

(2014) 01 KAR CK 0019

In the Karnataka High Court

Case No : Writ Petition No's. 43392-43393 of 2011 (GM-WAKF)

Karnataka Wakfs Protection Joint Action Committee (Regd.)	APPELLANT
Vs	
The State of Karnataka and Others	RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 1 AKR 851 : (2014) ILR 2618 : (2014) 1 KCCR 814

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : B.A. Belliappa, for the Appellant; Ravivarma Kumar, Advocate General, Sri Laxminarayan, AGA for R1 and R2, Sri H. Kantharaja, AAG for R1 and R2, Smt. S.R. Anuradha, for R3, Sri H.H. Kaladgi, for R4, Sri Padmanabha Mahale, for Sri Naveed Ahmed, for R5 and Smt. Niloufer Akbar, for R6, for the Respondent

Judgement

A.N. Venugopala Gowda, J.—Challenge in these writ petitions is to the appointment/nomination of the respondents 4, 5 and 6, as Members of the Karnataka State Board of Wakfs (for short "the Board"), vide Notification No. MWD 237 WES 2011, Bangalore, dated 20.08.2011, of the Government of Karnataka. By the said notification, in exercise of the powers conferred under S. 14(9) of the Wakfs Act, 1995 (for short "the Act") and Rule 32 of the Karnataka Wakfs Rules, 1997, the persons named therein were appointed as members of the Board for a period of five years under S. 15 of the Act. The present Act (Act 43 of 1995), which replaced the Wakfs Act, 1954 (29 of 1954) and the Wakfs (Amendment) Act, 1984 (69 of 1984) was enacted to provide for better administration of Wakfs and for matters connected therewith or incidental thereto.

2. Wakfs and matters relating thereto were governed by the Wakfs Act, 1954. Because of the deficiencies noticed in working of the said enactment, especially those governing the Wakf Boards, their power of superintending and control over the management of the individual Wakfs, Parliament brought the comprehensive

legislation, i.e., the present Act, 1995, for better administration of the Wakfs and the matters connected therewith or incidental thereto.

3. The Karnataka State Board of Wakfs was established by the State Government, by a Notification published in the Official Gazette, in exercise of the power under S. 13 of the Act. S. 14 relates to composition of the Board. The said Section, prior to its amendment vide Act 27 of 2013 published in the Gazette of India dated 23.09.2013, in so far as, it relates to the present, is extracted hereunder:

14. Composition of Board - (1) The Board for a State and the National Capital Territory of Delhi shall consist of-

(a) a Chairperson;

(b) one and not more than two Members, as the State Government may think fit, to be elected from each of the electoral colleges consisting of -

(i) x x x x

(ii) x x x x

(iii) Muslim Members of the Bar Council of the State, and

(iv) x x x x

(c) one and not more than two members to be nominated by the State Government representing eminent Muslim organizations;

(d) one and not more than two members to be nominated by the State Government, each from recognized scholars in Islamic Theology;

xxxx xxxx xxxx

(5) Where there are Shia Wakfs but no separate Shia Wakfs Board exists, at least one of the Members from the categories listed in sub-section (1), shall be a Shia Muslim.

xxxx xxxx xxxx

(8) Whenever the Board is constituted or re-constituted, the Members of the Board present at a meeting convened for the purpose shall elect one from amongst themselves as the Chairperson of the Board.

(9) The Members of the Board shall be appointed by the State Government by notification in the Official Gazette.

4. Clauses (c) and (d) of Sub. S. (1) of S. 14 provides for nomination by the State Government, one or not more than two members, representing eminent Muslim Organizations and recognized Scholars in Islamic Theology. The respondent 5 and 6 having been nominated by the State Government, in exercise of the said power, as members of the Board, their appointment/nomination has

been questioned.

5. The appointment of the 4th respondent - R. Abdul Reyaz Khan, to the Board, though has been questioned in these writ petitions, there is no need to decide the question relating to his appointment, in view of dismissal of W.P. No. 33441/2011 on 11.12.2013, thereby, upholding his appointment made under S. 14(1)(b)(iii) of the Act.

6. Nomination of 5th respondent to the Board, under S. 14(1)(c) of the Act, as representing eminent Muslim Organizations, has been questioned, on the ground that the two institutions, which he claims to represent are not eminent Muslim Organizations.

7. The 6th respondent having been nominated in exercise of the power under S. 14(1)(d) of the Act, as a Recognized Scholar, has been questioned on the ground that he has no credentials to support his nomination as a Scholar, as he is only Imam of the "Askari Mosque" Hosur Road, Richmond Town, Bangalore and is entrusted with job of conducting prayers in the mosque, five times a day, for which no qualification is required.

8. The 1st respondent filed statement of objections on 08.10.2012 in justification of the nomination and appointment of respondents 5 and 6. There being delay in filing of the counter by respondent No. 1, cost having been directed to be paid, vide an order dated 11.09.2012, within one week and to file the statement of objections within a period of two weeks, I.A. 1/12 was filed by the respondent No. 1. It has been stated therein, as follows:

This respondent respectfully submits that there was some delay in securing information pertaining to respondents 4, 5 and 6, who have been nominated by the respondent-State Government, as members to the Karnataka State Board of Wakfs.

For the present, suffice to observe that the said statement makes it clear that the 1st respondent had no information pertaining to the respondent Nos. 4, 5 and 6, at least till 11.09.2012.

9. Respondent No. 3 filed counter on 22.06.2012. Respondent 5 filed statement of objections on 17.04.2012. Respondent No. 6 filed statement of objections on 14.02.2012 and additional statement of objections on 22.05.2012. Petitioner filed re-joinder statement on 05.09.2012.

10. Sri. B.A. Belliappa, learned advocate, contended that the respondent No. 5 has been nominated as representing eminent Muslim Organizations, on the strength of he being the Vice President of "Anwar Ul Huq" Minority Institution (R), Bellary and he also being the Joint Secretary of Ghousiya Education Minorities Society (R), Bellary. He submitted that the said two institutions, which are Societies, registered under the Karnataka Societies Registration Act, 1960 have been established with the objective of running primary and secondary educational institutions, among other things, but, at no stretch of imagination,

the said institutions can be termed as eminent Muslim Organizations. Learned counsel contended that the Government has nominated respondent No. 5, at its whims and fancy, merely on the strength of a note sent to the then Chief Minister. Sri B.A. Belliappa, further contended that the respondent No. 6 has been nominated as Recognized Scholar in Shia Islamic Theology, though he is only Imam of a mosque, who is concerned and entrusted with the job of conducting prayers in the Mosque, five times a day, for which no qualification is prescribed. He submitted that for nomination under S. 14(1)(d) of the Act, a person should be qualified in Islamic Theology and should be a Recognized Scholar, possessing vast and special knowledge and must be competent enough to give "Fatwa" (decree) and be in a position to interpret the "Quranic" injunctions and must have performed such Scholarly work for a thesis, book or writings. He contended that nomination of respondents 5 and 6 being based on a note recommending their names by the then ruling party President to the then Hon"ble Chief Minister, their nominations being whimsical and the process being flawed, warrants interference. In support of the submissions, reliance was placed on an order dated 01.06.2001 passed in W.P. Nos. 34002-03/1998 and connected cases.

11. Sri. H. Kantharaja, learned Additional Advocate General, appearing on behalf of the respondents 1 and 2, contended that these writ petitions have been filed with ulterior motives and malafide intention. He submitted that the Board having been reconstituted on 20th August 2011, in compliance with the directions issued in the order dated 21.06.2011, passed in W.P. No. 15003/2011, does not warrant interference.

12. Smt. S.R. Anuradha, learned advocate for the Board - respondent No. 3, contended that the writ petitions are hit by delay and laches, since the persons appointed and constituted as the Board, on 20th August 2011, have taken charge and are performing the duties and the petitions having been filed on 18.11.2011, are liable to be dismissed in limine.

13. Sri Padmanabha Mahale, learned senior counsel contended that the 5th respondent is the Vice President of "Anwar Ul Huq" Minority Education Society (R), Bellary, which is an eminent Muslim Organization, established during the year 2006 and that he is also the Joint Secretary of Ghousia Education Minority Society, Bellary, which is running B.Ed., D.Ed., and Kannada and English medium High School and also Study and Exam Center of Moulana Azad Open University. He submitted that the 5th respondent served as the Chairman of the District Wakf Advisory Committee, Bellary from 1996 to 1997 and again from 16.02.2008 to 15.02.2011 and successfully resolved issues pertaining to Wakfs and Mutawallies of the Wakfs in Bellary District. He submitted that the State Government having been conferred with the discretionary power, in exercise of the said power and in the absence of any guidelines, being satisfied that the 5th respondent represents eminent Muslim Organizations, passed the order of nomination and hence, no interference is warranted.

14. Miss Niloufer Akbar, learned advocate, contended that the 6th respondent is a qualified and Recognized Scholar in Islamic Theology, possessing good knowledge of Quran, he having studied Urdu, Persian and Arabic literature and having obtained M.A., degree from Karnataka Open University and is the lone Shia Muslim in the Board. She submitted that the 6th respondent is also serving as the Head Priest at Masjid-e-Askari, which is a prime Shia Mosque in the State of Karnataka. She contended that neither of the petitioners being eminent Scholars and their rights having not been affected in any manner, cannot maintain the writ petitions. She further submitted that the Managing Committee of Masjid-e-Askari and Shia Khabrasthan, in its meeting held on 12.08.2011, decided and sent a letter to the Wakf Board, to nominate 6th respondent and that the nomination of the 6th respondent does not suffer from infirmity.

15. These writ petitions were filed as public interest litigation on 18.11.2011 by contending that the respondents 4 to 6 do not fulfill the requisite qualification prescribed for being appointed as Members of the Board -3rd respondent. On 16.02.2012, Sri. M.J. Ali, General Secretary of the 1st petitioner was directed to be personally present on the next date of hearing. On 13.03.2012, Sri M.J. Ali having appeared and explained, that W.P. No. 33441/2011 was in the nature of an election petition and that pursuant to the resolution adopted by the 1st petitioner, these writ petitions having been filed, the preliminary objection raised with regard to maintainability was not accepted and the respondents were directed to file statement of objections. By an order dated 08.01.2013, finding that any citizen can invoke the writ jurisdiction of quo-warranto when the appointment to public office is done in violation of the provisions of law and since, the appointment of respondents 4 to 6 pertains to one section of society and one particular community and is not concerned with the public at large, the writ petitions were ordered to be posted before the Single Bench dealing with the subject.

16. With regard to the contention relating to the locus standi of the petitioners, considering the aforesaid orders passed by the Division Bench and the nature of dispute involved in these writ petitions i.e., the challenge to the nomination and appointment of respondents 5 and 6, for constitution of the 3rd respondent - Board and keeping in view the provision in S. 3(k) of the Act, in my opinion, the 1st petitioner being a Muslim Organisation and the 2nd petitioner being interested in the Wakf, the petitioners have the locus-standi to maintain these writ petitions.

17. Impugned Notification was published on 20.08.2011. These writ petitions questioning the said Notification having been filed on 18.11.2011, I do not find any merit in the contention urged with regard to the petitions being belated and hit by delay and laches.

18. In the common order dated 01.06.2001 passed in W.P. Nos. 34002-03/1998 and connected cases, Division Bench having found that the State Government had not obtained any material to satisfy itself that the objective criteria laid down

in Clauses (c) and (d) of Sub-S. (1) of S. 14 of the Act having been fulfilled by the respondents concerned and the contention of the State Government that nomination could be made under clauses (c) and (d) of Sub-S. (1) of S. 14 of the Act, on the basis of pure subjective satisfaction, was held as unacceptable. It was held that it is not for the State Government to "pick and choose" anyone on the basis of hearsay or guesswork as representative of eminent Muslim Organizations and Recognized Scholars in Islamic Theology and has further observed that such an absolute power is not confided to the State Government. It has further observed as follows:

The State Government must be reasonably satisfied that the Member sought to be nominated is a representative of an eminent Muslim organization in the case of clause (c) and in the case of clause (d) that the proposed Member is a recognized scholar in Islamic Theology. The satisfaction in this regard cannot be reached at the whim and fancy of the State Government and without ascertainment of material facts. When an issue is raised, the State Government must be able to demonstrate before the Court that there was material before it to treat the proposed appointees as falling within clauses (c) and (d). The adequacy or sufficiency of the material, which formed the basis for reaching the satisfaction as to the fulfillment of the pre-qualification criteria laid down in clauses (c) and (d), cannot of course be gone into by the Court in exercise of its power of judicial review under Article 226. But, where there is no material at all or where the material available to the State Government does not reasonably or even prima facie point to the conclusion that the proposed nominees fall within the description contained in Clauses (c) and (d), the State Government cannot nominate such persons under clauses (c) and (d). In such a case, the resort to power u/s 14(9) read with Section 14(1)(c) and (d) would be arbitrary and vitiated by legal malafides. The State Government cannot choose to exercise the power so as to virtually circumvent the requirement of the relevant clauses of Section 14(1) read with the other allied provisions.

(emphasis supplied)

19. Nominations of respondents 5 and 6 herein, made to the Karnataka State Board of Wakfs, by the State Government, in exercise of power under S. 14(1)(c) and (d) of the Act has to be examined, keeping in view the aforesaid factual background and the rival contentions.

20. The choice of nomination in terms of S. 14(1)(c) of the Act is the discretion of the Government, which should adopt a balanced approach, keeping in view the interest of various Muslim Organizations in the State. In the matter of selection of a particular Organization by the State Government, there should be reflection of intense application of mind. The State Government should have with it at least a list of various eminent Muslim Organizations in the State and also the information about the persons managing such institutions and the activities of such Organizations, for the betterment of the Muslim Community.

21. To make a nomination under S. 14(1)(d) of the Act, the person should be a Recognized Scholar in Islamic Theology. In the Book titled "Outlines of Islamic Culture" Second Edition, by A.M.A. Shushtery, Professor of Iranian Language and Literature, University of Mysore, it is noted that Theology has been systemized into a science. Under this head, the following subjects have to be studied by those desirous of knowing it for practical purposes:

(1) A commentary on Quran

(2) Pertaining to tradition

(3) Fundamental principles of Muslim Law based on the Quran, the Tradition, consensus of opinion and analogy.

(4) Rules relating morals, civil and criminal law.

(5) Scholastic theology based on the knowledge of unity of God, His attributes, the word of God, freedom of will, the sacred books, the Prophets, the angels, the punishment and the reward, the resurrection, etc.

(6) A brief study of logic.

22. Learned Government Advocate made available the file with caption "Re-constitution of Karnataka Board of Wakfs, 2011, bearing No. MWD 237 WES 2011." Perused the file.

23. In view of the order dated 21.06.2011 passed in W.P. No. 15003/2011, there being a need to constitute the Board before 14.09.2011, Regional Commissioner, Bangalore Division, was appointed as the Electoral Officer and Returning Officer on 27.06.2011. The calendar of events of the election was notified on 22.07.2011. Declaration of result of election to the Muslim members of the Parliament, State Legislature and Bar Council, was declared on 03.08.2011. The election to the Board from Mutawallies of Wakfs Electoral Colleges was declared on 17.08.2011.

24. Sri K.S. Eshwarappa, State President, Bharatiya Janata Party, Karnataka, sent recommendation letter dated 19.08.2011 to the then Hon"ble Chief Minister, Government of Karnataka, to nominate five persons named therein, which includes respondents 5 and 6. The Hon"ble Chief Minister sent a note, dated 20th August 2011, according approval for nomination of the said five persons to the Karnataka Board of Wakfs. That is the only material which I can find from the file. Neither any enquiry was made nor any other report was called for with regard to possessing of qualifications prescribed under S. 14(1)(c) and (d) of the Act, by the persons, whose names were recommended and approval was accorded, as above. Nomination of respondents 5 and 6 has been casually made, only on the basis of the recommendation made by the then ruling party President on 19.08.2011. Said recommendation, unsubstantiated by any other material and without any kind of verification could not be the basis for the nomination of respondents 5 and 6. Without finding out, whether the respondents 5 and 6

satisfy the required qualification stipulated in the said provisions, they have been nominated. Whimsical exercise of power is very much apparent. The decision making process of respondent No. 1 with regard to the nomination of respondents 5 and 6 to respondent No. 3 is flawed. Hence, the said nominations cannot be sustained. The Wakf Act, 1995 (43 of 1995) was amended by the Wakf (Amendment) Act, 2013. The amended Act having received the assent of the President on 20.09.2013 was published in the Gazette of India, Extraordinary, Part II, S. 1, No. 37 dated 23.09.2013. In S. 14 of the principal Act, in Sub-S. (1), for clauses (iii)(c) to (e), the following clauses were substituted, namely:

(c) one person from amongst Muslims, who has professional experience in town planning or business management, social work, finance or revenue, agriculture and development activities, to be nominated by the State Government;

(d) one person each from amongst Muslims, to be nominated by the State Government from recognised scholars in Shia and Sunni Islamic Theology;

(e) one person from amongst Muslims, to be nominated by the State Government from amongst the officers of the State Government not below the rank of Joint Secretary to the State Government.

In the result, the writ petitions are allowed and the nomination and appointment of respondents 5 and 6 to the 3rd respondent - Board by the 1st respondent is quashed. The 1st respondent shall send the nominations in respect of the categories under the clauses (c) and (d) of Sub-Section (1) of S. 14 of the Act, as amended, vide Amendment Act 27 of 2013, by keeping in view the observations made supra. Time for compliance is four weeks from the date a copy of this order becomes available.

It is made clear that this order would not come in the way of the 1st respondent considering the names of respondents 5 and 6 also.

No costs.