

(1998) 10 KAR CK 0022
In the Karnataka High Court
Case No : Writ Petition No. 19188 of 1998

M. Noorulla Shariff

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 08-10-1998

Acts Referred:

Advocates Act, 1961 — Section 17, 2 (d), 3 (2), 3 (2) (a)
Waqf Act, 1995 — Section 14 (1) (b) (iii), 14 (2)

Citation : (1999) ILR (Kar) 355 : (1999) 2 KarLJ 408

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : Sri S.P. Shankar, for the Appellant; Sri Udaya Shankar, A.G.A., Sri D.L.N. Rao and Sri Suresh S. Joshi, for the Respondent

Judgement

1. The petitioner in this writ petition has sought for quashing of Annexure-E issued by the Divisional Commissioner rejecting his application for the nomination as a member of the Wakf Board.

The petitioner is an Advocate whose name has been entered on the roll of Advocates maintained by the Karnataka State Bar Council. Consequent on the coming into force of the Wakf Act, 1995, the Divisional Commissioner, Bangalore Division, Bangalore, published a notification dated 30-4-1998 (Annexure-A) for information of the persons eligible to get themselves registered as voters of the different electoral colleges as provided u/s 14(2) of the Wakf Act. In response to the notification the petitioner filed an application in Form No. 4 and 4-A to get himself registered as voter. The said application was rejected by the Divisional Commissioner stating that the petitioner is not a member of the Bar Council so as to get himself registered as voter of the electoral rolls for the purpose of composition of the Board u/s 14(1)(b)(iii) of the Wakf Act. This rejection is under challenge by the petitioner in this petition.

2. Sri S.P. Shankar, learned Counsel for the petitioner submitted that the petitioner is a practising Advocate whose name has been included in the roll of

Advocates maintained by the Bar Council and therefore the Divisional Commissioner is not justified in rejecting the application of the petitioner for inclusion of his name in the electoral rolls as voter. In order to appreciate this contention, it is useful to refer to some of the provisions of the Wakf Act and Advocates Act, 1961.

3. Section 14(1)(b)(iii) of the Wakf Act reads as follows.--

"14. Composition of Board.--(1) The Board for a State and the Union Territory of Delhi shall consist of:-

(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--

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

(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".

4. From a reading of the above said section, it is clear, that in order to get a person himself included in the list of voters of the electoral college meant for Muslim members of the Bar Council of the State he must be a member of the Bar Council of the State. In order to know who is the member of the Bar Council of the State, it is necessary to refer to some of the provisions of the Advocates Act, 1961.

5. Section 2(d) of the Advocates Act defines the word "Bar Council" means a Bar Council constituted under this Act. Section 3 of the Advocates Act, provides for establishment of State Bar Council. Section 3(2) of the Advocates Act reads as follows.--

"3(2). A State Bar Council shall consist of the following members, namely.--(a) in the case of the State Bar Council of Delhi, the Additional Solicitor General of India, ex officio; in the case of the State Bar Council of Assam, Nagaland, Meghalaya, Manipur and Tripura, the Advocate General of each of the States of Assam, Manipur, Meghalaya, Nagaland and Tripura, ex officio, in the case of the State Bar Council of Punjab and Haryana, ex officio and in the case of any other State Bar Council, the Advocate General of the State, ex officio".

(b) in the case of a State Bar Council with an electorate not exceeding five thousand, fifteen members, in the case of a State Bar Council with an electorate exceeding five thousand but not exceeding ten thousand, twenty members, and in the case of a State Bar Council with an electorate exceeding ten thousand, twenty five members, elected in accordance with the system of proportional representation by means of the single transferable vote from amongst Advocates on the electoral roll of the State Bar Council".

6. Section 17 of the Advocates Act, provides that every State Bar Council shall prepare and maintain a roll of Advocates in which shall be entered, the names

and addresses of all persons who are admitted to be Advocates on the roll of the State Bar Council under the Advocates Act.

7. The petitioner is an Advocate whose name is entered in the roll of Advocates as provided u/s 17 of the Act.

8. Now the question that arises for consideration is:

"Whether an Advocate whose name is entered in the roll of Advocates be considered as member of the State Bar Council for the purpose of including his name as voter in the electoral college meant for Muslim Members of the Bar Council of the State".

Under sub-section (2) of Section 3 of the Advocates Act, the petitioner cannot be considered as a member of the State Bar Council since neither he is holding any office as provided u/s 3(2)(a) of the Advocates Act; nor elected as a member of the State Bar Council as provided u/s 3(2)(b) on the Advocates Act. Therefore, the petitioner being an Advocate of the roll of Advocates cannot be considered as a member of the State Bar Council to get himself registered as a voter of the electoral college. Therefore, the Divisional Commissioner is right in rejecting his application for inclusion of his name as a voter of the electoral college for Muslim Members of the Bar Council of the State u/s 14(1)(b)(iii) of the Wakf Act.

9. Accordingly, writ petition is rejected.