
(2019) 06 UK CK 0012

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 985 Of 2019

Makhmool

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 11-06-2019

Acts Referred:

Waqf Act, 1995 — Section 14, 16, 99

Citation : (2019) 06 UK CK 0012

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Ramji Srivastava, Yogesh Pandey, Nishat Intezar, T.A. Khan, A.K. Arya

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J

1. The petitioner by means of the present writ petition has challenged the appointment of respondent nos.4 and 5 as the members of "Waqf Board".

2. The grounds for challenge are that previously in the year 2004, when the respondent nos.4 & 5 were the members of the "Waqf Board", the entire Board was superseded by the orders of the Government and since the entire "Waqf Board" was superseded by the orders of the Government, they would incur disqualification under Section 16 of the Waqf Act, 1995 and therefore they are now liable to be removed.

3. Section 16 of the Waqf Act, 1995 reads as under:-

"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) he is not a Muslim and is less than twenty-one years of age;

(b) he is found to be a person of unsound mind;

(c) he is an undischarged insolvent;

(d) he has been convicted of an offence involving moral turpitude and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;

(da) he has been held guilty of encroachment on any waqf property;)

(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."

4. Mr. T.A. Khan, Senior Counsel has put in appearance on behalf of private respondents and he submits that it is admitted by the petitioner that respondent nos.4 and 5 were earlier members of the board. They were not been removed as per the provisions contemplated under Section 16 of the Waqf Act, 1995 but what has actually been done was that the Board itself was superseded under Section 99 of the Waqf Act, 1995 by the State Government. Section 99 of the Waqf Act, 1995 reads as under:-

"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 the performance of, the duty imposed on it by or under this Act or has exceeded or abused its powers, or has wilfully and without sufficient cause failed to comply with any direction issued by the Central Government under section 96 or the State Government under section 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 [auqaf] 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 sub-section, 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:

[Provided further that the power of the State Government under this section shall not be exercised unless there is a prima facie evidence of financial irregularity, misconduct or violation of the provisions of this Act.]

(2) Upon the publication of a notification under sub-section (1) superseding the Board,-

(a) all the members of date of supersession, members; the Board shall, as from the vacate their offices as such

(b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Board shall, during the period of

supersession, be exercised and performed by such person or persons as the State Government may direct; and

(c) all property vested in the Board shall, during the period of supersession vest in the State Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1) , the State Government may-

[(a) extend the period of supersession by another six months with reasons to be recorded in writing and, the period of continuous supersession shall not exceed more than a year; or]

(b) reconstitute the Board in the manner provided in section 14."

5. In case the "Waqf Board" has been superseded it would not mean that a member or members have incurred disqualification. Moreover Section 16 of the Waqf Act, 1995 also does not visualize any such disqualification on the supersession of the Board. Therefore the contention of the learned counsel for the petitioner is totally misconceived.

6. Consequently, the writ petition fails and is hereby dismissed.