

(2019) 10 MAN CK 0014

In the Manipur High Court

Case No : Writ Petition (c) No. 190, 205 Of 2019

Md. Fajur Rahim

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 17-10-2019

Acts Referred:

Waqf Act, 1995 — Section 2(c), 2(h), 13(2)(1), 14, 14(1)(b), 14(1)(c), 14(1)(d), 14(1)(e), 14(9), 21, 106

Manipur Waqf Board (Conduct Of Election) Rules, 1997 — Rule 5, 37

Citation : (2019) 10 MAN CK 0014

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : Anjan Sahu, M. Rarry

Final Decision : Allowed

Judgement

Kh. Nobin Singh, J

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

[2] The above writ petitions have arisen out a similar set of facts and therefore, the same are being disposed of by this common judgment and order.

[3] By the instant writ petitions, the petitioners have prayed for issuing a writ of certiorari or any other appropriate writ to quash and set aside the impugned order dated 19/02/2019 issued by the Joint Secretary (MOBC & SC), Government of Manipur.

[4.1] Facts and circumstances as narrated in the writ petitions, are that the petitioners are the elected members of the Manipur Legislative Assembly belonging to minority community (Muslim) in the State of Manipur and the petitioner in WP(C) No. 205 of 2019 is also the elected Chairperson of the Manipur Waqf Board constituted under the provisions of Waqf Act, 1995

hereinafter referred to as "the Act, 1995").

[4.2] The Department of Minority and Other Backward Classes, Government of Manipur (hereinafter referred to as "the Department of MOBC") invited applications from amongst the MLAs, MPs and Advocates vide Notification dated 06/11/2014 published in the local newspapers for appointment of the members of the Waqf Board. Thereafter, the Election Officer-cum-Deputy Director of MOBC, Government of Manipur issued a Notification dated 17/01/2015 informing the date of nomination, scrutiny, withdrawal of application, election etc. for constitution of the 6th Waqf Board, Manipur, followed by a Notification dated 19/01/2015 informing that the applicants mentioned therein are enrolled in the Electoral College for the election/ nomination as the members in the constitution of the 6th Waqf Board, Manipur.

[4.3] The Secretary (MOBC), Government of Manipur issued a Notification dated 05/06/2015 appointing the members of the 6th Waqf Board, Manipur whereby the petitioners along with others were elected as the Chairperson and the Members of the Waqf Board. After about three years from the date of constitution of the 6th Waqf Board, four members submitted a letter dated 14-05-2018 to the Secretary (MOBC) tendering their resignation with the prayer for accepting it.

[4.4] After their resignation having been accepted, the Joint Secretary (MOBC & SC), Government of Manipur issued an order dated 19/02/2019 appointing the said four persons as the members of the 6th Waqf Board, Manipur. Being aggrieved by the said order dated 19/02/2019, the instant writ petitions have been filed by the petitioners.

[5] The short question that calls for consideration by this Court is as to whether the appointment of the private respondents as the members of the 6th Waqf Board has been made in accordance with the provisions of the Act, 1995 or not. In other words, the issue is whether their appointment is legally valid or not.

[6] It has been submitted by Shri Anjan Sahu, the learned counsel appearing for the petitioners that the appointment of a member of the Waqf Board, Manipur shall be done by way of an election under the provisions of Manipur Waqf Board (Conduct of Election) Rules, 1997 (hereinafter referred to as "the Conduct Rules, 1997"); that the private respondents were appointed as the members of the Waqf Board without following the procedure as prescribed in the Act, 1995 and the Rules made thereunder; that the acts of the respondent Nos. 1 & 2 are liable to be set aside for the reason that while appointing the private respondents as the members of the Waqf Board, they have not followed the principles laid down in the Act, 1995 and the Rules made thereunder; that the appointment of private respondents was made without following the conduct of election rules of the Waqf Board but it was a pre-planned politically motivated act due to their failure to dissolve or supersede the Board at the interference of this Court; that no notice as required under Rule 5 of the Manipur Waqf Board (Conduct of Election)

Rules, 1997 was given and that the acts of the official respondents were arbitrary, mala fide and illegal. On the other hand, Shri M. Rary, learned Addl. Advocate General has submitted that in the Law Lexicon Dictionary, the terms "appointment" and "nomination" are one and the same and therefore, the term "appointment" used in Section 21 would mean the term "nomination" as well. It has further been submitted by him that there was nothing wrong in the appointment of the private respondents and that since the State Government is empowered to make appointments, there was no need of issuing any notice which is required only for the purpose of election.

[7] An objection has been raised by Shri M. Rary, learned Addl. Advocate General as regards the maintainability of the writ petitions on the ground that one of the petitioners is the Chairperson who cannot be said to be an aggrieved person. This issue has been considered and rejected by this Court vide its order dated 11-03-2019 while issuing notice to the respondents. It is not known to this Court as to whether any appeal has been preferred against the order dated 11-03-2019 or not and since no information has been furnished to this Court to that effect, the said order dated 11-03-2019 can be said to have attained finality and therefore, the issue as regards the maintainability of the writ petitions need not be considered again.

[8] It is not in dispute that the appointment of members of the Waqf Board is to be made in terms of the provisions of the Waqf Act, 1995 and therefore, in order to decide the issue involved herein, it becomes necessary for this Court to examine the relevant provisions of the Act, 1995. The purpose for which the Waqf Act, 1954 was enacted, was to provide for the better administration and supervision of the Waqfs. While the Waqfs were functioning, many deficiencies had surfaced with the result that the Waqf Act, 1995 came to be enacted by the Parliament. The word "Board" is defined in Section 2(c) as a Board of Waqf established under sub-section (1) or as the case may be, under sub-section (2) of Section 13 and shall include a common Waqf Board established under Section 106. The word "member" is defined in Section 2(h) as the member of the Waqf Board and includes the Chairperson. Section 14 of the Act, 1995 provides for the composition of the Board and in the event of any vacancy being arisen, Section 21 of the Act, 1995 provides for filling of it. The decision on the issue involved herein will depend upon the interpretation of the provisions of Section 14 and 21 which read as under:

"14. Composition of Board.- (1) The Board for a State and the National Capital 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 National Capital Territory of Delhi;

(ii) Muslim Members of the State Legislature;

(iii) Muslim members of the Bar Council of the concerned State or Union territory:

Provided that in case there is no Muslim member of the Bar Council of a State or a Union territory, the State Government or the Union territory administration, as the case may be, may nominate any senior Muslim advocate from that State or the Union territory, and

(iv) mutawallis of the auqaf having an annual income of rupees one lakh and above;

[Explanation I.- For the removal of doubts, it is hereby declared that the members from categories mentioned in sub-clauses (i) to (iv), shall be elected from the electoral college constituted for each category.

Explanation II.- For the removal of doubts it is hereby declared that in case a Muslim member ceases to be a Member of Parliament from the State or National Capital Territory of Delhi as referred to in sub-clause (i) of clause (b) or ceases to be a Member of the State Legislative Assembly as required under sub-clause (ii) of clause (b), such member shall be deemed to have vacated the office of the member of the Board for the State or National Capital Territory of Delhi, as the case may be, from the date from which such member ceased to be a Member of Parliament from the State National Capital Territory of Delhi, or a Member of the State Legislative Assembly, as the case may be;

(c) one person from amongst Muslims, who has professional experience in town planning or business management, social work, finance or revenue, agriculture and development activities, to be nominated by the State Government;

(d) one person each from amongst Muslims, to be nominated by the State Government from recognised scholars in Shia and Sunni Islamic Theology;

(e) one person from amongst Muslims, to be nominated by the State Government from amongst the officers of the State Government not below the rank of Joint Secretary to the State Government;

(1A) No Minister of the Central Government or, as the case may be, a State Government, shall be elected or nominated as a member of the Board:

Provided that in case of a Union territory, the Board shall consist of not less than five and not more than seven members to be appointed by the Central Government from categories specified under sub-clauses (i) to (iv) of clause (b) or clauses (c) to (e) in sub-section (1):

Provided further that at least two Members appointed on the Board shall be women:

Provided also that in every case where the system of mutawalli exists, there shall be one mutawalli as the member of the Board.

(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 or 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).

(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 [auqaf] and Sunni [auqaf] to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination.

(8) Whenever the Board is constituted or reconstituted, 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.

21. Filling of a vacancy.- When the seat of a member becomes vacant by his removal, resignation, death or otherwise, a new member shall be appointed in his place and such member shall hold office so long as the member whose place he fills would have been entitled to hold office, if such vacancy had not occurred."

[9] There are two kinds/ categories of members as contemplated in Section 14 of the Act, 1995- one, members who are to be elected from each of the electoral colleges consisting of Muslim Members of Parliament; Muslim Members of the State Legislature; Muslim Members of the Bar Council of the concerned and mutawallis as provided in sub-section (1) (b) of Section 14 of the Act, 1995 and two, members who are nominated by the State Government in terms of sub-

section (1) (c), (d) and (e) of Section 14 of the Act, 1995. The first proviso to this sub-section states that at least two members appointed shall be women. The second proviso states that in every case where the system of mutawalli exists, there shall be one mutawalli as the member of the Board. Sub-section (2) provides that the election as mentioned in sub-section (1) shall be held in accordance with the system of proportional representation. The first proviso thereto states that where the number of Muslim Members of Parliament, the State Legislature or the State Bar Council, as the case may be, is one only, such Muslim member shall be declared to have been elected on the Board. Under the second proviso thereof, in case there are no Muslim members in any or the categories mention in sub-clause (i) to (iii) of clause (b) of sub-section (1), the ex-member thereof shall constitute the electoral college. Sub-section (3) provides that where the State Government is satisfied, for reasons to be recorded, that it is not reasonably practicable to constitute an electoral college as mentioned above, the State Government may nominate such persons as the members of the Board. The number of elected member, as provided in sub-section (4), shall, at all times, be more than the nominated members of the Board. Sub-section (9) provides that the members of the Board shall be appointed by the State Government by notification in the Official Gazette. The expression "appointed by the State Government" as contained sub-section (9) is important and significant for the reason that it would apply to both the elected and the nominated members of the Board. In other words, it indicates that the mere election and nomination of members are not enough and they are required to be appointed and notified in the official gazette.

[10] The application of Section 21 arises only when a seat has become vacant and that too, after the constitution of the Board. It provides that when the seat of a member becomes vacant by his removal, resignation, death or otherwise, a new member shall be appointed in his place and such member shall hold office as long as the member whose place he fills would have been entitled to hold office, if such vacancy had not occurred. While applying the provisions of this Section, three conditions are to be fulfilled - one, there shall be a vacancy of a seat because of the removal, resignation, death or otherwise of a member; two, a member shall be appointed in his place and such member shall hold office till such time the earlier member would have been entitled to hold office. In other words, the new member shall be entitled to hold office only for the remaining period out of the full term.

[11] As regards the interpretation of the provisions of Section 14 and 21 of the Act, 1995, not a single decision rendered by the Hon'ble Supreme Court has been brought to the notice of this Court. In order to substantiate his contention, Shri M. Rarry, learned Addl. Advocate General has relied upon the decision rendered by the Hon'ble Supreme Court in R.R Verma & ors. Vs. Union of India & ors., (1980) 3 SCC 402. There can be no dispute as regards the law laid down by the Hon'ble Supreme Court in the said case but since the facts of that case are not identical to that of the present case, it will have no application to the facts

and circumstances of the present case.

[12] The conjoint reading of the provisions of Section 14 and 21 of the Act, 1995 makes it very clear that the term "appointment" used therein is similar in the sense that it is necessary after a member has been either elected from each of the electoral colleges or nominated by the State Government and such appointment is to be published in the official gazette. This observation has gained support from the provisions of Rule 37 which provides that if the election has been conducted for any casual vacancy/ vacancies under Section 14(1)(b) of the Act on the receipt of result of the election from the election officer, the State Government shall issue a notification in the official Gazette under section 14(9) of the Act appointing such person/ persons as Member/ Members of the Board. The contention of the learned Addl. Advocate General that the terms "Appointment" and "Nomination" are one and the same is incorrect and is not acceptable to this Court. Therefore, if a seat falls vacant from the category of members as provided in sub to be held from each of the electoral colleges, while a seat is vacant from the category of members as are to be nominated by the State Government in terms of sub-section (1) (c), (d) and (e) of Section 14 of the Act, 1995, the same can be filled up by nomination. These are the two different sources of appointment of members of the Waqf Board and cannot be mixed up by anyone. The term "nomination" is not there in Section 21 of the Act, 1995 and if it was intended by the Legislature that the term "appointment" would mean "nomination" as well, it could have been mentioned specifically so in the section itself. It had not been done so.

[13] In the present case, the private respondents have been nominated vide order dated 19-02-2019 issued by the Joint Secretary (MOBC & SC), Government of Manipur. So far as the respondent No.3, Md. Ashab Uddin and respondent No.6, Mrs. Sarwari Begum are concerned, they fall in the category of members who are to be elected in terms of sub-section (1)(b) of Section 14 of the Act, 1995. Since no election has been held prior to their appointment, the order dated 19-02-2019 by which they are appointed, is bad in law in respect of them. As regards the remaining respondent No.4, Md. Samiruddin and respondent No.5, Mv. Hayat Ali, it is not clear to this Court as to whether they belong to the first category or the second category of members. The contention of the counsel appearing for the petitioners is that without any election being held, they could not have been appointed as the members of the Waqf Board. This shows, according to them, that the cases of the respondent Nos. 4 & 5 also will fall under the first category for which no appointment can be made without an election being held in that regard. In the counter filed on behalf of the respondent No.2, this factual aspect is not explained & clarified and therefore, this Court has no option but to declare the order 19-02-2019 as bad in law without any exception.

[14] In view of the above, the writ petitions are allowed and consequently, the impugned order dated 19-02-2019 is quashed and set aside with no order as to

costs. It is open to the respondent Nos.4 & 5 to approach this Court by way of a review petition provided they fall in the second category of members for which nomination can be made by the State Government. It is further open to the State Government to proceed in accordance with law for filling up of the vacancies keeping in mind the observations made hereinabove.