

**(2013) 12 KAR CK 0530**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 33441 of 2011 (GM-WAKF)

M. Javeed Ali

APPELLANT

Vs

The State of Karnataka, The Returning Officer, Karnataka  
State Board of Wakfs and Regional Commissioner, Govt. of  
Karnataka, Karnataka State Board of Wakfs and R. Abdul  
Reyaz Khan

RESPONDENT

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**Date of Decision :** 11-12-2013

**Acts Referred:**

**Citation :** (2014) 1 AKR 820 : (2014) 2 KCCR 1622

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

**Bench :** Single Bench

**Advocate :** R.L. Patil, for the Appellant; S. Lakshminarayana, AGA for R1 and R2, Smt. S.R. Anuradha for Sri Naveed Ahmed, for R3, Sri Padmanabha Mahale, for Sri H.H. Kaladgi, for R4, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

A.N. Venugopala Gowda, J.—The petitioner who belongs to Muslim community and Mutawalli of Masjid-e-Farooquia, Kodihalli, Bangalore, claiming to be interested in the proper functioning and management of the Karnataka State Board of Wakfs, Bangalore (for short "the Board"), constituted by the State Government for better administration of the Wakfs and for matters connected therewith or incidental thereto, has filed this writ petition, questioning the appointment of Mr. R. Abdul Reyaz Khan, the 4th respondent, as a member of the Board by the State Government, as per the Notification, dated 20.08.2011, as at Annexure-A. Brief facts necessary for deciding the petition are that the 4th respondent was a member of the Board in terms of a Notification No. RD/03/WES/2003, dated 20.09.2005. The Board was superseded by the State Government in exercise of the power under S. 99(1) of The Wakf Act, 1995 (for short "the Act") by issue of a Government Order dated 16.01.2010, based on the findings in the report dated 15.01.2010 of the Hon"ble Minister for Haj, Wakf and Minority Welfare. The members of the Board, including the 4th respondent,

questioned the said report, by which the Board was superseded, in W.P. No. 1476/2010. The main prayer in the writ petition having become infructuous, in view of the completion of the term of office of the writ petitioners, the petition was rejected and the "stigmatic observations in the impugned order were expunged". W.A. Nos. 4509 and 4565 of 2010 filed there-against have been dismissed.

2. The 2nd respondent - Returning Officer, having issued the calendar of events for holding election to the Board, the 4th respondent, the lone elected Muslim member of the Karnataka State Bar Council, having filed nomination in terms of the Sub-Section (2) of S. 14 of the Act, at the time of scrutiny, the petitioner raised objection on the ground that the candidature of the 4th respondent has to be rejected, by invoking the S. 16(e)(i) of the Act. The objection having been overruled and the nomination form of the 4th respondent having been accepted on 01.08.2011, vide Annexure-M and the State Government, in exercise of the power under S. 14(9) of the Act and Rule 32 of the Karnataka Wakf Rules, 1997 (for short, "the Rules") having issued the Notification dated 20.08.2011, published in the Karnataka Gazette, vide Annexure-A, notifying that the persons shown thereunder as having been appointed under S. 15 of the Act, as members of the Board, to hold office for a period of 5 years, feeling aggrieved, this writ petition was filed to quash the Notification, as at Annexure-A (in so far as it relates to the appointment of the 4th respondent) and the order, as at Annexure-M and for grant of consequential reliefs.

3. Mr. R.L. Patil, learned advocate for the petitioner contended as follows:

(i) The 2nd respondent has committed error of law in accepting the nomination of the 4th respondent, even though the 4th respondent has incurred disqualification under S. 16(e)(i) of the Act.

(ii) Challenge in W.P. No. 1476/2010 being only to the report dated 15.01.2010 and not to the order dated 16.01.2010 passed under S. 99(1) of the Act, superseding the Board, in which the 4th respondent was a member, the writ petition having been rejected, the 4th respondent has incurred the disqualification under S. 16(e)(i) of the Act and the view taken by the 2nd respondent in the order passed vide Annexure-M is illegal.

(iii) The Notification dated 20.08.2011, as at Annexure-A, (in so far as it relates to the appointment of the 4th respondent as a member of the Board) having been issued mechanically, is arbitrary and illegal and hence, interference is warranted.

4. Sri Padmanabha Mahale, learned Senior Counsel appearing for the 4th respondent, on the other hand contended as follows:

(a) The disqualification provided in S. 16(e)(i) and (ii) of the Act for being appointed or for continuing as a member of the Board applies to a person, who, on a previous occasion was removed from the office either as a Member or a

Mutawalli or either for mismanagement or for corruption and the 4th respondent having not been removed by the Board or a competent Court or Tribunal, either for mismanagement or corruption, the Returning Officer is justified in overruling the objections of the petitioner.

(b) The order dated 20.10.2010 passed in W.P. No. 1476/2010, questioned by the respondents therein, in Writ Appeal Nos. 4509 and 4565 of 2010 having been dismissed, is not against the interest of the 4th respondent herein.

(c) That the stigmatic observations found in the report dated 15.01.2010 having been specifically expunged, the claim of the petitioner that the 4th respondent has incurred disqualification is without any basis.

(d) The order dated 16.01.2010, superseding the Board, being based on the report dated 15.01.2010 and in view of the stigmatic observations found in the report having been expunged in W.P. No. 1476/2010, there being no legal basis of whatsoever nature for the order dated 16.01.2010, which cannot stand alone, questioning of the same was unnecessary.

(e) The order of supersession passed in exercise of the power under S. 99(1) being not against any individual, the 4th respondent neither having been removed from the membership of the Board, as provided under S. 20 of the Act nor having incurred any disqualification, this writ petition is untenable.

(f) The disqualification provided under S. 16 of the Act has to be read with the removal, if any, ordered by the State Government under S. 20 of the Act and not the order of supersession passed under S. 99(1) of the Act. An order of removal in exercise of the power under S. 20 of the Act having not been passed and there being no publication of such order, in the Gazette, this writ petition having been filed with oblique motives, to malign the good reputation of the 4th respondent, by abusing the process of this Court, is liable to be dismissed with exemplary costs.

g) The impugned order and the Notification, vide Annexures - M and A respectively, in the facts and circumstances of the case are unassailable.

5. Smt. S.R. Anuradha, learned advocate for the Board, contended that the 4th respondent was not removed from the membership of the Board by the Government at any point of time and hence, the 2nd respondent is justified in overruling the objection of the petitioner and in passing the order, as at Annexure-M and the Government is also justified in nominating the 4th respondent, as a Muslim member, representing the electoral college of Karnataka State Bar Council, in terms of Sub-Section (2) of S. 14 of the Act.

6. Sri Lakshminarayana, learned AGA submitted that in view of dismissal of W.A. Nos. 4509 and 4565 of 2010, the order, as at Annexure-M is unassailable and the 1st respondent is justified in including the 4th respondent, as a member of the Board, as he alone is the Muslim Member in the Karnataka State Bar Council.

7. It is not in dispute that the Board was superseded on 16.01.2010 based on a report dated 15.01.2010 of the Hon"ble Minister for Haj, Wakf and Minority Welfare, Government of Karnataka. W.P. No. 1476/2010 filed by the Chairman and the Members of the Board, questioning the report dated 15.01.2010, by which the Board was superseded in exercise of the power under S. 99(1) of the Act, was decided on 20.10.2010. Inter alia it was found therein as follows:-

It seems, the petitioners in regular course of business have performed their duties as the members of the Wakf Board. The negligence cannot be equated with intentional action. Thus, it cannot be said that the petitioners have intentionally committed any default in performance of their duties.

(emphasis supplied)

Finding that, during the pendency of the petition, the term of the Office of the writ petitioners has expired and even if the writ petition is decided in their favour, no useful purpose will be served, in view of the expiry of their term of office they cannot hold the office any more and fresh elections will have to be conducted, the impugned order was not interfered with i.e., in so far as seeking quashing of the order dated 15.01.2010, the same having become infructuous. However, the stigmatic observations found in the impugned order against the writ petitioners were expunged.

8. Relevant portion of the order passed by the 2nd respondent vide Annexure-M reads thus:

I heard the arguments. The objector has submitted the supersession order of the Wakf Board but not the removal or disqualification of Sri R. Abdul Reyaz Khan as required u/s 20 of the Wakf Act. But there is no individual removal of the respondent. Hence, I dismiss the objections petition. I accept the nomination paper of Sri R. Abdul Reyaz Khan filed to the electoral college of Muslim Members of State Bar Council.

9. The two provisions, on the basis of which the petitioner is seeking the relief, in so far the same being relevant for the present, are extracted hereunder for facility of reference:

S. 16. Disqualification for being appointed, or for continuing as, a member of the Board.- A person shall be disqualified for being appointed, or for continuing as, a member of the Board if -

(a) to (d) x x x x x

(e) he has been on a previous occasion -

(i) removed from his office as a member or as a mutawalli; or

(ii) removed by an order of a competent Court or Tribunal from any position of trust either for mismanagement or for corruption.

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S. 20. Removal of Chairperson and Member - (1) The State Government may, by notification in the Official Gazette, remove the Chairperson of the Board or any member thereof if he -

(a) is or becomes subject to any disqualifications specified in Section 16; or

(b) refuses to act or is incapable of acting or acts in a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the wakfs; or

(c) fails in the opinion of the Board, to attend three consecutive meetings of the Board, without sufficient excuse.

(underlined for emphasis)

10. The Board was constituted under S. 14(9) of the Act and under Rule 32 of the Rules, for a period of five years, as per a Notification No. RD/03/WES/2003, dated 20.09.2005. The Board was superseded on 16.01.2010, under S. 99(1) of the Act, for a period of six months. The said provision being relevant, is extracted hereunder, for facility of reference:

99. Power to supersede Board- (1) If the State Government is of opinion that the Board is unable to perform or has persistently made default in performance of the duty imposed on it by or under this Act or has exceeded or abused its powers, or has willfully and without sufficient cause failed to comply with any direction issued by the Central Government u/s 96 or the State Government u/s 97, or if the State Government is satisfied on consideration of any report submitted after annual inspection, that the Board's continuance is likely to be injurious to the interests of the Wakfs in the State, the State Government may, by notification in the Official Gazette, supersede the Board for a period not exceeding six months:

Provided that before issuing a notification under this subsection, the State Government shall give a reasonable time to the Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

(underlined for emphasis)

11. The above provision can be invoked for three types of defaults, the first one is, the collective omission or for persistent default in the performance of the duty imposed on the Board, by or under the Act. The second one is, the collective excesses or abuse of the powers by the Members of the Board. The third one is, willfully and without sufficient cause, failing to comply with any direction issued by the Central Government under S. 96 or by the State Government under S. 97 of the Act. The collective act or omission is totally different from an individual act or omission.

12. The Committee of the Board, with which the management of the Wakf vests, acts as such. The disqualification for being appointed, or for continuing, as a

member of the Board in respect of an individual is provided under S. 16. S. 20 provides for removal of Chairperson and/or Member, by the State Government, by a Notification in the Official Gazette, if the person is or becomes subject to any disqualifications specified in S. 16 or refuses to act or is incapable of acting or acts in a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interest of the Wakfs; or fails in the opinion of the Board, to attend three consecutive meetings of the Board, without sufficient excuse. If the Government is of the opinion that the Board has failed in its duty, it can exercise the power under S. 99(1) of the Act and supersede the Board for a period not exceeding six months, after giving reasonable time to the Board to show cause why it should not be superseded and after considering the explanations and objections, if any of the Board, by issuing a Notification and publishing in the Official Gazette.

13. S. 20 of the Act empowers the State Government to remove the Chairperson of the Board or any Member thereof, if, he is or becomes subject to any disqualifications specified in S. 16 of the Act or other acts shown in Clauses (b) and (c) under S. 20 i.e., by publishing the notification in the Official Gazette. S. 21 provides that when the seat of a member becomes vacant by his removal, resignation, death or otherwise, for filling up of the vacancy.

14. There is a clear distinction in law between "suspension/supersession" and "removal". The material difference is, when suspended or superseded, it can be for a certain period i.e., kept in abeyance. Whereas, the "removal" is "end" in all respects. "Supersession" of Board by virtue of the exercise of power under S. 99 of the Act is not stigmatic. On the contrary, "removal" of either chairperson or member of the Board in exercise of the power under S. 20 of the Act is stigmatic.

15. Ss. 16 and 20 of the Act are penal provisions and hence, the same have to be construed strictly. They speak about a Chairperson or any Member of the Board and not of the entire Board, a reference to which can be found in S. 99 of the Act. On account of the supersession of the Board, a person cannot be treated as having been removed from his office as a Member. The removal has been specifically provided in S. 20 of the Act. A conjoint reading of the said three provisions makes it clear that the Legislature has thought that when the chairperson or an individual Member is removed for his act or omission, he will have to be kept away from the administration of the Wakfs and/or the matters connected therewith or incidental thereto and not for the collective default/s shown in S. 99 of the Act. S. 99 is for the collective default/s, whereas, S. 16 is for individual wrong/s and the same having been separately dealt with, the legislative intent to provide different consequences is explicit and clear. The supersession of the Board and removal of the Chairperson of the Board or any Member of the Board thereto, are mutually exclusive concepts dealt with under separate chapters and the provisions by the Legislature. Hence, on account of the order of supersession, which even though remained unchallenged, the 4th respondent did not incur the disqualification for being nominated as a Member of

the Board, in as much as, no order of removal was passed against him nor was published by the Government in the Gazette. Even otherwise, in view of the findings recorded in the order dated 20.10.2010 passed in W.P. No. 1476/2010 and the dismissal of W.A. Nos. 4509 and 4565 of 2010, the order passed by the 2nd respondent, as at Annexure-M, is unassailable. There being no disqualification suffered by the 4th respondent, he having not been removed by an order of the State Government, his nomination to the electoral college of the Muslim Member of State Bar Council, in terms of Sub-Section (2) of S. 14 of the Act, in the Notification, as at Annexure-A, cannot be found fault with.

In the result, the writ petition being devoid of merit is dismissed. However, there shall be no orders as to costs.