Neutral Citation No. - 2023:AHC:175301

A.F.R.

Reserved on 21.08.2023.

Delivered on 06.09.2023.

Court No. - 10

Case :- WRIT - C No. - 11005 of 2023

Petitioner :- Anjuman Siddiquia Jamia Noorul Oloom And 4 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Ami Tandon,Sr. Advocate

Counsel for Respondent :- C.S.C.

WITH

Case :- WRIT - C No. - 5992 of 2023

Petitioner :- C/M Madarasa Islamiya And 12 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Rajendra Kumar Yadav,Sr. Advocate

Counsel for Respondent :- CSC

Hon'ble Kshitij Shailendra,J.

1. These two writ petitions, connected with each other, were heard simultaneously and since they involve identical factual

and legal controversy, both are being decided by a common judgment.

WRIT C No.11005 of 2023

THE CHALLENGE

2. This writ petition has been filed challenging an order dated 09.01.2023 passed by the Special Secretary, Government of U.P., Lucknow insofar as it pertains to the petitioners and contains a direction for an action to be taken against them in pursuance of a report dated 30.11.2022 submitted by the Special Investigation Team (S.I.T.), as considered in the meeting held on 19.12.2022. Further prayer is for quashing the S.I.T. report itself to the extent it pertains to the petitioners and also for quashing the Resolution dated 19.12.2022 passed in a meeting headed by Chief Secretary of the State Government whereby recommendation to accept the S.I.T. report has been made. Another relief claimed is that the respondents may not harass or take coercive measures against the petitioners.

FACTS OF THE CASE

3. The petitioner No.1-Anjuman Siddiquia Jamia Noorul Oloom Munshipur, Mubarakpur, Azamgarh through its Manager Mr. Zaheen Ahmad (hereinafter referred to as ‘the Society’) registered under the Societies Registration Act, 1860 (hereinafter referred to as ‘the Act, 1860’), established a Madarsa in the name and style of petitioner No.2- Madarsa

Ashrafia Madintul Banat, Mubarakpur, Azamgarh (hereinafter referred to as 'the Madarsa') over the properties taken on lease and sale; deeds annexed. After due verification, Madarsa was registered under the provisions of the Uttar Pradesh Board of Madarsa Education Act, 2004 (hereinafter referred to as 'the Act, 2004') by a Registration Certificate dated 27.07.2011 and the State Government introduced a Scheme named "Madarsa Adhunikaran (Modernisation) Scheme" for providing teachers to the Madarsas and to provide financial assistance to them for the purposes of teaching different subjects and, under the said Scheme, the petitioner No.2-Madarsa appointed three qualified teachers, namely Kahakasha Parveen (petitioner No.3), Subi Parveen (petitioner No.4) and Mohd. Shah Faizal (petitioner No.5).

4. It is further pleaded that under the aforesaid Scheme, a total sum of Rs.1,02,000/- was released by the State Government in two strokes (Rs.30,000/- + Rs.72,000/-) by 31.01.2016 and the said amount was directly transferred to the bank accounts of petitioner nos.3, 4 and 5, i.e. the teachers, and its details were uploaded on the Portal of Madarsa and, later on, due to various difficulties including financial crunch, a decision to close down the Madarsa was taken and, during the said course, a letter dated 31.07.2017 was written by the petitioners to the respondent No.4-District Minority Welfare Officer, Azamgarh to withdraw the Madarsa from the aforesaid Scheme and, further, by another letter dated 27.11.2017, decision to close down the Madarsa was communicated by the petitioner

No.2.-Madarsa to the respondent no.4 and, consequently, the Madarsa stood finally closed in November, 2017.

THE ISSUE RAISED BY THE PETITIONERS

5. The issue raised is that the Special Investigation Team (S.I.T.), constituted to examine various complaints against Madarsa, submitted a report dated 30.11.2022 which was placed before a Committee headed by Chief Secretary of the State Government in its meeting dated 19.12.2022 and proceedings of the said meeting disclose various actions proposed to be taken against various Madarsas, including the petitioner-Madarsa, which include lodging of F.I.R. against the office bearers of the Madarsa under Sections 409, 420, 467, 468 and 471 I.P.C. The case of the petitioners is that the Madarsa-Authorities were never provided any opportunity, either to participate in the investigation conducted by the S.I.T. or before passing of the Resolution dated 19.12.2022 or before accepting the S.I.T. report and the Resolution under the impugned order dated 09.01.2023. They have alleged the entire proceedings having been undertaken in utter violation of principles of natural justice, terming the same to be thoroughly *ex-parte*, arbitrary, perverse, erroneous, discriminatory, unjustified and in violation of Article 14 of the Constitution of India.

DEFENCE IN COUNTER AFFIDAVIT

6. A counter affidavit has been filed on behalf of the respondents which has been sworn by the Additional Superintendent of Police, State S.I.T., U.P., Lucknow and the

defence taken is that in furtherance of a letter dated 23.10.2020 issued by the Special Secretary, Home (Police) Anubhag-3, U.P., Lucknow, on the basis of recommendations made by the Director, Minority Welfare, U.P., Lucknow dated 12.07.2017, during the course of verification of Madarsas uploaded on the concerned portal of District Azamgarh, inquiry about 313 Madarsas was conducted and, having found various unwarranted activities and anamolies, a decision to get the investigation conducted through S.I.T. was taken and, consequently, investigation was conducted by the S.I.T. and following facts came into light, as pleaded by the respondents:-

> *I. During verification of uploaded Madarsa on the Madarsa Portal in District-Azamgarh by the State Special Investigation Team, U.P., Lucknow, upon the investigation of 313 Madarsa being found against standards. However, out of the aforesaid 313 Madarsa, 72 Madarsas have not been found to be as per standards. Meaning thereby, they were running, but did not fulfill various conditions in respect of recognition. These Madarsas after many years, did not complete the standards to fulfill the conditions for granting recognition, they were not having any building or land. As such, while committing grave negligence and irregularities, these Madarsas have been granted recognition by the concerned authorities. Hence a recommendation has been made to withdraw the recognition of these 72 Madarsas and to proceed with the departmental proceedings against the employee/officer, who has granted recognition.*

II. During inquiry, out of 313 Madarsas, 219 Madarsas have been found to be non existent. Meaning thereby, the Madarsas are only running on papers. Actually, these Madarsas, which have been shown to be run is only for the purpose to embezzle the Government Aid. The Madarsa Modernization Scheme started in the year 1994. Under the aforesaid scheme, in the name of the abovenoted non existing Madarsas, how much fund has been sanctioned, in this regard, the Minority Welfare Department could not furnish full and satisfactory information. Out of 313 Madarsa, which were under inquiry, only for 8 Madarsas recognition file records were made available only for the year 2014-15 and 2015-16. The amount, which has been paid to it, its details have been made available.

III. The concerned departmental officer/employee in collusion with the Manager and the Teachers of Modern Subjects (in whose accounts the amount of honorarium is being paid), while committing conspiracy, fabricating and cheating, said forged Madarsas have been shown to be run on papers and the Government Fund has been embezzled. The Kendra Puronidhanit Madarsa Adhunikikaran Yojna, which is being run since about 25 years, apart from it for misuse of the Government Fund and the scholarship to be paid to the minority students, the important Government Records are missing. Along with cancellation of withdrawal of the above-noted 219 non existing Madarsas, the employees/officers, who have granted recognition to the total 219 Madarsas and for missing of the records and embezzlement of the Government Fund, a recommendation has been made to register the prosecution against them. Along with it, for

the purpose to embezzle the Government Fund, above 219 non existing Madarsas, which are shown to be run on papers only, a recommendation has been made to lodge the prosecution against the Manager and the so called Teachers (who have obtained honorarium in their bank account).

IV. To end the problems of non existing and forged Madarsas, for maintaining various process in respect of granting recognition and aid to the Madarsas, Madarsa Portal was launched in the year 2017. The Madarsas were required to upload all information on Madarsa Portal. The hardcopy of the information after uploading the information on its Portal, after countersign along with stamp was to be sent to the District Minority Welfare Officer, so that the Madarsas could be verified and after verification, the information, which has been uploaded on the Portal of the Madarsas, the same could be approved by the District Minority Welfare Officer. Either the non existing Madarsas. did not upload the information on the Portal or uploaded the part or false information. In the Physical Verification made by the District Minority Welfare Officer, Azamgarh, the forged and non existing Madarsas in a large number were found."

7. Regarding the petitioner no.2-Madarsa, following factual position has been pleaded by the respondents as per the S.I.T. report:-

"6. That during inquiry, with regard to Madarsa Asharfiya Madintul Banat Mubarakpur, Azmagarh (Madarsa 1.D. 191200855), the following facts came into the light:-

I. On 22.06.2011, the Madarsa has been granted recognition at the level of 'Aliya'.

II. The Madarsa on its Portal had shown 3 rooms of Tahtaniya level of 300 Square Feet, 3 rooms of Fauquania of 300 Square Feet, 3 rooms of 300 Square Feet, 1 Principal Room of 150 Square Feet, 1 Library of 150 Square Feet and 1 Office Room of 150 Square Feet, while in the spot inspection, Madarsa has not been found to be run, The Madarsa is non existing.

III. The Madarsa on Madarsa Portal had shown 130 students of Tahtaniya Level, 92 students of Fauquania Level and 32 students of Aliya, while on the spot, it could not be verified. The Madarsa is non existing.

IV. Under the Modernization Staff on Madarsa Portal by the Madarsa, three names of Modern Teachers have been given i.e Kahkasha Parveen, Shah Faisal and Subi Parveeen. The details of payment chart is as under:-

				केन्द्रांश मानदेय भुगतान विवरण-1					
क्र०	लॉट संख्या	मदरसे का नाम व आई०डी०	शिक्षक का नाम	भुगतान की गयी धनराशि	खाता संख्या	बैंक का नाम	भुगतान दिनांक	अपलोडर का विवरण	अप्रूवर का विवरण
90	1506	मदरसा अशरफिया मदीनतुल बनात मुबारकपुर 191200855	कहकशा परवीन	72000	49550201 0006157	यू०बी० आई अमिलो	28.03. 2017	इरशाद अहमद	लालमन
			मो० शाह फैशल	72000	49550201 1007463	यू०बी० आई अमिलो	28.03. 2017	इरशाद अहमद	लालमन
			शूबी परवीन	72000	49550201 1002789	यू०बी० आई अमिलो	28.03. 2017	इरशाद अहमद	लालमन
			कहकशा परवीन	30000	49550201 0006157	यू०बी० आई अमिलो	28.03. 2017	इरशाद अहमद	लालमन
			मो०शाह फैशल	30000	49550201 1007463	यू०बी० आई अमिलो	28.03. 2017	इरशाद अहमद	लालमन
			शूबी परवीन	30000	49550201 1002789	यू०बी० आई अमिलो	28.03. 2017	इरशाद अहमद	लालमन
		कुल योग		3,06,000					

V. The Madarsa after taking the printout of the uploaded information from the Portal of Madarsa, the Manager of the Madarsa did not make available to the District Minority Welfare Officer after singed and stamped.

VI . The Madarsa has not been locked by the District Minority Welfare Officer on its portal and along with it, the District Minority Welfare Officer did not make available the file record of recognition.

VII. On inspection, above-noted Madarsa has been found to be non existing. File-record relating to the recognition of Madarsa was also not made available by the District Minority

Welfare Officer, Azamgarh. The Manager of the Madarsa has uploaded the false information on the Madarsa Portal However, as provided under the UP. Board of Madarsa Education Act and rule thereunder, the petitioners violated the conditions relating to building, number of students and other conditions relating to all recognition. Against this non existing Madarsa, the Minority Welfare Department, while 7 proceeding in the matter as per rules At shall be appropriate to withdraw recognition granted to it.

VIII. The District Minority Welfare Officer, Azamgarh under the Kendra Puronidhanit Madarsa Adhunikikaran Madarsa Yojna, has made available the amount to the Madarsas, as per the information, for the various periods of 2014-15 and 2015- 16. Under the Kendra Puronidhanit Madarsa Adhunikikaran Madarsa Yojna, for 2016-17, Rs.3,06,000/- has been paid as honorarium to the teachers of Modern Subjects i.e. Kahkasha Parveen, Mohd. Shah Faizal and Shubi Parveen in the Bank Accounts. It has been approved by the then District Minority Welfare Officer, Sri Lalman. Regarding this non existing Madarsa, the Manager, Ahmadullah in collusion with the then District Minority Welfare Officer, Sri Lalman and the Modemization Teachers, Kahkaasha

Parveen, Mohd. Shah Faizal and Shubi Parveen, embezzled the Government Aid."

8. It has further been pleaded that in view of the above report, decision to take criminal action against the erring persons has been taken and an identical challenge was made by certain teachers of some Madarsa by filing CRIMINAL MISC. WRIT PETITION NO.1131 of 2023 (SMT. NESHAT FATMA DAUDI AND OTHERS V. STATE OF U.P. THRU. ADDL. CHIEF SECY. HOME LKO. And OTHERS) before this Court which was dismissed by a Division Bench *vide* order dated 09.02.2023. Regarding alleged *ex-parte* proceedings, reliance has been placed upon Statement of Objects and Reasons of the Act, 2004 as well as various powers conferred upon the State Government including power under Section 13 of the Act, 2004. It has also been pleaded that the petitioners participated in the enquiry proceedings but the Manager did not make available relevant records nor were details found uploaded during the course of Portal examination and also during spot inspection and overall situation reveals that the Madarsa was non-existent.

REJOINDER AFFIDAVIT

9. The petitioners' rejoinder affidavit reiterates their stand regarding proceedings being *ex-parte* with a further statement that in the year 2016, an Inspection Committee headed by Block Education Officer, Azamgarh was constituted which carried out spot inspection and certified the existence of

Madarsa in question and, only thereafter, the salaries of petitioner nos. 3, 4 and 5 (teachers) were released. Reliance has been placed upon an Inspection Memo dated 20.07.2016, a copy whereof is said to have been served upon petitioners under the R.T.I. Act under the signatures of District Minority Welfare Officer, Azamgarh alongwith her letter dated 13.06.2023. Further reliance has been placed upon two interim orders dated 11.04.2023 and 19.05.2023, respectively passed in Application U/S 482 Cr.P.C. No.3380 of 2023 (Jawed Aslam v. State of U.P. Thru. Prin. Secy. Home U.P. Lok Bhawan Lko. And 4 others) and Application U/S 482 Cr.P.C. No.4891 of 2023 (Lalman v. State of U.P. Thru. Prin. Secy. Addl. Chief Secy. Deptt. of Home and others), whereby a Co-ordinate Bench of this Court has stayed the effect and operation of the S.I.T. report as well as further proceedings in relation to the concerned applicants.

10. I have heard Shri Anoop Trivedi, learned Senior Advocate assisted by Shri Ami Tandon on behalf of the petitioners and Shri Manish Goyal, learned Additional Advocate General alongwith Shri I.P. Srivastava, learned Additional Chief Standing Counsel on behalf of the State-respondents.

11. During the course of arguments, this Court had taken on record a copy of letter dated 25.08.2017 alongwith its enclosures issued by the District Magistrate, Azamgarh to various Authorities which was placed before the Court by the petitioners and arguments on the same were also heard. This

fact is also noted in the order dated 21.08.2023 while reserving the judgment.

CONTENTION OF PETITIONERS

12. Most of the contentions raised on behalf of the petitioners have already been noted in this judgement while referring to the pleadings and, hence, need not to be repeated. In sum and substance, the submission is that though the Madarsa was rightfully established and recognized in the year 2011 and has been closed down in the year 2017, any action taken or proposed to be taken against the Madarsa or its authorities or teachers, pursuant to the *ex-parte* report of S.I.T. is invalid and, hence, not only the S.I.T. report but also the consequential Resolution dated 19.12.2022 and its approval under the order dated 09.01.2023 is invalid and unsustainable. The argument is that S.I.T. has never allowed the petitioners to participate in the enquiry and spot inspection was never carried out but the decision has been taken only on the basis of portal information. Further argument is that spot inspection was once carried out in 2016 (vide Annexure RA-1 to the rejoinder affidavit) where the petitioner-Madarsa was found to be functional and, hence, the ground taken in the impugned Resolution that in 2014-2015 and 2015-2016, the petitioner-Madarsa was not functional and financial aid provided by the State Government was obtained by manipulation is factually incorrect, and even the said spot inspection report dated 20.07.2016 has not been taken into consideration by the S.I.T.

CONTENTION OF RESPONDENTS

13. *Per contra*, it has been argued on behalf of the respondents that S.I.T. conducted thorough investigation, both based on portal information and spot inspection and found Madarsa as non-existent and that the impugned Resolution dated 19.12.2022 has been passed in the meeting held by the State Government under the Chairmanship of Chief Secretary, Ministry of Home Affairs, U.P. Government, in which, apart from him, Additional Chief Secretary of Minority Welfare and Waqf Department, U.P., Government and Director General of Police, U.P. Lucknow were also present and signed the minutes and decision of authorities of such high level cannot be lightly challenged.

14. So far as the interim orders passed in the Applications U/S 482 Cr.P.C. Nos.3380 of 2023 and 4891 of 2023 are concerned, it has been argued that they were passed when the criminal action was being taken against Registrar of the Madarsa Board and another Official and, taking note of the interim order dated 19.04.2023, passed by this Court in the present Writ C No.11005 of 2023, Resolution dated 19.12.2022 and the S.I.T. report dated 30.11.2022 as well as further consequential proceedings, insofar as the same related to the applicants of the said applications were stayed. It has further been argued that the stay order passed in aforesaid applications under Section 482 Cr.P.C. would be of no avail as the challenge made to the S.I.T. report dated 30.11.2022 as well as impugned decision dated 09.01.2023 taken by the Government approving the Resolution dated 19.12.2022 has already been turned down

by the Division Bench of this Court in the order dated 09.02.2023 passed in the Criminal Misc. Writ Petition No.1131 of 2023. Relevant portions of the S.I.T. report and conclusion drawn by the S.I.T. during the investigation and also the Resolution dated 19.12.2022 were pressed with vehemence on behalf of the State and, as regards the pleadings contained on record, it was also argued that once specific details in relation to the non-existence of the petitioner-Madarsa were spelt out in various sub-paragraphs of ‘paragraph 6’ of the counter affidavit, the same have not been denied in the rejoinder affidavit and, only this much has been stated in ‘paragraph 10’ of the rejoinder affidavit that contents of ‘paragraphs 6 (I), (II), (III) and (IV) of the counter affidavit are matter of record and need no reply.

15. The submission is that Division Bench final order dated 09.02.2023 shall prevail over interim orders passed by the learned Single Judge in Applications U/S 482 Cr.P.C. Nos.3380 of 2023 and 4891 of 2023 and, even otherwise, the interim orders were only in relation to the Officials of the Madarsa Board and have no concern with the petitioners and were passed without taking into considerstion the order dated 09.02.2023.

16. With regard to the power of the State Government to take action, reliance has been placed on Section 13 of the Act, 2004 and it has also been argued that the writ petition is premature as, till today, neither the recognition granted to the petitioner-Madarsa has been withdrawn nor cancelled nor has any

criminal action been taken against the petitioners and, further, the report of S.I.T., even otherwise, cannot be quashed in writ jurisdiction.

17. Rival contentions shall be dealt with by this Court after the factual matrix of connected Writ C No.5992 of 2023 (C/M Madarasa Islamiya And 12 Others **v.** State Of U.P. And 5 Others) is discussed.

WRIT-C No. 5992 of 2023

THE CHALLENGE

18. This writ petition has been filed by the Committee of Management of 13 Madarsas and prayers made therein are more or less identical to the prayers made in Writ-C No.11005 of 2023 except that there is no challenge to the S.I.T. report.

FACTS OF THE CASE

19. In this writ petition, reliance has been placed upon various documents to establish that in the years 2008, 2009, 2010, due recognition was granted to the Madarsas, teachers were appointed and were paid honorarium with the aid of State Government, and the case is that in an arbitrary manner and without providing any opportunity to the petitioners, impugned Resolution dated 19.12.2022 was passed and approved by the State Government on 09.01.2023.

COUNTER AFFIDAVIT

20. A counter affidavit has been filed which has been sworn by the Additional Superintendent of Police, State S.I.T., U.P., Lucknow, in which, validity of proceedings undertaken by the S.I.T. has been pleaded with reference to the steps taken in respect of various Madarsas and pleadings, as they are, are reproduced below:-

> *"7. That during inquiry with regard to Madarsa Islamiya Niswas Samaisa Pawai, Azamgarh following facts came to light:-*
>
> > *I . That on 08.09.2008, said Madarsa was given temporary recognition by the then District Minority Welfare Officer, Azamgarh, Sri Prabhat Kumar along with Clerk, Waqf Om Prakash Pandey and Waqf Inspector Munnar Ram.*
> >
> > *II. That on Madarsa Portal 3 rooms of 300 Square Feet of Tahtaniya Level and 105 students of Tahtaniya Level were shown and after receiving printout of uploaded information by Madarsa the team of District Minority Welfare Officer, Azamgarh inspected the Madarsa. Madarsa was not existing, all the information was given by the Madarsa was found to be incorrect, in fact, no Madrasa was existing.*

III. The District Minority Welfare Officer did not lock the Madarsa on Portal and further he did not make available the record file of recognition.

IV. That the Manager of Madarsa uploaded false information and did not fulfill the requisite requirement of grant of recognition.

V. That for this non existing Madarsa Rs.3,45,000/- was made available under the Kendra Puramidhannit Madarsa Adhunikikaran Yojna by the District Minority Welfare Officer, Azamgarh, which was in collusion with Manager of Madarsa and was paid to the Adhunikikaran Teachers, Sadhna Yadav, Sumita and Sarita in the year 2016-17 for the period of 2014-15 and 2015-16 and thus embezzled the Government Fund.

8. That during the inquiry, the inquiry with regard to Madarsa Modern Public School, Takiya Gulam Ali Shah Samisa, Pawai Azmagarh following facts came to light:-

I. That on 22.01.2009, the said Madarsa was given temporary recognition by the then District Minority Welfare Officer, Azamgarh, Sri Prabhat Kumar, Waqf Clerk, Om Prakash Pandey and Waqf Inspector, Munnar Ram.

II. That on Madarsa Portal 3 rooms of 300 Square feet was shown for Fauquaniya level whereas on spot 3 rooms of 200 square feet as school is running beside which Madarsa was said to have been running. For the running of Madarsa at Fauquaniya Level requirement of 6 rooms and 2 office room is necessary. Madarsa was found non existing.

III. That on Portal Zero student of Tahtaniya level and 115 students of FAuquaniya Level was shown but on inspection, it was not found and Madarsa was non existent.

IV. That in the name of Madarsa Public School was running, which showed that there was no Madarsa in existence.

V. That after getting printout of uploaded information, the District Minority Welfare Officer and his team inspected the Madarsa, but he did not lock the Madarsa on Portal and further he did not make available the file record of recognition of Madarsa.

VI. That the Madarsa was not existing, the Manager uploaded wrong information on Madarsa Potal.

VII. That for this non existent Madarsa, Rs.56,000/- was made available under the Kendra Puronidhanit Madarsa Adhunikikaran Yojna by the District Minority

Welfare Officer, Azamgarh, which was in collusion with Manager Raunak and was paid to the Adhunikikaran teacher Vinod Kumar Yadav Motilal and Sangita in the year 2016-17 for the period fo 2014-15 and 2015-16 and thus embezzled the Government Fund

9. That during inquiry with regard to Madarsa Islamiya Imam Ali Razzakpur, Pawai, Azamgarh, following facts came into light:-

I. The said Madarsa was recognized on 26.06.2009 at Fauquaniya level and on the Madarsa Portal 3 rooms 300 square meters was shown at Fauquaniya level, but on inspection there was no Madarsa instead one resident house was found under one Tin Shade. There was one car and 2 small rooms were found. No display Board was found. It was also said that 2 recognized Madarsa was running therein one house. This Madarsa was not existing.

II. That on Portal zero student of Tahtaniya Level and 102 students of Fauquaniya level was shown by it, was not verified on spot and the Madarsa was found non existent. After inspection the District Minority Welfare Officer did not lock the Madarsa on Portal.

III. That Rs.66,000/- was paid to the teachers namely, Tabassum, Mohd. Wasim and Shahanwaz Alam in collusion with District Minority Welfare Officer, Lalman Manager Kamaruddin, hence there was embezzlement of Government Fund found.

10. That during inquiry with regard to sMadarsa Amina Nishwan Razzakpur, Pawai, Azamgarh following facts came to light:-

I. That on 08.09.2008, the said Madarsa was accorded temporary recognition at Tahtaniya Level. On the Madarsa Portal, 3 rooms of 300 Square Feet of Tahtaniya Level was shown but on spot inspection no Madarsa was found. One residence was shown where a four wheeler was standing there in the garage. 2 small rooms were found. There was no display board on Madarsa.

II. That 150 students of Tahtaniya Level was shown on Portal, but on spot inspection no Madarsa with 150 students was found. The Madarsa was not existing.

III. That no record file of recognition was made available by the District Minority Welfare Officer and the Manager Kamaluddin had uploaded wrong information on the Portal.

IV. That Rs.66,000/- was made available to the Madarsa in connivance with Manager by the District Minority Welfare Officer, Azamgarh under Kendra Puronidhanit Madarsa Adhunikikaran Yojna, which was paid to teachers Amina Khatoon, Sushma and Tarul. Thus, for non existing Madarsa, Government Fund was embezzled by the Manager Kamaluddin, Teachers and District Minority Welfare Officer, Azamgarh.

11. That during the enquiry with regard to Madarsa Ashrafiya Niswan Mahul, Azamgarh following facts came into light:-

I. That the said Madarsa was given temporary recognition at Tahtaniya Level on 8th September, 2008. At Madarsa Portal 3 rooms of 300 Square Feet, one Principal room of 150 Square Feet one Office room of 150 Square Feet were shown. whereas, on spot there was no Madarsa running and the Madarsa was not existing.

II. That 130 students of Tahtaniya Level was shown on the Madarsa Portal, but on inspection, no student was found. The Madarsa was not existing.

III. That no printout of information on Portalwas handed over to the District Minority Welfare Officer, Azamgarh by the

Manager Ahtsham Ahmad Khan. The District Minority Welfare Officer, Azamgarh did not lock on Portal and record of recognition was also made available.

IV. That the Manager thus uploaded wrong information on the Madarsa Portal and in collusion with District Minority Welfare Officer under Kendra Puronidhanit Madarsa Adhunikikaran Yojna in 2016-17 year for the year 2014-15 and 2015-16 receives Rs.66,000/- and paid in the Bank Account of teachers Shabana Bano, Alsha bano and Nahid Fatma. Thus, the Manager Ahtsham Ahmad Khan, District Minority Welfare Officer, Azamgarh, Sri Lalman and above- noted teachers embezzled the Government Fund.

12. That during the enquiry with regard to Madarsa Noor Islam Shikshan Sansthan, Khalispur, Azamgarh, following facts came into light:-

I. That said Madarsa was given temporary recognition of Tahtaniya Level as on the Madarsa Portal 3 rooms of 300 Square Feet, I office room of 150 Square Feet were shown but on the spot a public school was running. From the statement of nearby public there was no Madarsa was running, but a school other than Madarsa was running. On the spot, Dr. Ambedkar Public

School was running in short VAHSS was written. The Madarsa was not existing.s

II. That on Madarsa Portal wrongfully 134 students of Tahtaniya Level was shown, but on spot Public School was running and Madarsa was not existing.

III. That by the District Minority Welfare Officer, District- Azamgarh in collusion with Manager, who uploaded wrong information on the Madarsa Portal Rs.80,000/- was paid to Madarsa for Kendra Puronidhanit Madarsa Adhunikikaran Yojna in the year 2016-17 for the year 2014-15 and 2015-16 and was paid in the Bank Account of Teacher of non existing Madarsa Nirmala Kumar, Vimla Devi and Ram Samujh Yadav. Thus, embezzlement of Government Fund is proved.

13. That during the enquiry with regard to Madarsa Ashfaq Ullah, Dhankatiya, Azamgarh following facts came into light:-

I. That the said Madarsa was given temporary recognition of Tahtaniya Level and on the Madarsa Portal 3 rooms of 300 Square Feet was shown, but on spot Public School was running. The Madaras was not existing.

II. That on the Madarsa Portal 133 students of Tahtaniya Level was shown but on spot Public School was running. The Madarsa was not existing.

III. That on the Madarsa Portal, the District Minority Welfare Officer, Azamgarh did not lock and for Adhunikikarn Staff, who were shown on Madarsa Portal, Rs.55,000/- was paid in the Bank Account of teachers Sanjay Kumar, Vimla Devi and Rajesh Kumar Maurya. The Madarsa was not existing and thus the Manager Alim Ali in collusion with District Minority Welfare Officer, Lalman along with Adhunikikaran Teachers embezzled the Government Fund in the year 2016-17 for the years 2014-15 and 2015-16.

14. That during the enquiry with regard to Madarsa Kair Saheb, Ibrahimpur, Sathiyaon, Azamgarh, following facts came to light:-

I. That on 10.06.2008, the said Madarsa was given temporary recognition at Tahtaniya Level.

II. That on the Madarsa Portal, 3 rooms of 300 Square Feet and 127 students of Tahtaniya Level were found at the given address. The Madarsa is not existing.

III. That neither the Madarsa was locked on Portal nor recognition paper was made available by the District Minority Welfare Officer, Azamgarh.

IV. That the Manager Alim Ali in collusion with District Minority Welfare Officer, Azamgarh, Sri Lalman got payment of Rs.4,43,000/- in the year 2016-17 for the year 2014-15 and 2016-16 in the name of Kendra Puronidhaunit Madarsa Adhunikikaran Yojna and was paid in the Bank Account of non existing Madarsa Teachers Suman Lal, Ranjana Yadav, Parwati Devi and Reema Bharti and thus embezzled the Government Fund.

15. That during the enquiry with regard to Madarsa Noor Islam Niswan Shikshan Sansthan, Khalispur, Azamgarh, following facts came into light:-

I. That on 26.09.2009, the said Madarsa was granted temporary recognition at Fauquaniya Level. On the Madarsa Portal, 3 rooms of 300 Square Feet 1 room of 150 Square Feet were shown at Fauquaniya Level, whereas on spot a Public School was running. From the statements of people of locality it was informed that VAHSS named school in running. There was no Madarsa and Madarasa was nonexistent.

II. That it was stated by the Management persons that 2 Madarsas were running. On Madarsa Portal Zero student of Tahtaniya Level and 97 students of Fauquaniya Level were shown whereas on spot inspection, Public School was running. The Madarsa was not existing.

III. That on Madarsa Portal under the head of Adhunikikaran Staff 3 teachers namely Shailesh Kumar, Ravindra Kumar and Amina Khatoon were shown and Rs.1,68,000/- was paid under Kendra Puronidhanit Madarsa Adhunikikaran Yojna for the non existing Madarsa with connivance of Manager Mozibul Gaffar with District Minority Welfare Officer, Azamgarh Sri Lalman and the said teachers. The Government Fund was embezzled.

IV. The Madarsa was also not locked on Portal of the District Minority Welfare Officer, nor recognition record file was made available.

16. That during the enquiry with regard to Madarsa Ashfaq Ullah Niswan Shikshan Sansthan, Bahkaliya, Azamgarh following facts came to light:-

I. That the said Madarsa was granted temporary recognition of Fauquaniya Level and on the Madarsa Portal 3 rooms of 300 Square Feet and 100 students of Tahtaniya

Level and 85 students of Fauquaniya Level were seen.

II. That on the spot no Madarsa was found from the statement of people locality an English Medium school was running and no Madarsa was existing.

III. That under the head of Adhunikikaran Staff names of 3 teachers were shown on the Portal i.e. Azad Kumar Gautam, Ramayan Singh and Praveen Kumar, who have received Rs.2,60,000/- in their Bank Account in the year 2016-17 for the period of 2 years i.e. 2014-15 and 2015-16.

IV. That the District Minority Welfare Officer did not lock the Madarsa on Portal and in collusion with Manager Mozibol Gaffar with teachers embezzled the Government Fund.

17. That during the enquiry with regard to Madarsa Arbiya Talima) Kuran Gahni, Mirzapur, Azamgarh, following facts came into light-

I. That on 20.06.2009, the said Madarsa was granted temporary recognition of Fatuaniya Level and on the Madarsa Portal Fauquaniya Level 2 rooms of 300 Square Feet, Tahtaniya Level 3 rooms of 300 Square Feet were found, which were not of standard of level prescribed for. In the

nearby rooms, domestic goods were found. Madarsa was not existing.

II. That on the Madarsa Portal 131 students of Fauquaniya Level were shown, which not found on spot. The Madarsa was not existent.

III. That Madarsa on the Portal was locked by the District Minority Welfare Officer nor recognition record file was made available by him. The Manager has uploaded false information on Madarsa Portal.

IV. That the Manager of the alleged Madarsa Naseem Ahmad in collusion with District Minority Welfare Officer, Sri Lalman under the Kendra Purovidhanit Madarsa Adhunikikaran Yojna, received the account of Adhunik Teachers namely, Kausar, Homa Bano and Sufiya Bano to the tune of Rs.3,45,000/- in the year 2016-17 for the period of 2014-15 and 2015-16. Thus, they embezzled the Government Fund.

18. That during the enquiry with regard to Madarsa Kamarunnisha, Balaipur, Pawai, Azamgarh, following facts came into light:-

I. That on 22.01.2009, the said Madarsa was granted temporary recognition of Fauquaniya Level. On the Madarsa Portal 3 rooms of 225 Square Feet of Fauquaniya Level, 1 office room

225 Square Feet were shown whereas on spot only 3 rooms and one office room of 150 Square Feet were found, which were not upto standard prescribed for granting recognition.

II. That on the Madarsa Portal 102 students of Fauquaniya Level were shown, but on spot it is not verified and the Madarsa was found non existing.

III. The Madaras was not locked on the Portal by the District Minority Welfare Officer, Azamgarh nor recognition record file was made available by him.

IV. That for the said Madarsa under the Kendra Purovidhanit Madarsa Adhunikikaran Yojna was given Rs.1,68,000/- in the account of teachers of Modern Subject namely Vinod Soni Isliyak Ahmad and Savita in collusion with Manager and District Minority Welfare Officer, Sri Lalman and thus embezzled the Government Fund."

21. By taking the aforesaid stand, impugned action has been stated to be justified on the same lines on which its justification has been pleaded in the counter affidavit against Writ C No. 11005 of 2023.

REJOINDER AFFIDAVIT

22. The petitioners' rejoinder affidavit reiterates their stand taken in the writ petition and the entire thrust is upon *ex-parte* nature of decision.

23. I have heard Shri Ashok Khare, learned Senior Counsel assisted by Shri Rajendra Kumar Yadav on behalf of petitioners in this writ petition and Shri Manish Goyal, learned Additional Advocate General alongwith Shri I.P. Srivastava, learned Additional Chief Standing Counsel on behalf of the State-respondents.

CONTENTION OF PETITIONERS

24. The submission of Shri Ashok Khare, learned Senior Counsel, is that the impugned decision entails serious civil consequences and, therefore, adherence to the principles of natural justice was must; that the S.I.T. report can never be treated as a substantive piece of evidence and, since the Government, in the impugned Resolution dated 19.12.2022, has already recommended for taking action against the petitioners, nothing remains for any Authority at any level, be it administrative or police, to take a different view of the matter and the S.I.T. report would always be treated as conclusive in all the proceedings and the petitioners would stand nowhere. It has further been argued that under the Scheme For Providing Education in Madarsas/Minorities (S.P.E.M.M.), fixed honorarium was to be paid to the teachers teaching modern subjects in such Madarsas and all the petitioners-Madarsas stood identified for disbursement of honorarium; at no point of

time any such aspect was properly analyzed; the petitioners were not heard in relation to the allegations made; wrong and perverse conclusion has been drawn in the impugned Resolution dated 19.12.2022 and the nature of the impugned decision is that finality has been attached to the unlawful activities of the petitioners and nothing remains for further adjudication.

CONTENTION OF THE RESPONDENTS

25. In opposition to this writ petition also, the arguments on behalf of the State-respondents are identical, as already noted in relation to Writ C No.11005 of 2023.

ANALYSIS OF RIVAL CONTETIONS IN BOTH THE PETITIONS

26. Having heard learned counsel for the parties at length, before dealing with the factual aspects involved in these matters, the provisions of U.P. Board of Madarsa Education Act, 2004 need a discussion. The said Act came into force on 03.12.2004. Sections 2(a), 2(d) and 2(j) define respectively, “Board”, “Head of Institution” and “recognition” in the following manner:-

> *“Section 2(a). “Board” means the Uttar Pradesh Board of Madarsa Education established under Section 3;*
> *(d). “Head of institution,” in relation to and institution means the Principal or the Head Master, as the case may be, of that institution.”*

(j). "Recognition" means recognition for the purpose of preparing candidates for admission to the Board's Examination;"

27. The constitution of the Board is provided under Section 3 of the Act, 2004 which reads as follows:-

"3. Constitution of the Board.-*(1) With effect from such date as the State Government may, by notification, appoint, there shall be established at Lucknow a Board to be known as the Uttar Pradesh Board of Madarsa-Education.*
(2) The Board shall be a body corporate.
(3) The Board shall consist of the following members namely:

(a) a renowned Muslim educationist in the filed of traditional Madarsa-Education, nominated by the State Government who shall be the Chairperson of the Board;

(b) the Director, who shall be the Vice-Chairperson of the Board;

(c) the Principal, Government Oriental College, Rampur;

(d) one Sunni-Muslim Legislator to be elected by both houses of the State Legislature;

(e) one Shia-Muslim Legislator to be elected by both houses of the State Legislature;

(f) one representative of National Council of Educational Research and Training;

(g) two head of institution established and administered by Sunni-Muslim nominated by the State Government;

(h) one head of institution established and administered by Shia-Muslim nominated by the State Government;

(i) two teachers of institutions established and administered by Sunni-Muslim nominated by the State Government;

(j) one teacher of an institution established and administered by Shia-Muslim nominated by the State Government;

(k) one Science or Tibb teacher of an institution nominated by the State Government;

(l) the Account and Finance Officer in the Directorate of Minority Welfare, Uttar Pradesh;

(m) the Inspector;

(n) an officer not below the rank of Deputy Director nominated by the State Government, who shall be the member Registrar."

28. The functions of the Board are defined under Section 9 of the Act, 2004 and its powers under Section 10 in the following manner:-

"9. Functions of the Board.- *Subject to the other provisions of this Act, the Board shall have the following functions, namely-*

(a) to prescribe course of instructions text-books, other books and instructional material, if any, for Tahtania, Fauquania, munshi, Maulavi, Alim, Kamil, Fazil and other courses;

(b) prescribe the course books, other books and instruction material of courses of Arbi, Urdu and Pharsi for classes upto High School and Intermediate standard in accordance with the course determined there for by' the Board of High School and Intermediate Education;

(c) to prepare manuscript of the course books other books and instruction material referred to in clause (b) by excluding the matters therein wholly or partiality or otherwise and to publish them;

(d) prescribe standard for the appointment of Urdu translators in the various offices of the State and ensure through the appointing authority necessary action with respect to filling up of the vacant posts;

(e) to grant Degrees, Diplomas, Certificates or other academic distinctions to persons, who-

(i) have pursued a course of study in an institution admitted to the privileges or recognition by the Board;

(ii) have studied privately under conditions laid down in the regulations and have passed an examination of the Board under like conditions;

(f) to conduct examinations of the Munshi, Maulavi, Alim and of Kamil and Fazil courses;

(g) to recognise institutions for the purposes of its examination;

(h) to admit candidates to its examination;

(i) to demand and receive such fee as may be prescribed in the regulations;

(j) to publish or withhold publication of the result of its examinations wholly or in part;

(k) to co-operate with other authorities in such manner and for such purposes as the Board may determine;

(l) to call for reports from the Director on the condition of recognised institutions or of institutions applying for recognition;

(m) to submit to the State Government its views on any matter with which it is concerned;

(n) to see the schedules of new demands proposed to be included in the budget relating to institutions recognised by it and to submit if it thinks fit, its views thereon for the consideration of the State Government;

(o) to do all such other acts and things as may be requisite in order to further the objects of the Board as a body constituted for regulating and supervising Madarsa-Education upto Fazil;

(p) to provide for research or training in any branch of Madarsa Education viz, Darul Uloom Nav Uloom, Lucknow, Madarsa Babul Ilm, Mubarakpur, Azamgarh, Darul Uloom Devband, Saharanpur,

Oriental College Rampur and any other institution which the State Government may notify time to time.

(q) to constitute a committee at district level consisting of not less than three members for education upto Tahtania or Faukania standard, to delegate such committee the power of giving recognition to the educational institutions under its control it.

(r) to take all such steps as may be necessary or convenient for or as may be incidental to the exercise of any power, or the performance or discharge of any function or duty, conferred or imposed on it by this Act.

***10. Powers of the Board**.- (1) The Board shall subject to the provisions of this Act and the rules made thereunder, have all such powers as may be necessary' for the performance of its functions and the discharge of its duties under this Act, or the rules or regulations made thereunder.*

(2) In particular and without prejudice to the generality of the foregoing powers, the Board shall have the powers,-

(i) to cancel an examination or withhold the result of an examination of a candidate, or to disallow him from appearing at any future examination who is found by it to be guilty of,-

(a) using unfair means in the examination; or

(b) making any incorrect statement or suppressing material information or fact in the application form for admission to the examination, or

(c) fraud or impersonation at the examination: or

(d) securing admission to the examination in contravention of the rules governing admission to such examination; or

(e) any act of gross indiscipline in the course of the examination;

(ii) to cancel the result of an examination of any candidate for all or any of the acts mentioned in sub-clauses (a) to (d) of clause

(i) or for any bona fide error of the Board in the declaration of the result;

(iii) to prescribe fees for the examinations conducted by it and provide for the mode of its realisation;

(iv) to refuse recognition of an institution,-

(a) which does not fulfil, or is not in a position to fulfil, or does not come upto, the standards for staff, instructions, equipment or buildings laid down by the Board in this behalf; or

(b) which does not, or is not, willing to abide by the conditions of recognition laid down by the Board in this behalf:

(v) to withdraw recognition of an institution not able to adhere to, or make provisions for, standards of staff, instructions, equipment or buildings laid down by the Board or on its failure to observe the conditions of recognition to the satisfaction of the Board;

(vi) to call for reports from the head of institution in respect of any act of contravention of the rules or regulations of decisions, instructions or directions of the Board and take suitable actions for the enforcement of the rules or regulations decisions, instructions or directions of the Board, in such manner as may be prescribed by regulations;

(vii) to inspect an institution for the purpose of ensuring due observance of the prescribed courses of study and that the facilities for instructions are duly provided and availed of; and

(vii) to fix the maximum number of students that may be admitted to a course of study in an institution.

(3) The decision of the Board in all matters mentioned in sub-sections (1) and (2) shall be final."

29. Insofar as the powers of State Government are concerned, the same are contained under Section 13 of the Act which reads as follows:-

"***13. Power of the State Government.- (1) The State Government shall have the right to address the Board with reference to any work conducted or done by the***

Board and to communicate to the Board its views on any matter with which the Board is concerned.

(2) The Board shall report to the State Government such action, if any, as it is proposed to be or has been taken upon its communication.

(3) If the Board does not, within a reasonable time take action to the satisfaction of the State Government, the State Government may after considering any explanation furnished or representation made by the Board, issue such directions consistent with this Act, as it may think fit, and the Board shall comply with such direction.

(4) Whenever, in the opinion of the State Government, it is necessary or expedient to take immediate action, it may without making any reference to the Board under the foregoing provisions, pass such order or take such other action consistent with this Act as it deems necessary and in particular, may by such order, modify or rescind or make any regulation in respect of any matter and shall forthwith inform the Board accordingly.

(5) Any action taken by the State Government under sub-section (4) shall not be called in question in any court. "

30. A composite reading of afore-quoted sections of the Act, 2004 makes it clear that the Board, which comprises of many officers, performs various functions including a function to recognize institutions and to call for reports from the Director of Minority Welfare, U.P. on the conditions of recognized

institutions or of the institutions applying for recognition. The Board also has a power to refuse recognition as per Section 10(2)(iv) of the Act, 2004 and to withdraw recognition as per Section 10(2)(v) of the Act, 2004, as per the contingencies enumerated therein. The Act further empowers the Board to call for the reports from the Heads of the Institutions and carry out requisite inspections and also to take suitable actions for enforcement of the Rules, Regulations, decisions, instructions or directions of the Board.

31. Insofar as the *inter-se* role of Board and State Government is concerned, Section 13 of the Act clearly vests the State Government with a right to address the Board with reference to any work conducted or done by the Board and to communicate to the Board its views on any matter with which the Board is concerned and, thereafter, the Board is under obligation to report to the State Government about any such action taken or proposed to be taken upon communication with a further provision that the State Government may, after considering any explanation furnished or representation made by the Board, issue directions consistent with the Act, 2004 which would be complied by the Board.

32. In view of the above, neither the Board nor the State Government is powerless or functionless, in case, any illegality, irregularity, flaw, mischief, misrepresentation etc. comes to their knowledge by any means whatsoever, which may infer that either recognition was wrongfully granted to any Madarsa or, even if rightly granted, the conditions of recognition are

being violated or it is not fit, either in the opinion of the Board or the State Government, that the recognition should continue for an indefinite period of time.

33. In the light of the aforesaid provisions, I find that if the State Government constituted a Special Investigation Team to carry out inspection, either through spot inspection, physical verification or even through Portal information uploaded by the Board, its action cannot be said to be unjustified.

34. The question, therefore, arises as to whether the impugned S.I.T. report or the Resolution dated 19.12.2022 or its approval dated 09.01.2023, being allegedly ex-parte, would, in any manner, affect the interest of the petitioners or that doors of justice stand closed for them for all time to come. Insofar as the petitioners of Writ C No.11005 of 2023 are concerned, the submission that the concerned Madarsa has already been closed down in 2017 for various reasons, is not relevant as mere closure of Madarsa, either permanently or temporarily, would not mean that its recognition has lapsed or that action to withdraw recognition cannot be taken or that anything done prior to its closure loses its significance for one or the other purposes.

35. As regards adherence of principles of natural justice, though the S.I.T. has reported that it had conducted spot inspection and the concerned Madarsas were found non-existent and that the office bearers of the Madarsa could not furnish necessary details in any manner, even if, the submission

advanced on behalf of the petitioners that the investigation conducted by the S.I.T. was *ex-parte*, is accepted for the sake of argument, the Court finds that since the issue relates to withdrawal of or taking any action against the Madarsas, such power to withdraw vests in the Board as per Section 10 of the Act, 2004 and the State Government's role is spelt out under Section 13 of the Act, 2004. Certainly, the language of said Section makes it clear that the Government has right to address the Board and to communicate to the Board its views on any matter, with which the Board is concerned and, as a matter of fact, there are provisions for intra-departmental or inter departmental communication in between the State Government and the Board.

36. Therefore, if the constitution of the Special Investigation Team or enquiry/investigation conducted by it is examined in the light of the arguments advanced on behalf of the petitioners associated with alleged violation of principles of natural justice, the Court finds that the State Government is well empowered to take immediate action consistent with the Act, 2004 without even making any reference to the Board under certain emergent circumstances, even the principles of natural justice may be diluted, if at all the same have been allegedly violated, as contended by the petitioners. In this regard reference to a decision of the Supreme Court in the case of UOI v. J.N. Sinha and another reported in A.I.R. 1971 Supreme Court 40 can be made where the Apex Court, while dealing with the issue of alleged violation of principles of natural justice in relation to statutory provisions, observed that it is true that if a statutory

provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. **But, if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the rules of the principles of natural justice then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice.** Whether the exercise of a power conferred should or should not be made in accordance with any of the principles of natural justice depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.

37. Therefore, the Court also observes that if, at all, violation of principles of natural justice, has been committed while conducting investigation by the SIT, though a contrary stand has been taken by the respondents, as already elaborately discussed, adherence/non-adherence of principles of natural justice can be understood in the light of **implied exclusion** of such provision to some extent under various subsections of Sections 13 and **express inclusion** under Section 10 (2) (vi) of the Act, 2004, and hence, if the Board proposes to take an action under Section 10 of the Act, 2004, it may call for reports from the Head of the Institution and consider the representation made by the Institution and sufficient protection has already been accorded as per the judgment/order of the Division Bench

dated 09.02.2023. Further, section 10(2)(vi) of the Act, 2004 read with other provisions of the Act, 2004 contain provision for granting opportunity to Head of the Institution, if any act of contravention of the Rules or Regulations etc. is alleged and, therefore, in view of the liberty granted by the Division Bench in the judgment dated 09.02.2023 passed in Criminal Misc. Writ Petition No.1131 of 2023, I find that petitioners have ample opportunity to raise their grievances before the concerned Authorities by way of making applications/representations and taking all such pleas which may be available to them and enclosing therewith all the documents which they intend to rely on and, once such application or representation is preferred, the Competent Authority would take into consideration the same and pass appropriate orders at appropriate stages with due communication to the petitioners also.

38. As regards the action against the concerned petitioners pursuant to the impugned Resolution is concerned, while I find that the Resolution contains various tables out of which, the first table relates to description of 219 non-existent Madarsas and the Officers granting recognition to them, in which, the petitioner no.2-Madarsa of Writ C No.11005 of 2023 is included, the second table relates to 39 non-existent Madarsas, in relation whereto, allegations of mis-appropriation and embezzlement of Government fund have been levelled and petitioner no.2-Madarsa of Writ C No.11005 of 2023 is included therein with a disclosure that a sum of Rs.1,06,000/- was mis-appropriated as honorarium. Third table relates to 180

Madarsas, in relation whereto, criminal prosecution has been proposed, however, description of petitioner no.2 does not find mention in the same and the fourth table refers to description of Madarsas and Officers of sub-standard Madarsas, in which, also petitioner no.2-Madarsa is not there. Insofar as the petitioners of Writ C No.5992 of 2023 are concerned, it is pleaded in 'paragraph 29' of the said writ petition that they are included in the list of 39 Madarsas and on the allegations, criminal prosecution has been recommended.

39. The Court has already referred to an order dated 09.02.2023 passed by the Division Bench of this Court in Criminal Misc. Writ Petition No.1131 of 2023 and, at this stage, the said order needs to be reproduced as such:-

> *"Heard learned counsel for the petitioners and learned State counsel.*
>
> ***By means of this writ petition filed under Article 226 of the Constitution of India, a prayer has been made to quash the Government order dated 09.01.2023****, which has been enclosed as Annexure No.1 to the writ petition, whereby, the State government has required the Director General of Police (Special Investigating Team) to take appropriate action on the basis of a preliminary inquiry conducted by the* ***Special Investigating Team, which has submitted its report on 30.11.2022.***
>
> *For challenging the said Government order, submission of learned counsel for the petitioners is two fold.*

Firstly he has argued that the Special Investigating Team before furnishing its report dated 30.11.2022 did not provide any opportunity of hearing to the petitioners neither were the petitioners confronted in any manner by the S.I.T. while conducting the inquiry and submission of the same, and secondly that even from a perusal of the contents of the report submitted by Special Investigating Team there does not appear to be any material which can be said to constitute any cognizable offence against the petitioners. *It has also been argued by learned counsel for the petitioners that petitioners are merely teachers who were appointed in a Madarsa and they were duly appointed after following due process of law and procedure, and accordingly, subjecting the petitioners to criminal prosecution at this juncture, is not appropriate.*

So far as the first submission made by learned counsel for the petitioners is concerned, ***we are of the opinion that for lodging an F.I.R. under Section 154 of the Code of Criminal Procedure, in relation to a cognizable offence, there is no of legal requirement that action of lodging of F.I.R. should necessarily precede any fact finding or preliminary inquiry. In absence of any such legal requirement, in our opinion, it was not necessary for the State authorities to have associated the petitioners in the preliminary inquiry conducted by Special Investigating Team. As a matter of fact, the purpose of conducting the preliminary inquiry is to gather information and material so as to form an opinion as to whether matter should be criminally preceded or not. Thus, we are unable to agree with the first***

submission made by learned counsel for the petitioners.

As regard the second submission that even the preliminary inquiry report submitted by the Special Investigating Team does not disclose its commission of any cognizable offence by the petitioners, we may only observe that such challenge at this juncture is premature, and if, this Court interferes in the impugned order that may result in blocking of lodging of an F.I.R. in relation to cognizable offence. As to whether offence has been committed or not is subject to investigation to be conducted once F.I.R. is lodged and thereafter it is subject to trial, if a chargesheet is filed on the basis of investigation. For the aforesaid reasons, we are not inclined to interfere in this writ petition, which is hereby ***dismissed.***

However, notwithstanding the dismissal of the writ petition, we permit the petitioners to raise their grievances, if any, before the authority concerned by way of making an application/representation taking all the pleas which may be available to them and enclosing therewith all the documents on which they intend to rely. Once any such application/representation is preferred, the competent authority in the State Government shall take into consideration the same and pass appropriate order, which shall be communicated to the petitioners also. ”

40. A perusal of the order of Division Bench shows that challenge was made to the same decision dated 09.01.2023

which has also been impugned in both the writ petitions and, infact, it is a communication made by the Special Secretary of the U.P. Government to the concerned Director General of Police to proceed in furtherance of Resolution dated 19.12.2022 and submit report before the Government. The Division Bench, after taking into consideration identical arguments advanced before the Court as regards *ex-parte* nature of investigation conducted by the S.I.T. and its report dated 30.11.2022, clearly opined that for lodging of F.I.R. under Section 154 Cr.P.C. in relation to cognizable offence, there is no legal requirement that lodging of F.I.R. should necessarily precede any fact finding or preliminary inquiry and, therefore, in absence of any such legal requirement, the Division Bench opined that it was not necessary for the said Authorities to have associated the petitioners in the preliminary inquiry conducted by the S.I.T. and, as a matter of fact, the purpose of conducting preliminary inquiry is to gather information and material so as to form an opinion as to whether matter should be criminally proceeded or not and, with this observation, the challenge made to the findings recorded in the impugned decision/S.I.T. report to propose criminal action, was turned down. The Division Bench further observed that challenge made to the inquiry report on the ground that no cognizable offence had been committed, was premature and any interference in the order impugned would result in blocking of lodging of an F.I.R. in relation to a cognizable offence and as to whether an offence has or has not been committed is always subject to investigation to be conducted once F.I.R. is lodged and, thereafter, subject to trial after a charge-sheet is filed on the basis of investigation. **The**

Division Bench, in so many specific words, rejected every contention and dismissed the writ petition and, hence, this Court cannot take a different view as far as the S.I.T. report dated 30.11.2022 or the order dated 09.01.2023 confirming the Resolution dated 19.12.2022 is concerned.

41. This Court further finds that despite dismissal of the writ petition, the Division Bench permitted the concerned petitioners to raise their grievances, if any, before the authority concerned by way of making an application/representation taking all the pleas which may be available to them and enclosing therewith all the documents on which they intend to rely. The Division Bench also observed that once any such application/representation is preferred, the competent authority in the State Government shall take into consideration the same and pass appropriate order, which shall be communicated to the petitioners also.

42. It is not disputed that the aforesaid decision of the Division Bench was **not placed** before the Single Bench that has passed interim orders dated 11.04.2023 and 19.05.2023, respectively in Application U/S 482 Cr.P.C. Nos. 3380 of 2023 and 4891 of 2023 and, probably for this reason, the said interim orders appear to have been passed **in ignorance of the Division Bench judgment/order dated 09.02.2023**. Similar is the position with respect to the interim orders dated 19.04.2023 and 28.03.2023 passed in these two writ petitions which were *ex-parte* and apparently in ignorance of the Division Bench judgment/order, as the order of the Division Bench was placed

alongwith counter affidavit filed by the State. **I am also of the view that whereas the S.I.T. report refers to action taken against 313 Madarsas, merely on the challenge made by one Madarsa in Writ C No.11005 of 2023 and 13 Madarsas in Writ C No.5992 of 2023, the entire efforts made by the S.I.T. culminated into preparation of detailed report dated 30.11.2022 should not be nullified or even suspended barring further proceedings in toto or even in respect of the petitioners.**

43. I am of the firm view that the interim orders passed in the aforesaid applications under Section 482 Cr.P.C. or even the interim orders passed in these writ petitions would not have a binding force for any purpose as the same were admittedly passed without taking into consideration the Division Bench order dated 09.02.2023. These interim orders, in the opinion of the Court, suffer from the defect of ***"per incuriam".*** "***Incuria***" literally means **"carelessness"**. In practice, ***per incuriam*** is taken to mean ***per ignoratium***. English Courts have developed this principle in relaxation of the rule of stare decisis. The "quotable in law", as held in ***Young v. Bristol Aeroplane Co. Ltd. (1944) 2 All E.R. 293***, is avoided and ignored if it is rendered, "in ignoratium of a statute or other binding authority". Same has been accepted, approved and adopted by the Apex Court while interpreting Article 141 of the Constitution of India, 1950 which embodies the doctrine of precedents as a matter of law. The above position was highlighted in ***State of U.P. and another v. Synthetics and Chemicals Ltd. And another (1991) 4 SCC 139)***. **To**

perpetuate an error is no heroism. To rectify it is the compulsion of the judicial conscience. The aforesaid proposition of law has been reiterated by the Supreme Court in the case of Nirmal Jeet Kaur v. State of Madhya Pradesh and Another, JT 2004 (7) SC 161.

44. ***Halsburry's Laws of England (Fourth Edition) Vol.26***: Judgment and Orders Judicial Decisions as Authorities (pages 297-298, Para 578) observed about per incuriam stating that a decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction while covered the case before it, in which case it must decide which case to follow or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force. Even if a decision of the court of appeal has misinterpreted a previous decision of the House of lords, the court of appeal must follow its previous decision and leave the House of Lords to rectify the mistake.

45. The Supreme Court, in ***(2000) 4 S.C.C. 262, Govt. of Andhra Pradesh and Anr. v. B. Satyanarayana Rao (Dead) by Lrs.***, has held that rule of Per incuriam can be applied where a Court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue. A decision by two judges, has a binding effect on another Co-

ordinate Bench of two judges, unless it is demonstrated that the said decision by any subsequent change in law or decision, ceases to lay down a correct law. The same proposition of law has been reiterated by the Supreme Court in the case of ***State of Bihar v. Kalika Kuer @ Kalika Singh and others reported in JT 2003 (4) SC 489.*** The concept of "*per incuriam*" has been considered by the Apex Court time and again explaining that the expression means through inadvertence or a point of law is not consciously determined. If an issue is neither raised, nor argued, a decision by the Court after pondering over the issue in depth would not be precedent binding on the Courts. *(Vide Mamleshwar Prasad & Anr. Vs. Kanahaiya Lal (Dead), (1975) 2 SCC 232; Rajpur Ruda Meha & Ors. Vs. State of Gujrat, AIR 1980 SC 1707; A.R. Antule Vs. R.S. Nayak, AIR 1988 SC 1531; Municipal Corporation of Delhi Vs. Gurnam Kaur, AIR 1989 SC 38; Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh & Ors., (1990) 3 SCC 682; State of West Bengal Vs. Synthetics and Chemicals Ltd., (1991) 1 SCC 139; Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd & Anr. Vs. Employees' Union & Anr., 1994 Supp (3) SCC 385; Pawan Alloys & Casting Pvt Ltd, Meerut Vs. U.P. State Electricity Board & Ors., (1997) 7 SCC 251; Ram Gopal Baheti Vs. Girdharilal Soni & Ors., (1999) 3 SCC 112; Sarnam Singh Vs. Dy. Director of Consolidation & Ors., (1999) 5 SCC 638; Govt. of Andhra Pradesh Vs. B. Satyanarayana Rao, AIR 2000 SC 1729; Arnit Das Vs. State of Bihar (2000) 5 SCC 488; M/s. Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd., AIR 2001 SC 2293; A-One Granites Vs.*

State of U.P. & Ors., (2001) 3 SCC 537; Suganthi Suresh Kumar Vs. Jagdeeshan, AIR 2002 SC 681; Director of Settlements A.P. & Ors. Vs. M.R. Apparao & Anr., (2002) 4 SCC 638; S. Shanmugavel Nadar Vs. State of T.N & Anr.., (2002) 8 SCC 361; State of Bihar Vs. Kalika Kuer Kalika Singh & Ors., AIR 2003 SC 2443; and Manda Jaganath Vs. K.S. Rathnam & Ors., (2004) 7 SCC 492).

46. Usually, the concept of "*per incuriam*" is discussed and applied in terms of final judgments, however, in the present case, while referring to the order dated 09.02.2023 passed in Criminal Misc. Writ Petition No.1131 of 2023, in connection with the interim orders passed in the aforesaid applications under Section 482 Cr.P.C. as well as in these two writ petitions, the Court feels it apt to utilize the philosophy underlying the concept of "*per incuriam*" and observes that the same principle would apply while passing the interim orders also as it applies in the case of finality attached to any decision. That is to say that if interim orders in the aforesaid applications under Section 482 Cr.P.C. as well as these two writ petitions have been passed in ignorance of the decision of Division Bench of this Court dated 09.02.2023 pased in Criminal Misc. Writ Petition No.1131 of 2023, all the four interim orders would be hit by the principle of "*per incuriam*".

47. There is another aspect of this matter as reflected during the course of arguments. It was argued on behalf of the petitioners that judgment/order dated 09.02.2023 was passed in a Criminal Miscellaneous Writ Petition arising out of those circumstances, under which, the concerned petitioners were

facing criminal action; however, the issues involved in the present cases are much wider in nature and, therefore, the order passed by a Bench exercising criminal jurisdiction, would not be of much significance in the present cases.

48. I am unable to accept the contention so advanced. The reason is that our Constitution of India is "neither a book of civil nature nor of criminal". When it comes to exercise of powers under Article 226 of the Constitution of India, the same are certainly for enforcement of Fundamental Rights conferred by Part III of the Constitution by means of any or more of the five prerogative writs, i.e. Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari. While practically applying Article 226 of the Constitution of India, Chapter XXII Rule 1 of the Allahabad High Court Rules, 1952 (hereinafter referred to as 'the Rules, 1952') may be referred to. The said Chapter does not differentiate between writs of different nature except cognizability before Single/Division Bench. Therefore, even the Rules of the Court uniformally apply for writs of every nature. The said Chapter is contained under Part IV of the Rules, 1952 titled as "**Enforcement of Fundamental Rights".** Insofar as the Civil and Criminal jurisdictions are concerned, Civil jurisdiction is contatined in Part II of the Rules, 1952 whereas criminal jurisdication finds place under Part III of the Rules, 1952 and both parts elaborately describe nature of various proceedings, respectively of civil and criminal jurisdiction.

49. From the aforesaid discussion of Article 226 of the Contitution of India read with Parts II, III and IV of the Rules,

1952, it is clear that any judgment of Writ Court, either in a Civil Miscellaneous Writ Petition or Criminal Miscellaneous Writ Petition would have impact either way, depending upon the issues raised and decided by the concerned Writ Court. In the aforesaid Criminal Misc. Writ Petition No.1131 of 2023, the issue before the Division Bench was the same which is involved in these two writ petitions as well as in the aforesaid applications under Section 482 Cr.P.C., i.e. as to whether for alleged want of opportunity to participate during investigation process culminating into report dated 30.11.2022 submitted by the Special Investigation Team and consequential Resolution of the State Government dated 19.12.2022 and/or its approval by impugned communication dated 09.01.2023, the petitioners are entitled to any relief or not. Hence, the judgment passed by the Division Bench in Criminal Miscellaneous Writ Petition cannot be treated as "**alien to the present proceedings**" either on facts or on law or on the categorization etc. etc.

50. Now while referring to two more documents on record, I find that even the Recognition Letter dated 27.07.2011, 'Annexure No.5' to Writ C No. 11005/ 2023, clearly reflects that recognition is subject to sub-clauses (v), (vi) (vii) and (viii) of Section 10 of the Act, 2004. It means that, in case, violation of the aforesaid provisions of law is found to have taken place, withdrawal of recognition can be a necessary consequence. Insofar as the letter dated 25.08.2017 issued by the District Magistrate, Azamgarh to various Authorities is concerned, I find that the concerned Committee was headed by the Sub Divisional Officers of the concerned Tehsils and its members

being District Backward Class Welfare Officers, District Minority Welfare Officers and District Social Welfare Officers concerned and **even the District Magistrate observed that considering the large number of Madarsas and the fact that they did not fulfill standards, extensive inquiry is expected.** Hence, if SIT has conducted the extensive investigation, its report cannot be said to be unlawful, merely, because in 2016-2017, some inquiry at Tehsil level was conducted.

51. While concluding this judgment, another important feature associated with the power of the State Government conferred by Section 13 (4) of the Act, 2004 should not be left undiscussed as the said power speaks that whenever, in the opinion of the State Government, it is necessary or expedient to take immediate action, it may without making any reference to the Board under the foregoing provisions, pass such order or take such other action consistent with this Act as it deems necessary and, in particular, may by such order, modify or rescind or make any regulation in respect of any matter and shall forthwith inform the Board accordingly. Hence, if the State Government constituted a Special Investigation Team to carry out inspection and it carried investigation, either through spot inspection or through Portal information uploaded by the Board or by both modes, action or steps taken by it cannot be said to be unjustified in totality of facts and circumstances of the case, as elaborately discussed.

52. In view of the above discussion, following is the end result of these writ-proceedings:-

(i) prayers to quash or set aside either the S.I.T. report dated 30.11.2022 or the Resolution of the State Government dated 19.12.2022 or the communication of the Special Secretary dated 09.01.2023 ***are hereby refused and declined*** and both the writ petitions are ***dismissed*** with the same liberty to the petitioners, as granted by the Division Bench of this Court in order dated 09.02.2023 passed in Criminal Misc. Writ Petition No.1131 of 2023.

(ii) Interim order dated 19.04.2023 passed in Writ C No.11005 of 2023 and dated 28.03.2023 in Writ C No.5992 of 2023 are hereby ***vacated.***

Order Date:-6.9.2023

Jyotsana

(Kshitij Shailendra, J.)