

(2003) 09 KAR CK 0055

In the Karnataka High Court

Case No : Writ Petition No. 24803 of 2003

Khasim Sab Bapu Sab Sirguppi

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 15-09-2003

Acts Referred:

Waqf Act, 1995 — Section 14, 14 (3), 15

Citation : (2003) 6 KarLJ 382

Hon'ble Judges : K. Bhakthavatsala, J

Bench : Single Bench

Advocate : Jayakumar S. Patil and Deviprasad Shetty, for the Appellant;
Deshraj, A.G.A. for Respondent -1, Prabhuling K. Navadgi, for Respondent-3, K.
Lakshminarayana Rao, for Respondent-4, for the Respondent

Final Decision : Allowed

Judgement

K. Bhakthavatsala, J.—The petitioner, who is one of the voters in the electoral college constituted for the purpose of electing Mutawalli to the Board is before this Court challenging the Government order dated 30-4-2003 bearing No. RD 07 WES 2003 (Annexure-A) insofar as the Government nominating the 4th respondent as a member of the 3rd respondent-Board.

2. The brief facts of the case of the petitioner may be stated as under.--

The petitioner is one of the voters as per the electoral college of Muthawalli prepared by the Government in Form 6-D (vide Sl. No. 24). As per Government notification bearing No. RD 49 WES 98, dated 26-9-1988, the Government notified and appointed in all 13 persons as members of the Karnataka State Board of Wakfs. Out of the 13 members posts, five persons were nominated by the Government as per Section 14 of the Wakf Act, 1995 (in short, "the Act"). Out of 13 members of the Board, 7 persons are elected from the respective electoral college and the 13th member was appointed as an officer of the State Government as per Section 14 of the Act, to hold office for a period of 5 years as

per Section 15 of the Act. Later on, due to the demise of the elected member, Sri F.M. Kittur, from the Muthawallis of the Wakfs, the Government by notification at Annexure-A, dated 30-4-2003 nominated the 4th respondent in lieu of the said Muthawalli's vacancy. This is challenged in this writ petition.

3. During the course of argument, the learned Senior Counsel, Sri Jayakumar S. Patil, submitted that in view of Section 14 of the Act, the nomination of the 4th respondent is ex facie illegal as the Government lacks the power to nominate any person as a member of the Board from the category of muthawalli's

4. On the other hand, the learned Counsel for the respondent 4, Sri K. Lakshminarayana Rao, submitted that keeping in view the provisions of Part IX of the Representation of People Act, 1951 and repealed the Wakf Act, 1954 and the Rules framed under the present Wakf Act, the notification in question is valid and the Government had the power to nominate the 4th respondent to the Board from the category of Muthawalli's.

5. Whether the Government had the power to nominate the 4th respondent to the Board of the 3rd respondent will have to be examined with reference to Section 14 of the Act. Hence, it is necessary to excerpt Section 14 of the Act.

6. Section 14 of the Act dealing with composition of the Board reads as under:-

"Composition of Board.--(1) The Board for a State and the Union 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) Muslim Members of Parliament from the State or, as the case may be, the Union territory of Delhi.

(ii) Muslim Members of the State Legislature.

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

(iv) Mutawallis of the wakfs having an annual income of rupees one lakh and above;

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

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

(e) an officer of the State Government not below the rank of Deputy Secretary.

(2) Election of the members specified in Clause (b) of Sub-section (1) shall be held in accordance with the system of proportional representation by means of a single transferable vote, in such manner as may be prescribed:

Provided that where the number of Muslim Members of Parliament, the State Legislature or the State Bar Council, as the case may be, is only one, such Muslim Member shall be declared to have been elected on the Board: Provided further that where there are no Muslim Members in any of the categories mentioned in Sub-clauses (i) to (iii) of Clause (b) of Sub-section (1), the ex-Muslim Members of Parliament, the State Legislature or ex-member of the State Bar Council, as the case may be, shall constitute the electoral college.

(3) Notwithstanding anything contained in this section, where the State Government is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in Sub-clauses (i) to (iii) of Clause (b) of Sub-section (1), the State Government may nominate such persons as the members of the Board as it deems fit.

(4) The number of elected members of the Board shall, at all times, be more than the nominated members of the Board except as provided under Sub-section (3).

(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.

(6) In determining the number of Shia members or Sunni members of the Board, the State Government shall have regard to the number and value of Shia wakfs and Sunni wakfs to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination.

(7) In the case of the Union territory other than Delhi, the Board shall consist of not less than three and not more than five members to be appointed by the Central Government from amongst the categories of persons specified in Sub-section (1): Provided that there shall be one mutawalli as the member of the Board.

(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".

7. From the reading of Section 14, it is crystal clear that the State Government can nominate minimum 3 persons, maximum six persons as per Clause (b) of Sub-section (1) of Section 14 of the Act. According to Sub-section (3) of Section 14 of the Act, notwithstanding anything contained in Section 14, where the State Government is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in Sub-clauses (i) to (iii) of Clause (b) of Sub-section (1), the State

Government may nominate such persons as the members of the Board as it deems fit.

8. Admittedly, the State Government has not recorded reasons as required under Sub-section (3) of Section 14 to nominate the 4th respondent herein to the 3rd respondent-Board. Further, Sub-section (4) of Section 14 clarifies that the number of elected members of the Board shall, at all times, be more than the nominated members of the Board except as provided under Sub-section (3). Sub-sections (1), (3) and (4) of Section 14 of the Act shall be read in conjunction. Now, I refer to the Government notification at Annexure-C, dated 26-9-1998. As per Annexure-C, the Government has appointed 13 members to the 3rd respondent-Board for a period of 5 years, out of that, five members were nominated by the Government as against, 7 elected members from the respective electoral college. Therefore, there is no impediment to hold that the notification at Annexure-C is in accordance with Section 14 of the Act.

9. Now, I refer to the impugned order at Annexure-A. As per Annexure-A, three persons including the respondent 4 have been nominated in view of the vacancies fell due to demise of the members of the Board elected from the category of Muslim members of the State Legislature, members of Mutawallis of Wakf and category of Muslim scholars, respectively. If Annexure-A is allowed to take effect, there will be seven State Government nominees as against five elected members, which is quite contrary to the mandatory provisions viz., Sub-section (4) of Section 14 of the Act. In other words, as per Sub-section (4) of Section 14 of the Act, the number of elected members of the Board, shall, at all times, be more than the nominated members of the Board except as provided under Sub-section (3). Therefore, entire Annexure-A is liable to be quashed, but the petitioner has challenged the Annexure-A insofar as nomination of respondent 4 as a member of the 3rd respondent-Board.

10. Hence, I pass the following order:

The writ petition is allowed. The impugned order dated 30-4-2003 issued by the 2nd respondent at Annexure-A, nominating the 4th respondent as member of the 3rd respondent-Board is quashed. No costs.

Rule made absolute.

The learned Government Advocate is permitted to file memo of appearance within four weeks.