

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) 1885/2023

Raj Ali and others

..... petitioner (s)

Through :- Mr. Gagan Basotra Sr. Advocate
with Mr. Sahil Gupta and
Mr. Nadeem Bhat Advocates.

V/s

Union of India and others

.....Respondent(s)

Through :- Ms Monika Kohli Sr. AAG

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

ORDER

1 The petitioner is essentially and primarily aggrieved of orders dated 03.07.2023 passed by the Additional Deputy Commissioner, Kishtwar whereby and whereunder the Management of Madarsas run by the petitioners has been ordered to be taken over with a further direction to the petitioners to immediately hand over the possession of the buildings of Madarsas to the District Administration through Tehsildar concerned.

2 The impugned orders have been assailed by the petitioners primarily on two grounds:

- (i) That order dated 14.06.2023 passed by the Divisional Commissioner, Jammu pertains to the Madarsas being run by Maulana Ali Miyan Educational Trust, Bathindi and, therefore, the same could not have been applied to the petitioners' Madarsas which have nothing to do with the Maulana Ali Miyan Educational Trust, Bathindi. The petitioners submit that they are running their Madarsas under different Educational Trusts

constituted for the purpose and are not indulging in any activity, which could be termed by the respondents ‘anti social or anti national’; and,

(ii) that the impugned orders passed by the Additional Deputy Commissioner, Kishtwar taking over the Madarsas of the petitioners are violative of principles of natural justice, in that, no opportunity of being heard has been given by the respondents before passing the impugned order.

3 After giving preliminary hearing to Mr. Basotra, learned Senior Counsel appearing for the petitioners, Ms Monika Kohli, learned Sr. AAG was put on short notice to confirm as to whether the Madarsas of the petitioners are being run by Charitable Educational Trustd different from Maulana Ali Miyan Educational Trust, Bathindi. She, on instructions, has reported that the petitioners’ Trusts, which are running Madarsas in District of Kishtwar are, *prima facie*, not connected or related to the Maulana Ali Miyan Educational Trust, Bathindi. She, however, submits that the investigation in illegal funding of these Madarsas is an on-going exercise and the respondents are free to initiate action against any such Madarsas who are found involved in anti-national or anti social activities and also those who are not in a position to explain the source of their funding.

4 Having heard learned counsel for the parties and perused the material on record, I am of the considered view that the order passed by the Divisional Commissioner, Jammu dated 14.06.2023 is very specific and pertains only to the Madarsas being run by Maulana Ali Miyan Educational Trust, Bathindi. The Divisional Commissioner, Jammu has not passed any order in respect of other Madarsas which are being run by other Educational Charitable Trusts established for the purpose. The Additional Deputy Commissioner, Kishtwar was, thus, not correct to apply the order of Divisional

Commissioner to close down or take over the Madarsas run by the petitioners' Trusts, unless he had in possession a substantial proof that the Madarsas of the petitioners are connected or related to the Maulana Ali Miyan Educational Trust, Bathindi. For coming to such conclusion, least that was required was to put the petitioners on notice and give them an opportunity to explain their position. Obviously, this has not happened in the instant case . The impugned orders, on the face of it, are passed without giving an opportunity of hearing to the petitioners and without holding any enquiry into the matter.

5 In view of the above, this petition is allowed by holding that the order of the Divisional Commissioner, Jammu dated 14.06.2023 is applicable only to the Madarsas run by Maulana Ali Miyan Educational Trust, Bathindi and cannot be universally applied to all the Madarsas being run legitimately in the UT of Jammu and Kashmir. Consequently, the impugned orders passed by the Additional Deputy Commissioner, Kishtwar dated 03.07.2023 in respect of Madarsas being run by the petitioners are quashed. It is, however, made clear that in case during any enquiry or investigation, it comes to the notice of the respondents that the Madarsas being run by the petitioners or others are operating in violation of law of land, the respondents are free to initiate appropriate action, but it is reiterated that no order adverse to the interest of the petitioners shall be passed without putting them to notice and providing them adequate opportunity of hearing.

(SANJEEV KUMAR)
JUDGE

Jammu
26.07.2023
Sanjeev

whether order is reportable: Yes/No