
(2015) 08 BOM CK 0043

In the Bombay High Court

Case No : Writ Petition No. 5566 of 2015

Shaikh Mahemud and Others

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-08-2015

Acts Referred:

Citation : (2015) 08 BOM CK 0043

Hon'ble Judges : R.M. Borde, J;P.R. Bora, J

Bench : Division Bench

Advocate : V.J. Dixit, Senior Counsel i/by R.D. Sanap, for the Appellant; V.D. Hon, Senior Counsel and D.R. Kale, Government Pleader, Advocates for the Respondent

Judgement

R.M. Borde, J—Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2. Petitioners, who were appointed as Members of Wakf Board since 10.11.2014, are objecting to the notification issued by the State Government on 25.05.2015, superseding earlier notification dated 10.09.2014, whereby petitioners came to be appointed as Members of the Wakf Board. The net result of supersession of earlier notification is that the membership of petitioners of the State Board of Wakf stands terminated.

3. The petitioners contend that after issuance of notification dated 10.09.2014, nine seats of members were vacant, however, the State Government did not take steps for making appointment of the Chairperson since 2007. It is contended that as a result of failure on the part of State Government to appoint the Chairperson, functions of the Board of Wakf in the State of Maharashtra are adversely affected.

4. The constitution of the Wakf Board is provided under Section 14 of the Wakf Act, 1995, which reads thus:

14. Composition of Board - (1) The Board in the 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 State Legislature;

(iii) Muslim Members of the Bar Council of the concerned State or Union Territory of Delhi;

(iv) Mutawallis of the aukafs having an annual income of Rupees One lakh and above;

(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 the 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.

5. The petitioners contend that the term of office of the Members of the Board, as prescribed under Section 15 of the Act of 1995, is five years from the date of notification referred to in subsection (9) of Section 14 and that the tenure of the Members cannot be curtailed by the State Government. It is further contended that there is no other enabling provision authorising the State Government to put an end to tenure of the Members of the Board before completion of term of five years except in case of contingency as provided under Sections 16, 19 and 20 of the Act of 1995. Section 16 of the Act provides for disqualification for being appointed, or for continuing as a member of the Board; whereas, Section 19 relates to resignation of the Chairperson and members; and Section 20 relates to removal of Chairperson and Members. The relevant provisions are quoted as below:

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.

19. Resignation of Chairperson and members. The Chairperson or any other member may resign his office by writing under his hand addressed to the State Government:

Provided that the Chairperson or the member shall continue in office until the appointment of his successor is notified in the Official Gazette.

20. Removal of Chairperson and member-

(1) The State Government may, by notification in the Official Gazette, remove the Chairperson of the Board or any member thereof if he-

(a) is or becomes subject to any disqualifications specified in section 16; or

(b) refuses to act or is incapable of acting or acts in a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the auqafs; or

(c) fails in the opinion of the Board, to attend three consecutive meetings of the Board, without sufficient excuse;

(2) Where the Chairperson of the Board is removed under subsection (1), he shall also cease to be a member of the Board.

6. The petitioners contend that except as otherwise provided under Sections 19 and 20 of the Act, tenure of members of the Board, as provided under Section 15 of the Act, cannot be brought to an end. It is, thus, contended that it is not permissible for the State to supersede earlier notification appointing petitioners as members of the Wakf Board and put an end to their tenure.

7. So far as petitioner no.1 is concerned, he has been appointed from amongst the category prescribed under Section 14(1)(c) of the Act which relates to a person having professional experience in town planning or business management, social work, finance or revenue, agriculture and development activities, whereas, petitioners no.2 and 3 are appointed from the category specified under Section 14(1)(d) of the Act which relates to category of recognised scholars in Shia and Sunni Islamic Theology. Petitioner no.2 is a Sunni

Islamic scholar, whereas, petitioner no.3 is a Shia Islamic scholar. Section 14(1)(c) provides for representation of one person from amongst the category prescribed under Section 14(1)(c); and two persons one from amongst Shia Islamic scholars and one from Sunni Islamic scholars, as specified in clause (d) subsection (1) of Section 14 of the Act. It is contended that since the seats specified under Section 14(1)(c) and 14(1)(d) have already been filled in, it was not permissible for the State Government to issue fresh notification on 25.05.2015 and fill in the seats from amongst aforesaid categories.

8. It is contended that Respondent No. 4 has been appointed from amongst Section 14(1)(c) category; whereas, Respondent No. 5 has been appointed from amongst the category specified under Section 14(1)(d). As has been stated earlier, there is no provision in respect removal of members appointed except in observance of the procedure prescribed for terminating membership of the petitioners.

9. Apart from this, as the seats from amongst the categories specified under Section 14(1)(c) and 14(1)(d) were not available to be filled in, the notification issued by the State Government on 25.05.2015, appointing Respondents No. 4 and 5 is not sustainable and deserves to be quashed and set aside.

10. That, so far as appointment of Respondents No. 2 and 3 is concerned, they occupy the seats available from the relevant categories and as such, notification issued by the State Government on 25.05.2015 in respect of their appointment cannot be faulted. Although, it is specified in the notification that Respondent No. 3 was appointed from the category of Muslim members of the Bar Council of the State, as specified in Section 14(1)(b)(iii), learned Special Counsel appearing for the State, on instructions, informs that reference made in the notification in respect of category of Muslim Members of the Bar Council of the State, is an error, which needs to be corrected. It is contended that appointment of Respondent No. 3 shall be construed as from amongst the category of persons specified in proviso to Section 14(1A), which requires that at least two members appointed on the Board shall be women. The appointment of Respondent No. 3 shall be construed as from amongst the category of women members of the Board. It is also submitted by learned Special Council, representing the State, that a corrigendum declaring necessary correction in the notification dated 25.05.2015, will be issued within a period of one month from today.

11. We accept the statement made by the Special Counsel on behalf of the State Government and do not deem it necessary to issue any adverse order in respect of appointment of Respondent No. 3.

12. Learned Special Counsel, appearing for Respondent State, contends that by virtue of subsection (8) of Section 14, the State Government is authorised to reconstitute the Board; and referring to the aforesaid enabling provision, it is contended that the notification issued by the State Government on 25.05.2015 needs to be upheld.

13. Subsection (8) of Section 14 provides that 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. The provision itself does not authorise the State Government to reconstitute the Board in deference to the provisions of Sections 19 and 20 of the Act. Although the State Government is authorised to make appointments of the members of the Board, considering mandate of Section 15 of the Act of 1995, which prescribes tenure of the members as five years, cannot be curtailed by the State Government. The contention of the learned Special Counsel that appointment and continuance of the members of the Board shall be at the pleasure of the Government, cannot be accepted. The State Government does have power to terminate tenure of members appointed in accordance with Section 14, however, same shall have to be in observance of Sections 19 and 20 of the Act. The State Government does not have power to curtail tenure of members of the Board without taking recourse to the specific provisions contained in the Act. Section 99 of the Act provides for supersession of the Board. It is provided that if the State Government is of the 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 auqafs in the State, the State Government may, by notification in the Official Gazette, supersede the Board for a period not exceeding six months.

14. In the instant matter, the contingency, as specified in Section 99 of the Act, has neither arisen nor the State Government has exercised powers conferred under Section 99 of the Act.

15. For the reasons recorded above, notification issued by the State Government dated 25.05.2015, to the extent it directs supersession of the earlier Government Notification dated 10.11.2014, stands quashed and set aside. Resultantly, the appointment of petitioners as members of Wakf Board, under Notification dated 10.11.2014, shall remain valid and subsisting. Apart from this, appointment of Respondents No. 4 and 5 from amongst the categories specified in Section 14(1) (c) and 14(1)(d) of the Wakf Act, under Notification dated 25.05.2015 1995, also stands quashed and set aside. Subject to the statement made by the learned Special Counsel, on behalf of the State Government in respect of appointment of Respondent No. 3, under notification dated 25.05.2015, her appointment shall be deemed valid. The corrigendum to notification dated 25.05.2015 shall be issued, specifying appointment of Respondent No. 3 from amongst the category of women members of the Board, within a period of four weeks from today. In the event of failure of the State Government to issue such notification, within stipulated period, appointment of Respondent No. 3 shall be deemed to have

been quashed and set aside.

16. Rule is accordingly made absolute. There shall be no order as to costs.