contradictory and in conflict with the judgment passed in TMA Pai Foundation Vs. State of Karnataka reported in 2002 (8) SCC page 481 and also completely contradictory and in conflict with the judgment dated 25.9.2019 passed in Civil Appeal No. 2858 of 2007 in the case of Chandana Das (Malakar) vs. State of West Bengal & Ors. In a self same State there are other community who have been given the privilege of article 30 of the constitution but leaving aside those community the court cannot treat a particular community, belonging to the minority community as step son by curtailing a right which is already given under article 30 showing the National interest. Thereby the Petitioners are seeking the issuance of a writ of certiorari or any other appropriate

writ to declare the judgment and order dated 06.01.2020 passed in Civil Appeal No. 5808 of 2017 to be tested by the Larger Bench as the observation and the findings of the said judgment virtually distinguished the judgment passed by the Constitution Bench in TMA Pai Foundation case and also the judgment passed by 3 Judges Bench in Civil Appeal No. 2858 of 2007 on 25.9.2019 for being in violation of Article 30 (1) of the Constitution of India and this is also hit the provisions article 12, 14 and 21 of the Constitution of India.

B) That the issues in question in respect of all the Civil Appeals are same and identical. More so, there are two cases i.e. Civil Appeal No. 2858 of 2007 as well as Civil Appeal No. 5808 of 2017 have been brought from the self same State in which the issuing questions are same and identical. It is not in dispute that in both the cases the parties are covered under Article 30 of the Constitution of India but the views of two courts of this Hon'ble Court is completely contradictory as well as the TMA Pai Foundation case has been virtually

distinguished by this Hon'ble Court in Civil Appeal No. 5808 of 2017.

- C. That the Hon'ble Court while considering the issues in question indicated the issue of national interest but the issues in question were nowhere related with the national interest. The minority status have been given to certain communities in West Bengal but the Hon'ble Court while considering the issue purposefully segregated a particular community from other community whereas all the communities, who have been given the privilege of protection under Article 30 of the Constitution of India.
- D. That the religion based classification is an impermissible classification and thereby violates Article 14 of the Indian Constitution also while considering the protection under Article 30 of the Constitution of India to the petitioners.
- E. That while considering the issue in question, the Hon'ble Court virtually distinguished the judgment of TMA Pai Foundation.

F. That while considering the issue in question, the Hon'ble Court completely overlooked the principles and/or observations laid down on 25.09.2019 in Civil Appeal No. 2858 of 2007.

G. That in view of the above it is in the interest of justice and equity, the Petitioner seeks to pray following directions from this Hon'ble Court under Article 32 of the Constitution.

PRAYER

In the circumstances it is most respectfully prayed that this Hon'ble Court may be pleased to:

- (a) clarify the judgment dated 25.09.2019 passed by three judges in Civil Appeal No. 2858 of 2007 of this Hon'ble Court judgment dated 06.01.2020 passed by two Judges Bench in Civil Appeal No. 5808 of 2017 is the correct law of land or if found appropriate to refer the two judgments to the Constitution Bench to resolve the conflict between two judgments passed in Civil Appeal No. 2858 of 2007 and Civil Appeal No. 5808 of 2017
- (b) Issue a Writ or direction declaring the judgment and order dated 06.01.2020 passed in Civil Appeal No.

5808 of 2017 to be stayed till the decision of the Civil Appeal No. 5808 of 2017 by the Constitution Bench.

(c) Pass such other and further order/orders as are deemed fit and proper in the facts and circumstances of the case.

Drawn and Filled by

New Delhi

(SARLA CHANDRA)

Drawn On:- 06.01.2020

Advocate for the petitioners

Filed On:- 07.01.2020

SYNOPSIS AND LIST OF DATE

Challenging the order of the High Court of Calcutta, several Special Leave Petitions have been preferred and after hearing all the parties, this Hon'ble Court duly passed the judgment and order on 06.01.2020 in Civil Appeal No. 5808 of 2017. The issues in question in respect of all the Civil Appeals are same and identical. More so, there are two cases i.e. Civil Appeal No. 2858 of 2007 as well as Civil Appeal No. 5808 of 2017 have been brought from the self same State in which the issuing questions are same and identical. It is not in dispute that in both the cases the parties are covered under Article 30 of the Constitution of India but the views of two courts of this Hon'ble Court is completely contradictory as well as the TMA Pai Foundation

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Foundation case and also the judgment passed by 3 Judges Bench in Civil Appeal No. 2858 of 2007 on 25.9.2019 for being in violation of Article 30 (1) of the Constitution of India and this is also hit the provisions article 12, 14 and 21 of the Constitution of India.

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25.11.2002 The Hon'ble Court has already laid down and/or settled the law in a case of TMA Pai Foundation Vs. State of Karnataka reported in 2002 (8) SCC 481 in which it has been specifically held that the statutory provision regulating the facets of administration are concerned, in case of minority educational institution, the regulatory measures of

control should be very minimal and the condition of recognition as well as condition of affiliation to a Board have to be complied with but the matter of day to day management like appointment of staff, teaching and non-teaching and administrative control over them, the Management should have the freedom and there should not be any external controlling agency.

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conditions of eligibility for appointment of such teachers. The regulations can also prescribe measures to ensure that the institution is run efficiently for the right to administer does not include the right to maladministration. While grant in aid is not included in the guarantee contained in the Constitution to linguistic and religious minorities for establishing and running their educational institutions, such grant cannot be denied to such institutions only because the institutions are established by linguistic or religious minority. Grant of aid cannot, however, be made subservient to conditions which deprive the institution of their substantive right of administering such institutions. Suffice it to say that once respondent No.4 institution is held to be a minority institution entitled to the protection of Articles 26 and 30 of the Constitution of India the right to appoint teachers of its choice who satisfy the conditions of

eligibility prescribed for such appointments under the relevant rules is implicit in their rights to administer such institutions. Such rights cannot then be diluted by the State or its functionaries insisting that the appointment should be made only with the approval of the Director or by following the mechanism generally prescribed for institutions that do not enjoy the minority status. Due to the difference of opinion, the same was referred to the larger Bench and ultimately on 25.9.2019 the Hon'ble Court comprising 3 Judges Bench affirmed the view of the judgment of Hon'ble Justice Thakur as the same is correct in law.

06.01.2020 Challenging the order of the High Court of Calcutta, several Special Leave Petitions have been preferred and after hearing all the parties, this Hon'ble Court duly passed the judgment and order on 06.01.2020 in Civil Appeal No. 5808 of 2017. The issues in question in respect of all the Civil Appeals

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07.01.2020 Hence, the present Special Leave Petition.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. _____ OF 2020

IN

WRIT PETITION (CIVIL) NO. _____ OF 2020

IN THE MATTER OF:-

The Managing Committee Contai Rahamania High
Madrasah & Anr. ...PETITIONERS

VERSUS

The State Of West Bengal & Ors. ...RESPONDENTS

APPLICATION FOR EX-PARTE STAY

To:

Hon'ble the Chief Justice of India
and His companion Judges of the
Supreme Court of India, New Delhi.

The humble Petition of
the Petitioners above named

MOST RESPECTFULLY SHOWETH:

1. The present writ petition under Article 32 is preferred by the Petitioners herein since the Petitioners are aggrieved by the judgment and order dated 06.01.2020 passed in Civil Appeal No. 5808 of 2017, as the same is completely contradictory and in conflict with the judgment passed in TMA Pai Foundation Vs.

State of Karnataka reported in 2002 (8) SCC page 481 and also completely contradictory and in conflict with the judgment dated 25.9.2019 passed in Civil Appeal No. 2858 of 2007 in the case of Chandana Das (Malakar) vs. State of West Bengal & Ors. In a self same State there are other community who have been given the privilege of article 30 of the constitution but leaving aside those community the court cannot treat a particular community, belonging to the minority community as step son by curtailing a right which is already given under article 30 showing the National interest. Thereby the Petitioners are seeking the issuance of a writ of certiorari or any other appropriate writ to declare the judgment and order dated 06.01.2020 passed in Civil Appeal No. 5808 of 2017 to be tested by the Larger Bench as the observation and the findings of the said judgment virtually distinguished the judgment passed by the Constitution Bench in TMA Pai Foundation case and also the judgment passed by 3 Judges Bench in Civil Appeal No. 2858 of 2007 on 25.9.2019 for being in violation of Article 30 (1) of the Constitution of India and this is

also hit the provisions article 12, 14 and 21 of the Constitution of India.

2. That the detail facts of the case has already been stated in Writ Petition as such they are not being repeated herein for the sake of brevity and in order to avoid repetition.

PRAYER

On the aforesaid submissions it is most respectfully prayed that this Hon'ble Court be pleased to:

- a) grant the ex-parte stay against the judgment and order dated 06.01.2020 passed in Civil Appeal No. 5808 of 2017 herein till the decision by the Constitution Bench and;
- b) Pass such further and other orders as may be deemed fit in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN & FILED BY

(SARLA CHANDRA)
ADVOCATE FOR THE PETITIONER

FILED ON: 07.01.2020
PLACE: NEW DELHI

IN THE SUPREME COURT OF INDIA