

(2018) 12 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petition No. 48995 Of 2018 (Gm-Wakf)

Mr. Asif Ali Shaikh Hussain

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 12-12-2018

Acts Referred:

Waqf Act, 1995 — Section 14(1)(b), 14(1)(b)(i), 14(1)(b)(iii), 14(1)(c), 14, 14(2)
Advocates Act, 1961 — Section 8
Representation of People Act, 1950 — Section 23, 23(3)
Karnataka Municipalities Act, 1964 — Section 14
Karnataka State Bar Council Election Rules, 1971 — Rule 31, 31(2), 31(3)

Citation : (2018) 12 KAR CK 0008

Hon'ble Judges : B. Veerappa, J

Bench : Single Bench

Advocate : Jayakumar S Patil, Mahammed Tahir A, T.S. Mahantesh, S.R. Anuradha, G. Nataraj, D.N. Nanjunda Reddy, A.S. Kulkarni, G. Krishnamurthy, P. Usman

Final Decision : Allowed

Judgement

1. The petitioner filed the present writ petition for a writ of certiorari to quash the order dated 16.10.2018 passed by the 3rd respondent in Case No.ELN/CR/44(14)/2018-19 as per Annexure-L and the writ of mandamus directing the 3rd respondent to permit the petitioner to vote, contest and participate in the upcoming Election of Karnataka State Board of Auqaf under the category of Muslim member of the Bar Council (Karnataka State) for membership of Karnataka State Board of Auqaf as per Section 14(1)(b)(iii) of the Waqf Act, 1995 by including the name of the petitioner in the final voters' list at Annexure-M.

I Facts of the Case

2. It is the case of the petitioner that election to the 4th respondent - Karnataka State Bar Council was conducted on 27.3.2018 and petitioner is the only Muslim

candidate who has been declared as elected out of 25 members of the 4th respondent Bar Council and his name appeared at serial No.12 in the result sheet - Annexure-A dated 7.7.2018. He being elected as the member of the 4th respondent - Bar Council has made an application under Form No.20 to the Bar Council Electoral College on 7.8.2018. In pursuance of the said application, the 4th respondent - Bar Council has registered the name of the petitioner in the Electoral College of the 4th respondent - Bar Council as a Muslim Member and also issued Form No. 21C. It is further contended that the 3rd respondent being Electoral Registration Officer to the election of the Respondent No.2 - Karnataka State Board of Auqaf has issued notification dated 3.8.2018 calling eligible persons to get themselves registered as voters of Respondent No.2 Board on or before 9.8.2018.

3. The petitioner submitted application for registration of his name as a sitting Muslim Member of the Bar Council of Karnataka as contemplated under Section 14(1)(b)(iii) of the Waqf Act, 1995. In pursuance of the said application made by the petitioner, the 3rd respondent - Electoral Registration Officer has entered the name of the petitioner in the Draft Electoral College of Muslim Member of the Karnataka State Bar Council. The Respondent No.5 filed objections for the enrolment of the membership of the petitioner in the category of sitting member of the Bar Council of Karnataka on the ground that the Hon'ble Supreme Court in its order dated 23.3.2018 in Transferred Case Civil No.(S) 126/2015 has held that the results of the election to the Bar Council cannot be published in the official gazette until all the complaints which are pending before the election tribunal are disposed of.

4. It is further contended that based on the objections filed by the 5th respondent, the 3rd respondent issued notice dated 29.9.2018 directing the petitioner to appear before him on 6.10.2018 for consideration of the objections filed. In response to the said notice, the petitioner filed reply to the objections filed by the 5th respondent before the 3rd respondent contending that the petitioner has already submitted a communication issued by the Karnataka State Bar Council, wherein it is stated that elections held on 27.3.2018 and results were declared on 27.6.2018. The petitioner further specifically pleaded that he is the lone Muslim member elected to the Karnataka State Bar Council and his name is found at serial No.12 in the result sheet - Annexure-A. Therefore his name was rightly enrolled in the draft voters list in the constituency of the Muslim Member of the Bar Council as contemplated under Section 14(1)(b)(iii) of the Waqf Act, 1995.

5. The petitioner further contended before the 3rd respondent that the objections raised by the 5th respondent with reference to the order dated 23.3.2018 passed by the Hon'ble Supreme Court to the effect that "the result of the members will also be declared; But the results will not be sent for publication in the official gazette and will not attain finality, unless the concerned tribunal finally approves the said result after holding enquiry, if any into the complaints made. The result

will be sent for publication in the official gazette only after getting approval from the Tribunals and the Bar Council of India. The office is directed to place the resolution before the Tribunals for the needful." The petitioner further contended before the 3rd respondent that in view of the observations made by the Hon'ble Supreme Court stated supra, the result will attain finality only after the Tribunal approves the result after holding enquiry, if any into complaints made. Therefore, even if ultimately on enquiry into the complaints, Election Tribunal and Bar Council of India have to make any order that will take effect on the date so made. Assuming, if the election of Karnataka Bar Council is set aside, that will have its effect as and when election for Auqaf Board is notified. Therefore the objections raised with regard to inclusion of the petitioner's name in the electoral roll in category of Muslim members of the Bar Council under Section 14(1)(b)(iii) of the Act is totally untenable and therefore he sought to reject the objections and confirm the petitioner's name being included in the draft voters list.

6. It is further contended that the 3rd respondent clubbed the petitioner's case along with three other cases and passed a common order dated 16.10.2018 by dropping the name of the petitioner from the electoral roll on the ground that "as far as Sri Abdul Rehaman Khan Usmani's objections are concerned, the Secretary of Karnataka State Bar Council has issued Form No.21C with a rider that its authenticity (sindutwa) has to be declared only after the order passed by the Tribunal constituted under Rule-31 of the Karnataka Bar Council's Election Rules. When such being the case, the Form No.21C of Sri Asif Ali Shaikh Hussaini in the Electoral College of sitting Muslim Members under State Bar Council Category comes under cloud and hence the Electoral College of Muslim member of the State Bar Council shall not be constituted under Section 14(1)(b)(iii)".

7. It is further contended that the list of elected candidates of the Karnataka State Bar Council has been published in the official gazette on 8.11.2018 and the petitioner's name has appeared at serial No.12 in the list of candidates published in the gazette. Since the petitioner's name appeared in the official gazette as per Rule 31 of the Karnataka State Bar Council Election Rules, 1971, the reasoning assigned by Respondent No.3 does not hold good and the same is liable to be quashed. Hence the present writ petition is filed for the reliefs sought for.

II Objections filed by the 5th respondent

8. The 5th respondent filed objections to the main writ petition and contended that the writ petition filed by the petitioner is not maintainable and further contended that the provisions of Section 14 of the Waqf Act stipulates that Muslim members of the Bar Council of the concerned State or Union Territory shall constitute amongst others one of the Electoral College to constitute the Board of Auqaf. Further, it was provided that where there are no Muslim Members in the said category, the Ex.Member of the State Bar Council shall constitute the Electoral College. The petitioner had submitted Form No.20 as per Annexure-B contending that he be included in the electoral college as a Sitting Member of Karnataka State Bar Council. After coming to know about the false

claim made by the petitioner, the 5th respondent had filed his objections before the 3rd respondent contending that the name of the petitioner was not at all published in the official gazette as contemplated under Rule 31 of the Karnataka State Bar Council Election Rules and therefore the question of including his name in the draft electoral roll would not arise.

9. The 5th respondent further contended that the Hon'ble Supreme Court in Writ Petition No.97/2016 directed to implement the resolution passed by the Bar Council of India to the effect that counting process shall go on after election and the results of the members will also be declared, but the same shall not be sent for publication in the official gazette. Therefore as on the date of the application filed, the petitioner's name was not published in the official gazette. Therefore he was not eligible to file application to consider his name in the electoral college. He further contended that it is well established principle that unless and until the name of the elected member is published in the official gazette, such member shall not be deemed to be the member of the Bar Council. Admittedly in the present case, as on the date of the application inviting the 3rd respondent to prepare draft electoral college, the petitioner was not eligible to include his name in the electoral college and he had no right to make a claim to include his name in the Electoral College as he was not a sitting member of Karnataka State Bar Council since the provisions of Section 14 of the Waqf Act, 1995 recognizes such right of Muslim Members of the Bar Council which implies that the name of such members should have been published in the official gazette as required under the law.

The 3rd respondent considering the entire material on record has rightly passed the impugned order deleting the name of the petitioner in the electoral roll and the same is in accordance with law and the petitioner is not entitled for any relief and therefore sought for dismissal of the writ petition.

III Objections filed by the 6th respondent

10. The 6th respondent also filed the statement of objections and contended that the writ petition filed for the relief sought for is not maintainable and the petitioner's name was not published in the official gazette as an elected member of the State Bar Council in view of the embargo placed by the Bar Council of India in its resolution against the publication of the names of the elected members to the Karnataka State Bar Council which was approved by the Hon'ble Supreme Court. The petitioner's name was published in the official gazette only on 8.11.2018 in the official gazette during the pendency of the present writ petition. Even assuming that the same was published on 8.11.2018, still the petitioner is not entitled to be enrolled as a voter in view of the provisions embodied in the Karnataka Waqf Rules, 2017, which places a time limit for such enrolment. The very approach of the petitioner for the relief sought is premature and the petitioner is not entitled to any relief. The 6th respondent further contended that the 3rd respondent after following all the procedures as contemplated has passed the impugned order. The same is in accordance with

law and the petitioner is not entitled to any relief and therefore sought for dismissal of the writ petition.

11. I have heard the learned counsel for the parties to the lis.

IV Arguments advanced by the learned Senior counsel appearing for the petitioner

12. Sri Jayakumar S. Patil, learned senior counsel appearing for the petitioner vehemently contended that the impugned order passed by the 3rd respondent is erroneous and contrary to the material on record. He would further contend that the impugned order was passed by the 3rd respondent without understanding the scope of the provisions of Section 14(1)(b)(iii) of Waqf Act, 1995 and as also ignoring the provisions of Section 8 of the Advocates Act, 1961. He would further contend that the provisions of Section 14(1)(b)(iii) of the Waqf Act was substituted by Act No.27/2013 w.e.f. 1.11.2013 and proviso to the said provision clearly depicts 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. The same has not been considered by the 3rd respondent while passing the impugned order.

13. Learned senior counsel would further contend that ignoring the amended provisions of Section 14(1)(b) & (c) of the Waqf Act, the 3rd respondent has straight away considered the provisions of Section 14(2) of the Waqf Act and proceeded to pass the wrong order. He further brought to the notice of the Court the provisions of Section 23(3) of the Representation of People Act, 1950; Section 23 of the

Karnataka Municipal Corporations Act and Section 14 of the Karnataka Municipalities Act, 1964 and contended that till the last date for making nominations for an election, the name of the petitioner can be included in the voters' list. He would further contend that on 13.11.2018 the petitioner made request to the concerned authorities to include his name. The Government also forwarded the same to the 3rd respondent and there is no bar for Respondent No.3 to reconsider the case of the petitioner since the calendar of events not yet issued. Therefore he sought to allow the writ petition by quashing the impugned order.

14. In support of his contentions, learned senior counsel appearing for the petitioner relied upon the Judgment of the Hon'ble Supreme Court in the case of COMMERCIAL TAX OFFICER, RAJASTHAN vs. BINANI CEMENTS LIMITED AND ANOTHER reported in (2014)8 SCC 319 (paragraphs 32 and 34).

V Arguments advanced by the learned Senior counsel appearing for the Respondents and the learned Government Advocate

15. Per contra, Sri Nanjunda Reddy, learned senior counsel appearing for the 5th respondent, who filed objections before the 3rd respondent has contended that

Rule 31(2) of the Karnataka State Bar Council Election Rules, 1971 is mandatory. Therefore, the mere declaration that the petitioner was elected on 27.6.2018 cannot be accepted and he cannot become the member in view of Rule 31(3) of the Karnataka State Bar Council Election Rules, 1971. The publication of the results made by the Bar Council in the official Gazette was only on 8.11.2018. The draft voters' list was published on 10.9.2018. The declaration of the results was not notified in the official gazette and wrongly included the name of the petitioner in the draft voters' list and therefore the 5th respondent filed objections. He would further contend that the 3rd respondent considering the entire material on record has rightly passed the impugned order. He would further contend that even as on the date of the impugned order passed by the 3rd respondent, the petitioner was not an elected member as contemplated under sub-rule (3) of Rule 31 of the Karnataka State Bar Council Rules, 1971. Section 8 of the Advocates' Act, 1971 clearly depicts that the term of office of an elected member of a State Bar Council shall be five years from the date of publication of the results of his election. He further contended that Section 14 of the Waqf Act which deals with composition of Board is nothing to do with the preparation of the electoral roll. Therefore, the petitioner is not entitled to any relief before this Court.

16. Sri Krishnamurthy, learned senior counsel appearing for the 6th respondent while adopting the arguments of Sri Nanjunda Reddy, learned senior counsel relied upon the judgment of the Delhi High Court reported in AIR 2018 Delhi 90 (paragraphs 18, 19, 20, 21 and 22). He would further contend that the writ petition filed against the 6th respondent is liable to be rejected as no allegations are made and no relief is sought against the 6th respondent.

17. Sri T.S. Mahantesh, learned Government Advocate sought to justify the impugned order.

VI. Point for consideration

18. In view of the rival contentions urged, the only point that arises for consideration in the present writ petition is :

"Whether the petitioner has made out a prima-facie case to interfere with the impugned order dated 16.10.2018 passed by the 3rd respondent, in the facts and circumstances of the case ?

VII. Consideration

19. The case of the petitioner in substance is that he was declared elected for the 4th respondent - Karnataka State Bar Council and his name appeared at serial No.12 in the result sheet dated 7.7.2018 and he is eligible to contest the election to be conducted for the 2nd respondent - Board under the provisions of Section 14(1)(b)(iii) of the Waqf Act, 1995. The impugned order passed by the 3rd respondent deleting the name of the petitioner in the draft electoral list cannot be sustained.

20. The case of the respondents in substance is that as on the date of the draft voters' list published on 10.9.2018, the declaration of the results of the Bar Council was not notified in the official gazette. By mere declaration that the petitioner was elected on 27.6.2018, he cannot become member of the Bar Council in view of Rule 31(3) of the Karnataka State Bar Council Rules, 1971. Even as on the date of the impugned order passed by the 3rd respondent, the declaration of the results of the Bar Council was not notified in the official gazette and it was published in the official gazette only on 8.11.2018.

Therefore according to the respondents, the impugned order passed by the 3rd respondent is justified in the facts and circumstances of the case.

21. In view of the aforesaid rival contentions, it is relevant to consider the provisions Section 14 of the Waqf Act relating to composition of Board, which reads 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 or 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).

(5) omitted

(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.

(7) omitted

(8) Whenever 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."

22. A plain reading of the said provisions makes it clear that the Board shall consist of a Chairperson AND 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 (ii) Muslim Members of the State Legislature, (iii) Muslim Members of the Bar Council of the concerned State or Union Territory. Sub-clause (iii) of Section 14(1)(b) came to be substituted by Act No.27/2013 w.e.f. 1.11.2013. Before substitution, the same was stood as "Muslim Members of the Bar Council of the State, and". The provisions of Section 14(1)(b) of the Waqf Act prescribes that the Board shall consist of one and not more than two members, as the State Government may think fit, to be elected from each of the electoral colleges mentioned in Section 14(1)(b)(i) to (iv) of the Waqf Act. The proviso to Section 14(1)(b)(iii) clearly depicts 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. Explanation - I of Section 14(1)(b) clearly depicts that the members from categories mentioned in sub-clauses (i) to (iv) shall be elected from the electoral college constituted for each category.

23. The 3rd respondent while passing the impugned order has proceeded to hold that since no sitting Muslim member of State Bar Council is available, the electoral college consisting of Ex-Muslim Member of the Bar Council as provided under Section 14(1)(b)(iii) of the Waqf Act, in Form-22C shall constitute the electoral college, mainly relying upon the provisos 1 and 2 of Section 14(2) of the Waqf Act, ignoring the amended provisions of proviso to Section 14(1)(b)(iii) of the Waqf Act. It is also relevant to state that in respect of the dispute with regard to election of Bar Council of Delhi, the Hon'ble Supreme Court in

Transferred Case (civil) Nos.126/2015 dated 13.11.2018 held that "the results that have now been declared will stand declared finally i.e., they will no longer be subject to the Tribunal deciding on objections".

24. As rightly contended by the learned counsel for the Respondent No.5, as on the date of the draft notification issued though the petitioner was elected from the Bar Council, the same was not notified in the official gazette as contemplated under the provisions of Rule 31(3) of the Karnataka State Bar Council Election Rules, 1971. According to the learned counsel for Respondent No.5, as on the date of the draft voters' list published on 10.9.2018 and as on the date of the impugned order dated 16.10.2018, the petitioner was not eligible to be notified his name in the electoral roll and he became eligible only when the results made by the Bar Council were published in the official gazette on 8.11.2018. The fact remains as to when the petitioner who elected from the learned members of the Bar Council on 27.6.2018, can be ignored in the electoral roll because of the delay of publication of his result in the official gazette.

25. At this juncture, it is relevant to refer to Chapter III of the Karnataka Waqf Rules, 2017, which deals with conduct of election to the Board. Sub-clause (3) of Rule 11 deals with preparation of Electoral Roll and it clearly depicts that the electoral roll for the four categories of Electoral Colleges under Clause (b) of sub-section (1) of Section 14 shall be prepared or revised before the date of the notification of the election to the Board. Sub-clause (4) of Rule 11 deals with obtaining list of Electoral Colleges by Electoral Registration Officer and it clearly depicts that the Electoral Registration Officer at the time of revision of Electoral Roll to the four Electoral Colleges shall obtain the list of eligible voters in case of categories specified in Sub-Clause (i) and (ii) of Clause (b) of sub-section (1) of Section 14, from (i) Secretary-General of Lok Sabha and Rajya Sabha, (iii) Secretary, Karnataka Legislative Assembly and Secretary, Karnataka Legislative Council, (iv) the Secretary,

Karnataka State Bar Council and from the Chief Executive Officer,(v) Karnataka State Board of Auqaf respectively.

26. In view of the aforesaid rules, the voters' list for the purpose of election to the 2nd respondent - Board shall be prepared or revised before the date of the notification of the election to the Board. Admittedly in the present case, the calendar of events is not yet issued by the concerned respondent/authority and therefore the Electoral roll for the four categories of Electoral Colleges under Clause (b) of sub-section (1) of Section 14 of the Waqf Act shall be prepared or revised before the date of the notification of the election to the Board.

27. In view of the provisions of sub-clause (3) of Section 23 of the Representation of the People Act, 1950, no amendment, transposition or deletion of any entry shall be made under Section 22, which pertains to correction of entries in electoral rolls and no direction for inclusion of a name in the electoral roll of a constituency shall be given under this Section, after the last date for

making the nominations for an election in that constituency or in the parliamentary constituency within which that constituency is comprised and before the completion of that election.

28. The 2nd proviso to Section 23 of the Karnataka Municipal Corporations Act, 1976 provided that the electoral roll for any ward of the Corporation shall not include any amendment, transposition, inclusion or deletion of entry made after the last date for making nomination for the election to such ward and before completion of such election.

29. Section 14 of the Karnataka Municipalities Act, 1964 deals with the list of voters. The 2nd proviso to the said section prescribes that the list of voters for any ward of the Municipal Council shall not include any amendment, transposition, inclusion or deletion of entry made after the last date for making nomination for the election to such ward and before completion of such election.

30. It is also not in dispute that the petitioner's name was published in the official gazette on 8.11.2018. The petitioner made representation on 13.11.2018 to the 3rd respondent as well as to the State Government to include his name in the Voters' list. The State Government forwarded the petitioner's representation to the 3rd respondent.

31. In so far as the Judgment relied upon by the learned senior counsel appearing for Respondent No.6 in the case of RANA PARWEEN SIDDIQUI v. UNION OF INDIA (AIR 2018 DELHI 90), it was a case where a practicing advocate has approached the Court seeking a direction to the respondents therein to conduct the proposed elections for the constitution of Delhi Waqf Board in accordance with the mandate of Section 14(1)(b)(iii) of the Waqf Act and the main grievance of the petitioner therein is that while displaying the electoral roll for the election of Members of Delhi Waqf Board, have failed to act in accordance with the mandate of Section 14(1)(b)(iii) of the Waqf Act as they have totally ignored the category of a Muslim member of the Delhi Bar Council. Admittedly in the present case, the 3rd respondent proceeded to pass the impugned order on the ground that as on the date of the draft voters' list published on 10.9.2018, the petitioner was not eligible though elected from the Bar Council as his name was not published in the official gazette. Therefore the judgment relied upon by the learned senior counsel for Respondent No.6 has no application to the facts of the present case.

32. Admittedly, the State Government/concerned authority has not notified the schedule of election to the four electoral colleges mentioned in clause (b) of sub-section 1 of Section 14 of the Waqf Act, indicating the date of commencement and completion of election, which shall not be less than 30 days and the Returning Officer has not issued calendar of events. In view of the provisions of sub-clause (3) of Rule 11 of the Karnataka Waqf Rules- 2017, the electoral roll for the four categories of electoral colleges under clause (b) of sub-section (1) of Section 14 of the Waqf Act shall be prepared or revised before the date of the

notification of the election to the Board. Therefore the matter requires reconsideration, as the 3rd respondent while passing the impugned order has not considered the amended provisions of Section 14(1)(b)(iii) of the Waqf Act which came into effect on 1.11.2013 and also the provisions of Rule 11 of the Waqf Rules 2017.

VII Conclusion

33. For the aforesaid reasons, the point raised in the present writ petition has to be answered in the affirmative holding that the petitioner has made out a prima-facie case to interfere with the impugned order dated 16.10.2018 passed by the 3rd respondent, in the facts and circumstances of the case.

34. In view of the above, the writ petition is allowed. The impugned order dated 16.10.2018 passed by the 3rd respondent as per Annexure-L is hereby quashed only in so far as the petitioner - Mr. Asif Ali Shaikh Hussain is concerned. The matter is remanded to the 3rd respondent for reconsideration afresh in the light of the observations made by this Court in the present writ petition and taking into consideration that the list of selected candidates of the Karnataka State Bar Council has been published in the official gazette on 8.11.2018 and also the provisions of Rule 11 of the Karnataka Waqf Rules 2017 and pass appropriate orders in accordance with law.

Ordered accordingly.