
(2010) 06 CHH CK 0025
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 5163 of 2007

Moinuddin Qureshi

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 30-06-2010

Acts Referred:

Waqf Act, 1995 — Section 13, 13(1), 14, 14(1)(2), 15

Citation : (2010) 06 CHH CK 0025

Hon'ble Judges : S.K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Agnihotri, J.—By this petition, the petitioner seeks a direction to restrain the respondent No.3 to 11 from working as member of the Wakf Board and further to direct the Chief Executive Officer to manage the affairs, without taking any policy decision till the new Wakf Board is reconstituted by the State Government.

2. The facts, in nutshell, as projected by the petitioner are that the petitioner is a follower of Sunni Muslim sect and he is a person interested in a Wakf. The State Government, exercising power u/s 13 of the Wakf Act, 1995 (for short "the Act, 1995") established a Wakf Board for the state of Chhattisgarh i.e. respondent No.1, vide its notification dated 06.12.2001 (Annexure P/1) and nominated the members as per section 14(1) (2) of the Act, 1995. The notification was published on 11.12.2001 (Annexure P/2) in the Gazette. One Syed Ashfaque Hashmi filed a writ petition before this High Court being W.P. No. 2683/2001, challenging the notification dated 06.12.2001 Learned Single Judge, vide order dated 26.12.2001 (Annexure P/ 3), stayed operation of the said notification. Thereafter, the respondent No.1, exercising power u/s 13(1) of the Act, 1995, amended the notification dated 11.12.2001 (Annexure P/2) and reconstituted the Wakf Board by appointing certain members vide notification dated 21.7.2003 (Annexure P/4) and appointed respondent No.11 as the member of the Board on 03.09.2005 (Annexure P/4A), Thereafter, the W.P. No.2683/2001 was heard by

the learned Division Bench of this Court and the interim order dated 26.12.2001 was vacated vide order dated 13.07.2005 (Annexure P/5) observing that the constitution of Wakf Board by the impugned notification will be subject to the result in the main writ petition. Later on, vide order dated 10.01.2006, the learned Division Bench Dismissed the said writ petition holding that there was absolutely no ground to conclude that the constitution of Chhattisgarh State Wakf Board suffered from any illegality any illegality.

3. Shri N.K. Vyas, learned counsel appearing for the petitioner would submit that according to section 15 of the provisions of the Act, 1995, the term of a member which includes, chairperson also, is five years The respondent No.1 notified the constitution of Wakf Board on 11.12.2001 and such, the term had expired way back on 10.12.2006, but still the respondent No.3 to 11 are continuing to hold the office of the Wakf Board which is illegal and contrary to the Act, 1995 and as such, the petitioner had issued a notice dated 20.06.2007 (Annexure P/7) to the respondent No.1 and 2 to reconstitute the Wakf Board as per the provision of Act, 1995, Shri Vyas would further submit that the respondent No.1 has not given any reply to the said notice, but the respondent No.2, vide its reply (Annexure P/8) has stated that since the stay was operating in their favour, therefore it could not be said that the term of the Board has expired on 10.12.2006 whereas the Board has started functioning only after vacation of stay on 13.07.2005, in accordance with the notification dated 21.7.2003 issued by the respondent No.1. It was further stated that the term of the members of the Board has to be expired on 12.7.2010 as per tenure of five years as specified in section 15 of the Wakf Act, 1995.

4. Shri Vyas would further submit that despite the notice given by the petitioner, the respondent No.1 has not reconstituted the Wakf Board as per the provisions of the Act, 1995. Thus, a direction may be given to the respondent No.1 to restrain the respondent No.3 to 11 from working as member of the Wakf Board and further to direct the Chief Executive Office to manage the affairs without taking any policy decision till the new Wakf Board is reconstituted by the State Government.

5. On the other hand Shri N.N. Roy, learned panel Lawyer for the State/ respondent No.1, Shri K.R. Nair, learned counsel for the respondent No.2,7 and 9, Shri Jitendra Pali, learned counsel for the respondent No.3, Smt. Fouzia Mirza, learned counsel for the respondent No.6, respectively, would submit that the term of members including the Chairman is not dependent on the establishment of the Board. Once the notification has been stayed by this Court, the Chairman/ members could not hold the office as required u/s 15 of the Act, 1995. Thus, they are entitled to continue as members including Chairman for a period of five years. The Board has been reconstituted by notification dated 21.07.2003 (Annexure P/4) which is not under challenge in this petition.

6. Heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

7. In the facts of the case, the maxim "actus curiae neminem gravabit" would apply in full force as on account of the stay of the notification dated 06.12.2001 on 26.12.2001 by this Court, no effect could be given to the said notification and as such, the notification remained on the paper. Subsequently, by order dated 21.07.2003 (Annexure P/4), the learned Division Bench, by order dated 13.7.2005 (Annexure P/5), vacated the interim order dated 26.12.2001 holding that the constitution of the Wakf Board by the impugned notification dated 06.12.2001 would be subject to result of the main writ petition i.e. W.P. No.2683/2001. The said writ petition was ultimately dismissed on 10.01.2006 (Annexure P/6).

8. The question for consideration before this Court is as to whether after completion of five years w.e.f. 06.12.2001, the term of the members appointed under the said notification would come to an end under the provisions of section 14 read with section 15 of the Act, 1995. Section 13 of the Act, 1995 provides for establishment of a Board of wakf by notification in the official gazette. Sub-section (3) of section 13 of the Act, 1995 provides that the wakf board shall be a body corporate having perpetual succession and a common seal. For reference, section 13,14, and 15 of the Act, 1995 reads as under:

13. Incorporation - (1) With effect from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established a Board of Wakfs under such name as may be specified in the notification..

(2) Notwithstanding anything contained in sub-section (1), if the Shia wakfs in any State constituted in number more than fifteen per cent, of all the wakfs in the State or if the income of the properties of the Shia Wakfs in the State constitutes more than fifteen per cent, of the total income of properties of all the wakfs in the State constitutes more than fifteen per cent, of the total income of properties of all the wakfs in the State, the State Government may, by notification in the Official Gazette, establish a Board of Wakfs each for Sunni wakfs and for Shia wakfs under such names as may be specified in the notification.

(3) The Board shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property subject to such conditions and restrictions as may be prescribed and shall by the said name sue and be sued.

14. Composition of Board - (1) The Board for a State and the Union 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

Union territory of Delhi,

(ii) Muslim Members of the State Legislature, Muslim Members of the Bar Council of the State, and Mutawallis of the wakfs having an annual income of rupees one lakh and above;

(c) one and not more than two members to be nominated by the State Government representing eminent Muslim organizations;

(d) one and not more than two members to be nominated by the State Government, each from recognized scholars in Islamic Theology;

(e) an officer of the State Government not below the rank of Deputy Secretary.

(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 Member 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 reasonable practicable to constitute an electoral college for any of the categories mentioned in sub-clause (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).

(5) Where there are Shia wakfs but no separate Shia Wakfs Board exists, at least one of the members from the categories listed in sub-section (1), shall be a Shia Muslim.

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

(7) In the case of the Union territory other than Delhi, the Board shall consist of not less than three and not more than five members to be appointed by the Central Government from amongst the categories of persons specified in sub-

section (1):

Provided that there shall be one mutawalli as the member of the Board.

(8) Wherever the Board is constituted or re-constituted, 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.

15. Term of Office - The members of the Board shall hold office for a term of five years.

9. The constitution of a Board, it appears is not dependent on the term of member including Chairman as prescribed u/s 15 of the Act, 1995. Member has been defined in section 3(h) of the Act, 1995 that member means a member of Board and includes the Chairperson. If the Board is a body corporate and having perpetual succession and a common seal, only the member including the chairman are appointed by notification from time to time for a period of five years. On perusal of the subsequent notifications for appointment of Syed Alim Aman and Sheikh Mohammad, it appears that they were appointed as members by notification dated 20.02.2007 (Annexure R/3-1) for five years. The respondent No.3 Md. Salim Asharfi was appointed as Chairman of the Board by notification dated 11.08.2005, and the respondent No. 11, Mohsina Kidwai was appointed as member of the Board vide notification dated 03.09.2005, (Annexure P/4A), after vacation of interim stay dated 26.12.2001 on 13.07.2005 (Annexure P/5).

10. Having regard to the facts situation of the case wherein the first notification was not given effect to by virtue of interim order dated 26.12.2001 (Annexure P/3) which was vacated on 13.7.2005 (Annexure P/5) and the re-constitution of the Board was done, vide notification dated 21.07.2003 (Annexure P/4), it cannot be held that the term of the members came to an end from the date of composition/establishment of Wakf Board as per the provisions of section 13 read with section 14 of the Act, 1995. The appointment of the member is dependent on the establishment of the Board. They have five years term from the date they hold the office pursuant to the notification under the provisions section 15 of the Act, 1995.

11. The term "perpetual succession" means continuous succession so long as it continues and not to define its duration. It has been defined in Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edn. 2005, as under:

Perpetual succession. The Term "perpetual succession" as a statute giving a certain company perpetual succession, would be intended merely to give the company continuous succession so long as it continued in existence, and not to define its duration. The continuous succession of a corporation - despite changes in share holders and officers- for a long as the corporation legally exists.

Continuation of a company after the departure of death of its members. A company is an individual legal entity which exists irrespective of its personnel, and which ceases to exist in law only after its liquidation

(Insurance; Banking; International Accounting)

As a general rule, the words "perpetual succession," as used in charters, often in connection with a further provision limiting the period of corporate existence to a certain number of years, mean nothing more than that the corporation shall have continuous and uninterrupted succession so long as it shall continue to exist as a corporation, and are not intended to define its duration." 18 Am. Jur. 2d Corporations S. 69, at 883 (1985).

12. The Supreme Court, in Mohammed Gazi Vs. State of M.P. and Others, , observed as under;

7. In the facts and circumstances of the case, the maxim of equity, namely *actus curiae neminem gravabit* - an act of the court shall prejudice no man, shall be applicable. This maxim is founded upon justice and good sense which serves a safe and certain guide of the administration of law. The other maxim is, *lex non cogit ad impossibilia* - the law does not compel a man to do what he cannot possible perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt the general exception in the consideration of particular cases. The applicability of the aforesaid maxims has been approved by this Court in *Raj Kumar Dey v. Tarapada Dey and Gursharan Singh v. New Delhi Municipal Committee*.

13. The ratio laid down by the Supreme Court in the above case was subsequently followed in *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, and *Shakuntala Bai and Others Vs. Narayan Das and Others*, .

14. The establishment of Wakf Board is not for a fixed term, but on perpetual succession. The members are appointed for a fixed term of five years from the date they hold the office. Thus, each member is entitled to continue for a period of five years from the date they held the office, pursuant to the notification appointing them as Chairman/member of the Board.

15. In light of the above discussions and for the reasons stated hereinabove, the writ petition is dismissed.

16. There shall be no order as to costs.