

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No. 1105 of 2022

1. Md. Rabi Khan, aged about 47 years, S/o. Md. Alimuiddin, resident of Minuthong Golapati Tanky, P.O. & P.S. Porompat and District Imphal East, Manipur-795005.
2. Quayamuddin, aged about 70 years, S/o. Md. Mujafar, resident of Lilong Haoreibi Turel Ahanbi, P.O. & P.S. Lilong and District Thoubal, Manipur, Pin-795130.

..... *Petitioners.*

-Versus-

1. The State of Manipur, represented by the Chief Secretary, Govt. of Manipur, Old Secretariat, P.O. & P.S. Imphal and Imphal West District, Manipur, Pin-795001.
2. The Department of Minorities Affairs through the Principal Secretary/Secretary (Minority Affairs), Govt. of Manipur, New Secretariat Building, P.O. & P.S. Imphal, District Imphal West, Manipur, Pin-795001.
3. Md. Abdul Nasir, Chairman Waqf Board, Manipur, R/o. Lilong Chaobok, Mairenkun, P.O. & P.S. Lilong, District Thoubal, Manipur-795130.
4. Mohammed Iqbal Ahamed, aged about 42 years, S/O Md. Ziauddin a resident of Lilong Haoreibi Chandakhong, P.O. & P.S. Lilong, Thoubal District, Manipur-795130.

5. Mohammed Azad Khan, aged about 52 years, a resident of Khabeisoi Khumidok, P.O. & P.S. Lilong, Imphal East District, Manipur-795010.

.....Respondents

WP(C) No. 304 of 2023

Md. Rabi Khan, aged about 47 years, S/o. Md. Alimuddin, resident of Minuthong Golapati Tanky, P.O. & P.S. Porompat and District Imphal East, Manipur, Pin-795005.

..... Petitioner

-Versus-

1. The State of Manipur, represented by the Chief Secretary, Govt. of Manipur, Old Secretariat, P.O. & P.S. Imphal and Imphal West District, Manipur, Pin-795001.
2. The Department of Minorities Affairs through the Principal Secretary/Secretary (Minority Affairs), Govt. of Manipur, New Secretariat Building, P.O. & P.S. Imphal, District Imphal West, Manipur, Pin-795001.
3. Md. Firoz Ahmad Khalid, aged about 61 years old, S/O A. Hassan, a resident of Khergao Awang Leikai, P.O. & P.S. Porompat, Imphal East District, Manipur – 795005.

.....Respondents

MC(WP(C)) No. 32 of 2023

Ref:- WP(C) No. 1105 of 2022

Md. Abdul Nasir, aged about 48 years, S/O Mohd. Abdul Hamid, a resident of Lilong Chaobok Mairenkun, P.O. &

P.S. Lilong, Thoubal District, Manipur- 795130, presently functioning as Chairman Waqf Board, Manipur.

.... Applicant

-Versus-

1. Md. Rabi Khan, aged about 47 years, S/o. Md. Alimuddin, resident of Minuthong Golapati Tanky, P.O. & P.S. Porompat and District Imphal East, Manipur-795005.
2. Quayamuddin, aged about 70 years, S/o. Md. Mujafar, resident of Lilong Haoreibi Turel Ahanbi, P.O. & P.S. Lilong and District Thoubal, Manipur, Pin-795130.

.....Respondents

3. The State of Manipur represented by the Chief Secretary, Government of Manipur, Secretariat Building, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin-795001.
2. The Department of Minorities Affairs through the Principal Secretary/Secretary (Minority Affairs), Govt. of Manipur, New Secretariat Building, P.O. & P.S. Imphal, District Imphal West, Manipur, Pin-795001.

.....Proforma Respondents

BEFORE

HON'BLE THE ACTING CHIEF JUSTICE M.V. MURALIDARAN

For the Petitioner	::	Mr. BP Sahu, Sr. Adv. Mr. Anjan Prasad Sahu, Adv.
For the Respondents	::	Mr. M. Devananda, Addl. AG Mr. BR Sharma, Adv.
Date of Hearing and reserving Judgment & Order	::	10.08.2023
Date of Judgment & Order	::	23.08.2023

JUDGMENT AND ORDER
(CAV)

Heard Mr. BP Sahu, learned senior counsel for the petitioners and Mr. M. Devananda, the learned Additional Advocate General for the respondent State and Mr. BR Sharma, the learned counsel for the private respondents.

2. W.P. (C) No.1105 of 2022 has been filed by the petitioners for issuance of a mandamus directing the respondents to fix time, date and place for holding a meeting of the Board for the purpose of no confidence motion.

3. MC (WP(C)) No.32 of 2023 has been filed by the applicant Md. Abdul Nazir who is third respondent in W.P.(C) No.1105 of 2022 to vacate the interim order dated 22.12.2022.

4. W.P. (C) No.304 of 2023 has been filed by the petitioner Md. Rabi Khan challenging the order dated 8.2.2023 passed by the Commissioner-cum-Secretary (Minority Affairs), Government of Manipur, thereby appointing Md. Firoz Ahmad Khalid of Khergao Awang Leikai vice the petitioner Md. Rabi Khan as member of the 7th Waqf Board, Manipur with immediate effect.

5. Since prayers made in both the writ petitions are interlinked with each other, both the writ petitions were heard together and disposed of by this common order.

6. Mr. BP Sahu, the learned senior counsel for the petitioners submitted that they are the members of 7th Waqf Board, Manipur, constituted by the Government of Manipur under the Waqf Act, 1995. On 21.8.2022 and 13.9.2022, the members wrote letters to the Chief Executive Officer of the Waqf Board requesting to call for a special emergency meeting of the Board to discuss some important issues. Despite receipt of the letters, there was no response. Therefore, the petitioners along with some members held a meeting on 5.10.2022 at the office premises of the Waqf Board and in the said meeting it was resolved to submit a resolution to the Government for issuing notice of no confidence motion against the Chairman. He would submit that on 7.10.2022, a letter was sent to the Secretary (Minority Affairs) regarding the notice for motion of no confidence against the Chairman of the Waqf Board, Manipur. The petitioners have also submitted letters to all banks requesting to put on hold any kind of transaction/withdrawal from the Waqf Board account opened in their respective bank by the Chairman or any of the staff of the Board until a new Chairman of the Board

is elected. On 15.11.2022, the petitioners have submitted a representation to the Hon'ble Chief Minister. Since no action was taken, the petitioners have filed W.P.(C) No.1105 of 2022.

7. Assailing the order impugned in W.P.(C) No.304 of 2023, the learned counsel for the petitioner submitted that under the impugned order, the Commissioner-cum-Secretary (Minority Affairs), Government of Manipur, nominated Md. Firoz Ahmad Khalid as member of 7th Waqf Board vice the petitioner. The learned counsel would submit that the removal of Chairperson and any members of the Board in the Waqf Board shall be done by following the Waqf Act and Regulations of the Waqf Board.

8. The learned counsel submitted that the petitioner Md. Rabi Khan has not been re-elected as the member of the Bar Council of Manipur. There is no provision under the Waqf Act unlike the members of Parliament and/or Legislative Assembly that a member of the Waqf Board will ceased to be a member if he is not re-elected or is not a member of the Bar Council. Therefore, the petitioner is deemed to be continuing as member. Md. Firoz Ahmad Khalid or anyone else could not have been appointed in lieu of the petitioner as his appointment has never been cancelled/re-called by any competent authority. Thus, the

nomination of Md. Firoz Ahmad Khalid in the place of the petitioner is void ab-initio and the same is liable to be set aside.

9. Mr. M. Devananda, the learned Additional Advocate General appearing for the respondent State submitted that subsequent to the filing of W.P.(C) No.1105 of 2022 some developments had taken place. Initially, 5 members of the Waqf Board (out of 10 members, including the Chairman) moved petition for removal of Chairman, Waqf Board by vote of no confidence. Out of the 5, the petitioner Md. Rabi Khan has been replaced by Md. Firoz Ahmad Khalid as member of the Waqf Board as Md. Rabi Khan is no longer member of the Bar Council and the withdrawal of two members from no trust vote, only two members namely Md. Deepak Shah and Md. Quari Quayamuddin would be deemed to have moved the petition for no trust vote. He would submit that under Section 20A(b) of the Waqf Act and as amended from time to time, notice for no confidence shall be addressed to the State Government with grounds on which such motion is proposed to be moved and shall be signed by atleast half of the total members of the Board. In view of the aforesaid subsequent development, W.P.(C) No.1105 of 2022 is no more maintainable and, therefore, the same is liable to be dismissed.

10. The learned Additional Advocate General next questioned the very maintainability of W.P.(C) No.304 of 2023 by contending that the said writ petition deserves to be dismissed on the ground of concealment of fact and that the petitioner is no more a member of the Bar Council of Manipur and, therefore, he has no legal right to hold or continue the office of the member of the Waqf Board.

11. The learned Additional Advocate General submitted that the petitioner Md. Rabi Khan is no longer a member of the Bar Council of Manipur and he lost in the election of member of the Bar Council held on 17.12.2022. As per the purposive interpretation of the provision of Section 14(1)(b)(iii) of the Act, he ceased to be member of the Waqf Board when he ceases to be member of Bar Council of Manipur. Though Section 20 of the Waqf Act states about the removal of Chairperson and member, the present case is not on the conditions stipulated in Section 20. Upon ceasing to be Muslim member of Bar Council which was the very basis, the petitioner Md. Rabi Khan cannot claim any relief in his favour. As the petitioner Md. Rabi Khan is no longer member of the Bar Council, Md. Firoz Ahmad Khalid who was the only Muslim member of Bar Council was nominated as member of the Waqf Board in the place of Md. Rabi Khan.

12. According to the learned Additional Advocate General, the petitioner has approached the Court with unclean hands. Thus, a prayer is made to dismiss the writ petition. In support, the learned Additional Advocate General has placed reliance upon the decision of the Apex Court in the case of *K.D.Sharma v. Steel Authority of India Limited and others, (2008) 12 SCC 481*.

13. Mr. BR Sharma, the learned counsel for the private respondents in W.P.(C) No.1105 of 2022 submitted that the petitioners are neither aggrieved nor any legal rights have been infringed as the State in the present circumstances could not have acted upon the notice dated 7.10.2022 as the notice fails to qualify the mandatory requirements of Section 20A(b) of the Act. Further, on the date of filing the writ petition, the petitioner Md. Rabi Khan ceases to be an elected member of the Bar Council as required by Section 14(1)(b)(iii) of the Act.

14. This Court considered the rival submissions and also perused the materials available on record.

15. Consequent upon the expiry of 6th Waqf Board, Manipur, the 7th Waqf Board was constituted by the State Government vide notification dated 31.3.2021 in exercise of the

powers under Section 14(9) of the Act read with Rule 36 of the Manipur Waqf Board (Conduct or Election) Rules, 1997. Ten members were appointed/nominated as members of the 7th Waqf Board in terms of the relevant provision of the Waqf Act. The third respondent in W.P.(C) No.1105 of 2022 is the Chairman of the Board.

16. W.P.(C) No.1105 of 2022 has been filed by the petitioners for direction to hold the meeting of Board for the purpose of no confidence motion. It is the case of the petitioners that in the meeting held on 5.10.2022, the members present in the meeting unanimously resolved to move a motion for no confidence against the Chairman of the Waqf Board as he failed to discharge his official duty and mismanagement of the Waqf property. By order dated 22.12.2022, while admitting the writ petition, this Court had granted interim order restraining the respondent No.3 to impart his duties as Chairman of the Board.

17. As could be seen from the notification dated 31.3.2021, the first petitioner Md. Rabi Khan was nominated under Section 14(1)(b)(iii) and the second petitioner Md. Hafiz Quayamuddin was nominated under Section 14(1)(d) of the Act as members of the 7th Waqf Board.

18. In terms of Section 14, the members must possess the qualification for continuing as a member of the Waqf Board, Manipur. Once members appointed under Section 14(1)(b)(ii) ceased to be member of Legislative Assembly, they would automatically ceased to be a member of the Waqf Board, Manipur. Similarly, for member appointed under Section 14(1)(b)(iii) when the member ceased to be a member of the Bar Council of Manipur, he would automatically ceased to be a member of Waqf Board, provided there is another Muslim member in the existing Bar Council of Manipur.

19. The petitioner Md. Rabi Khan was appointed by nomination as member of the Waqf Board by virtue of he being the member of the Bar Council of Manipur, which is provided under Section 14(1)(b)(iii) of the Waqf Act. In the election of Members of Bar Council of Manipur, the petitioner contested, but he lost the election. In view of the above, the petitioner Md. Rabi Khan ceased to be the member of the Bar Council of Manipur. As stated supra, for member appointed under Section 14(1)(b)(iii) when the member ceased to be a member of the Bar Council of Manipur, he would automatically ceased to be a member of Waqf Board, provided there is another Muslim member in the existing Bar Council of Manipur.

20. The respondent State contended that there is some subsequent development after filing W.P.(C) No.1105 of 2022 that initially 5 members of Waqf Board moved the petitioner for removal of the Chairman of the Waqf Board by vote of no confidence. Out of 5, Md. Rabi Khan has been replaced by Md. Firoz Ahmad Khalid as member of the Waqf Board and Md. Rabi Khan is no longer member of the Bar Council.

21. The undisputed fact that the petitioner Md. Rabi Khan is no longer member of the Bar Council of Manipur and he lost in the election of Member of Bar Council of Manipur held on 17.12.2022. Thus, as per the provisions of Section 14(1)(b)(iii) of the Act, the petitioner Md. Rabi Khan ceased to be Member of Waqf Board as he ceased to be the member of the Bar Council of Manipur.

22. The learned Additional Advocate General submitted that with the withdrawal of two members from no trust vote and Md. Rabi Khan is no longer member of the Bar Council, the only two members namely Md. Deepak Shah and Md. Quari Quayamuddin would be deemed to have moved the petition for no trust vote. The learned Additional Advocate General submitted that under Section 20A(b), notice for no confidence shall be addressed to the State Government stating clearly the

grounds on which such motion is proposed to be moved and shall be signed by atleast half the total members of the Board.

23. In the affidavit filed by the respondents 4 and 5, it has been stated that they were mislead by the petitioner to have the impression that the Chairman of Waqf Board of Manipur has failed to discharge his official duty and on the ground that the Chairman has refused to call Board meeting and, as such, inadvertently both the respondents put their respective signature on the notice/requisition of no confident against the Chairman. It has been further stated that subsequent to putting the signatures on the requisition dated 7.10.2022 by the members which was done with a good intent in the interest of the Board, the respondents realized the inadvertence and decided to withdraw themselves from the requisition for moving a no confident motion against the Chairman due to lack of trust over the petitioners.

24. In view of the subsequent development stated supra, this Court is of the view that W.P.(C) No.1105 of 2022 is no more maintainable and therefore, the same is liable to be dismissed.

25. Coming to W.P.(C) No.304 of 2023, the same has been filed by the petitioner Md. Rabi Khan to set aside the

impugned order dated 8.2.2023 whereby the Governor of Manipur was pleased to appoint Md. Firoz Ahmad Khalid vice the petitioner by nomination as member of 7th Waqf Board.

26. The petitioner Md. Rabi Khan assailed the impugned order dated 8.2.2023 on the ground that there is no provision under the Waqf Act unlike members of Parliament and/or Legislative Assembly that a member of the Waqf Board will ceased to be a member if he is not re-elected or is not a member of the Bar Council. Hence, he is deemed to be continuing as a member. According to the petitioner, Md. Firoz Ahmad Khalid or anyone else could not have been appointed in lieu of the petitioner as his appointment has never been cancelled/re-called by any competent authority. Hence, the nomination of Md. Firoz Ahmad Khalid in his place is void ab-initio.

27. The aforesaid ground raised by the petitioner cannot be appreciated. As stated supra, the petitioner was nominated as member of the Waqf Board under Section 14(1)(b)(iii) of the Act. He was appointed as member of the Waqf Board on virtue of he being a Muslim member of the Bar Council of Manipur at the relevant point of time. Since the petitioner Md. Rabi Khan was no longer member of the Bar Council of Manipur,

Md. Firoz Ahmad Khalid, who was the only Muslim member of the Bar Council of Manipur was nominated as member of the Waqf Board in the place of the petitioner in the same category where the petitioner was elected. Such an action of the respondent authorities cannot be questioned by the petitioner, as there is no flaw in it. In fact, in exercise of powers conferred under Section 14(1)(b)(iii) and 14(3) of the Waqf Act, the Governor of Manipur appointed Md. Firoz Ahmad Khalid in the place of the petitioner by nomination as member of 7th Waqf Board. Therefore, the nomination of Md. Firoz Ahmad Khalid in the place of the petitioner is not void ab-initio.

28. In *K.D.Sharma*, supra, the Apex Court held:

“34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the

threshold without considering the merits of the claim.

29. Admittedly, the petitioner has failed to disclose in the writ petition that he is no longer a member of the Bar Council of Manipur. Concealing and suppressing such a material fact tantamount to misleading the Court. Therefore, the writ petition of the petitioner suffers from concealment of material facts and the petitioner has approached this Court with unclean hands. There is no merit in the writ petition and, therefore, the same is liable to be dismissed.

30. For all the reasons stated above, the writ petitions are dismissed. The interim order dated 22.12.2022 passed in W.P.(C) No.1105 of 2022 shall stand vacated. No costs.

ACTING CHIEF JUSTICE

FR/NFR

Sushil