
(2019) 06 MAN CK 0002
In the Manipur High Court
Case No : Writ Petition (c) No. 1217 Of 2018

Md. Fajur Rahim And Others

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 26-06-2019

Acts Referred:

Waqf Act, 1995 — Section 14(9), 96, 97, 99, 99(1)

Citation : (2019) 06 MAN CK 0002

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : B.P. Sahu, M. Rarry

Final Decision : Dismissed

Judgement

Kh. Nobin Singh, J

[1] Heard Shri BP. Sahu, learned Senior Advocate appearing for the petitioners and Shri M. Rarry, learned Addl. Advocate General for the respondents.

[2] By the instant writ petition, the petitioners have prayed for issuing a writ of certiorari or any other appropriate writ to quash and set-aside the order dated 21.12.2018 issued by the Joint Secretary (MOBS & SC), Government of Manipur.

[3] The Waqf Board, Manipur was constituted vide order dated 05-06-2015 issued by the Secretary (MOBC), Government of Manipur, in exercise of the power conferred under Section 14(9) of the Waqf Act, 1995 and rules made thereunder, of which the petitioner No.1 is the Chairman and other petitioners are its members.

[4] After about two and half years, the Deputy Secretary (MOBC), Government of Manipur, in a purported exercise of power conferred upon it under Section 99 of the Waqf Board Act, 1995, issued a notice dated 31.01.2018 to show cause as to why the Waqf Board should not be dissolved and superseded by the State Government. Four charges were made in the notice, although no documents

thereof were furnished to the petitioners and they were mainly based on news reports only. The Deputy Secretary (MOBC), Government of Manipur issued an order dated 01.03.2018 dissolving the Waqf Board, Manipur. Being aggrieved by it, the petitioner No.1 filed a writ petition being WP(C) No.217 of 2018 challenging it on the ground that it was contrary to the provisions of Section 99 of Waqf Act, 1995 by which the State Government is empowered to supersede the Board and not to dissolve it and that too, subject to the terms and conditions mentioned therein and during the pendency thereof, the State Government issued a corrigendum dated 27.03.2019 whereby the word "dissolution" was deleted with the order that the Waqf Board should remain superseded. This Court vide its judgment and order dated 18-05-2018 quashed the order dated 01.03.2018 and the corrigendum dated 27.03.2018 with a liberty being granted to the State Government to proceed afresh as regards the supersession of the Board in accordance with law. Taking advantage of the order dated 18.05.2018 passed by this Court, the respondents issued another notice dated 29.05.2018 to show cause as to why the Waqf Board should not be superseded by it. Being aggrieved by the notice dated 29.05.2018, the petitioners filed another writ petition being WP(C) No.488 of 2018 which was dismissed by this Court on 26.07.2018 with the direction to the petitioners to submit their response to the notice within a week therefrom. Against it, the petitioner preferred an appeal being WA No.25 of 2018 which was dismissed by this Court on 08.10.2018 and the petitioners were directed to submit their reply to the show cause notice.

[5] Since a confusion arose as regards the two show cause notices, an application being MC(WA) No.73 of 2018 was filed wherein this Court passed an order clarifying that the notice which was required to be given reply, was the one quoted in the order of this Court. Accordingly, the petitioner submitted the reply on 28.11.2018. The Joint Secretary (MOBC), Govt. of Manipur issued an order dated 21.12.2018 superseding the Waqf Board for 6(six) months stating that the reply to the show cause notice was unsatisfactory. Being aggrieved by the order dated 21.12.2018, the instant writ petition was filed by the petitioners on the inter-alia grounds that their reply was not considered by the State Government.

[6] An affidavit-in-opposition was filed on behalf of the respondents stating therein that the notice was issued in view of the liberty being granted by this Court and that the same contained the article of charges of irregularities committed by the Board and its members with clear prima facie evidence of financial irregularities, misconduct and violations of the provisions of the Waqf Act, 1995. Complete copies of all the documents in support of the allegation of charges containing 79 sheets were served upon the Board and its members. The Board was unable to perform and had persistently made default in the performance of the duty imposed on it.

The Board had abused its power by committing irregular and illegal acts and had been willfully functioning by committing various irregularities and illegalities and its continuance was likely to be injurious to the interest of the Waqf in the State.

The Board was not able to clarify nor was it able to explain satisfactorily the article of charges as all the charges against the Board were based on documents.

[7] 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 1 [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 the Board shall, as from the date of supersession, vacate their offices as such members;

(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 properties 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."

By Section 99 of the Waqf Act, 1995, the State Government is conferred power to supersede the Board on any of the grounds mentioned in sub-Section (1) thereof but this power can be exercised by the State Government only after two

conditions as prescribed in the two provisos, are fulfilled. The first condition is that the State Government shall give a reasonable time to the Board to show cause as to why it should not be superseded and shall consider the explanations and objections, if any, of the Board. The second condition is that the power of the State Government shall not be exercised, unless there is a prima facie evidence of financial irregularity, misconduct or violation of the provisions of the Act. In other words, the power to be exercised by the State Government under sub-Section (1) is conditional and that too, on the fulfillment of the said two conditions.

[8] It has been submitted by Shri B.P Sahu, the learned counsel appearing for the petitioners that the petitioners submitted their reply to each and every allegations with supporting documents; that the respondents were unable to prove them wrong; that the impugned order was issued with oblique motive and was malafide having been issued in colourable exercise of power; that it is nowhere stated in the notice as to who committed fraud, financial irregularities etc.; that the notice was not served upon all the members and that the exercise of power was politically motivated with the change of guards in the Government. Refuting the contentions as aforesaid, Shri M. Rarry, the learned Addl. Advocate General reiterated the stand taken by the State Government in their affidavit and justified the action of the State Government.

[9] The short question which falls for consideration by this Court is as to whether the State Government fulfilled the conditions as prescribed in the provisos to Section 99 before exercising the power conferred by sub-Section (1) of Section 99. Before going into the merits of case, it is appropriate for this Court to consider one aspect which has cropped up while preparing this judgment and order. The order dated 21-12-2018, impugned herein and issued by the Joint Secretary (MOBC & SC), Government of Manipur was valid for six months only and it had expired on 20-06-2019 with the result that the issue involved herein had become academic and consequently, the instant writ petition had become infructuous. It is not proper for this Court at this stage to make any observation on the merit of the case, since the writ petition has become infructuous. In view of the aforesaid, the instant writ petition is liable to be dismissed as infructuous with the questions of law being kept open so that they can be decided by this court in an appropriate case in future.

[10] For the reasons stated hereinabove, the instant writ petition stands dismissed as infructuous leaving the questions of law, involved herein, open.