

(1999) 01 RAJ CK 0008
In the Rajasthan High Court
Case No : Civil Writ Petition No. 170 of 1999

Shokat Ali Ansari

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 20-01-1999

Acts Referred:

Waqf Act, 1954 — Section 12
Waqf Act, 1995 — Section 14

Citation : AIR 1999 Raj 175 : (1999) 1 RLW 696 : (1999) 2 WLC 765 : (1999) 1 WLN 80

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : D.S. Shishodia and Manish Shishodia, for the Appellant;

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—By way of this petition, the petitioner has prayed that the impugned order dated 12-1-1999 (Annex.P/5) passed by the Principal Secretary to the Govt. be set aside. It is also prayed that the rescindment of Annex.P/1, dated 2-1-96 may also be declared illegal and de hors the powers. It is also prayed that the appointment of respondent No. 2 as Administrator be also quashed and the Govt. be directed to reconstitute the Board as per the provisions of Section 14 of the Wakf Act, 1995. The petitioner was initially nominated by the State Govt. as member of the Rajasthan Board of Muslim Wakfs, which is now known as "Rajasthan Wakf Board" and thereafter elected by the members as a Chairman/Chairperson of the Board. The term of the Board was up to 2-1-96. On 1-1-1996, the Wakf Act, 1995 came into force, therefore, he submitted his resignation in December, 1995. But by a notification dated 2-1-96 (Annex. P.1), the petitioner's term was extended with the other members of the Board till the reconstitution of the Board under the new Act. However, by a subsequent amendment order dated 10-1-97 (Annex. P/2), the words "1995" were added. It is the case of the petitioner that on 3-2-97 and 15-12-98 (Annex. P/3 and P/4 respectively), he requested the State Govt. to

reconstitute the Board but the Board was not reconstituted. The grievance of the petitioner in this case is that instead of reconstituting the Board, the State Govt. by its order dated 12-1-99 (Annex/P/5) appointed respondent No. 2 as the Administrator of the Board, which is dehors the provisions of the new Act. The same is challenged by the petitioner in this petition.

2. Mr. D. S. Shishodia, Sr. Advocate, who is assisted by Mr. Manish Shishodia, for the petitioner, submitted that the order (Annex. P/5) passed by the State Govt. is colourable exercise of its powers. He submitted that there is no such provision in the Act itself to appoint an Administrator of the Board. He further submitted that under proviso to Section 19 of the Act, the Chairman or the member has to be continued in the office until the appointment of his successor is notified in the Official Gazette. He also submitted that as per the order at Annex. P/1, the petitioner and the members of the Board were continued by way of an interim arrangement till the constitution of the new Board but in the impugned order at Annex. P/5, it has been deliberately and falsely mentioned that in the earlier order at Annex. P/1, it was mentioned that the appointment will be till further orders. He, therefore, submitted that the impugned order at Annex. P/5 be quashed and set aside and the State Govt. be directed to constitute the new Wakf Board immediately.

3. It is true that in the order dated 2-1-96 (Annex. P/1), it has been mentioned that the petitioner and other members of the Board were continued till the constitution of the new Board by way of an interim arrangement. It is also true that it was never mentioned in that order that their appointment was till further orders. However, the fact cannot be denied and which is not in dispute that the term of the Board was only up to 2-1-96. Thus, this term came to expire long back. u/s 15 of the Wakf Act, 1995, the members of the Board shall hold the office for a term of five years. It is also not in dispute that the petitioner completed his term of five years. However, learned counsel Mr. Shishodia submitted that he completed his term under the old Act and not under the new Act. If this argument of Mr. Shishodia is to be accepted then there is no question of considering the provisions of new Wakf Act, which has come into force from 1-1-96. Under the proviso to Section 19 of the new Act, the Chairperson or the member can continue in the office until the appointment of his successor is notified in the Official Gazette, otherwise not. It is true that in the order dated 2-1-96 (Annex. P/1), it has been mentioned that by way of an interim arrangement, the term of the members of the Board and its Chairman is continued till the new Board is constituted but that does not mean that the Govt. is not empowered to make the appointment of an Administrator. No doubt, their appointment was. extended till further orders, was not specifically mentioned but on completion of their term, it has to be presumed that their term was extended till further orders. It is not necessary that till the new Wakf Board is constituted, they should be continued.

4. It was submitted that there is no provision for appointing an Administrator in

the new Act. However at the same time, there is no such clear-cut provision for not making any appointment of an Administrator. Suppose if all members of the Board resign, then what would be the position? Under such circumstances, till the new appointment is made, the Govt. has to appoint someone as an Administrator. The Board cannot function without any person. Somebody should be there to look after it. Hence, this second submission of Mr. Shishodia has also no substance. One more submission was made by Mr. Shishodia that the impugned order at Annex.P/5 was colourable exercise of powers. There is no question of colourable exercise of powers in this type of cases. In fact, it appears that because of certain reasons, the past Govt. continued their term even though their initial term of five years came to an end way back in 1995 itself. The constitution of the Board is to be first made u/s 14 of the new Act by the State Govt. and then the members have to elect their Chairperson. In my opinion, the petitioner has no such right to continue till the new Wakf Board is constituted. It was a simple extension as per the impugned order at Annex. P/1 and nothing more. No right much less fundamental right of the petitioner is violated by passing the impugned order at Annex. P/5. Hence, this submission of Mr. Shishodia is also rejected.

5. There was one more prayer in the petition to direct the State Govt. to constitute the new Board immediately under the Act of 1995. There is no specific provision under the Act for constitution of the new Board but Section 99 of the Act gives power to the State Govt. to supersede the Board but there is a restriction of only six months" time. Under the circumstances, I hope and trust that the Govt. shall constitute the new Wakf Board as early as possible preferably within a period of six months from the date of making the appointment of Administrator as per the impugned order dated 12-1 -99 (Annex. P/5).

6. Accordingly, with the aforesaid observations, this petition is dismissed.