

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

WA No. 75 of 2023

(Ref:- 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-795005.

***... Appellant
in Writ Appeal***

-Versus-

1. The State of Manipur, represented by the Chief Secretary,
Govt. of Manipur, Old Secretariat, P.O. & P.S. Imphal,
District Imphal West District, Manipur-795001.
2. The Department of Minorities Affairs through the
Commissioner/ Principal Secretary/ Secretary (Minority
Affairs), Govt. of Manipur, New Secretariat Building, P.O. &
P.S. Imphal, District Imphal West, Manipur-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
in Writ Appeal***

IN WRIT PETITION (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-795005.

***... Petitioner
in Writ Petition***

-Versus-

1. The State of Manipur, represented by the Chief Secretary,
Govt. of Manipur, Old Secretariat, P.O. & P.S. Imphal,
District Imphal West District, Manipur-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-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
in Writ Petition***

Writ Appeal is preferred against the judgment and order dated 23-08-2023 passed by the Hon'ble Acting Chief Justice (Hon'ble Mr. Justice M.V. Muralidaran) in Writ Petition (C) No. 304 of 2023.

With

WA No. 76 of 2023

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

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-795130.

***... Appellants
in Writ Appeal***

-Versus-

1. The State of Manipur, represented by the Chief Secretary, Govt. of Manipur, Old Secretariat, P.O. & P.S. Imphal, District Imphal West District, Manipur-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-795001.
3. Md. Abdul Nasir, Chairman Waqf Board, Manipur, R/o Lilong Chaobok, Mairengkun, P.O. & P.S. Lilong, District Thoubal, Manipur-795130.
4. Mohammed Iqbal Ahamed, aged about 42 years, S/o Md. Ziauddin, R/o Lilong Haoreibi Chandakhong, P.O. & P.S. Lilong, District Thoubal, Manipur-795130.

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

***... Respondents
in Writ Appeal***

IN WRIT PETITION (C) NO. 1105 OF 2022

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-795130.

***... Petitioners
in Writ Petition***

-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, Mairrenkhun, P.O. & P.S. Lilong, District Thoubal, Manipur-795130.
4. Mohammed Iqbal Ahamad, aged about 42 years, S/o Md. Ziauddin a resident of Lilong Haoreibi Chandakhong, P.O. & P.S. Lilong, District Thoubal, Manipur-795130.
5. Mohammed Azad Khan, aged about 52 years, a resident of Khabeisoi Khumidok, P.O. Pangei, P.S. Heingang, Imphal East District, Manipur-795010.

***... Respondents
in Writ Petition***

Writ Appeal is preferred against the judgment and order dated 23-08-2023 passed by the Hon'ble Acting Chief Justice (Hon'ble Mr. Justice M.V. Muralidaran) in Writ Petition (C) No. 1105 of 2022.

B E F O R E

HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the appellants : Mr. B.S. Sahu, Sr. Advocate asstd. by
Ms. H. Kunjeshori

For the respondents : Mr. M. Devananda, Addl. AG asstd. by
Ms. N. Jyotsana, Advocate;
Mr. H.S. Paonam, Sr. Advocate asstd. by
Mr. S. Gunabanta, Advocate &
Mr. B.R. Sharma, Advocate

Date of Hearing : **13-10-2023**

Date of Judgment & Order : **23-11-2023**

JUDGMENT & ORDER

(A. Bimol Singh, J.)

[1] Heard Mr. B.P. Sahu, learned senior counsel assisted by Ms. H. Kunjeshori, learned counsel appearing for the appellants, Mr. M. Devananda, learned Addl. Advocate General assisted by Ms. N. Jyotsana, learned counsel appearing for the State respondents No. 1 and 2, Mr. H.S. Paonam, learned senior counsel assisted by Mr. S. Gunabanta, learned counsel appearing for the respondent No. 3 and Mr. B.R. Sharma, learned counsel appearing for the respondents No. 4 and 5 in WA No. 76 of 2023.

[2] The appellants/ writ petitioners have filed the present two writ appeals challenging the legality of the common judgement and order dated 23-08-2023 passed by the learned Single Judge in WP(C) No. 1105 of 2022 and WP(C) No. 304 of 2023. The core issues to be decided in the present writ appeals are:-

- (a) Whether a person who had been appointed as a member of the Waqf Board under Section 14(1)(b)(iii) of the Waqf Act, being a

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Muslim member of the State Bar Council, shall automatically cease to be a member of the Board when he ceased to be a member of the State Bar Council or not?

(b) Whether a No-Confidence notice which does not fulfil the condition laid down under Section 20A(b) of the Waqf Act can be acted upon or not?

[3] On expiry of the term of the six Waqf Board, the Secretariat, Minority Affairs Department, Government of Manipur appointed altogether ten members, including the present two appellants and private respondents, as members of the 7th Waqf Board, Manipur w.e.f. 01-04-2021 by issuing a Notification dated 31-03-2021 and by publishing the said Notification in the Manipur Gazette Extraordinary dated 08-04-2021. The appellant No. 1, viz., Md. Rabi Khan, was appointed as member of the said Waqf Board under Section 14(1)(b)(iii) of the Waqf Act, 1995. As per provisions of Section 15 of the Waqf Act, the term of office of the members of the Board is for five years from the date of Notification referred to in sub-section 9 of Section 14.

[4] The case of the appellants is that on 21-08-2022; and 13-09-2022, some members of the Board wrote letters to the Chief Executive Officer of the Waqf Board requesting for calling a special emergency meeting of the Board to discuss and transact some urgent matters/ issues of the Board. Despite receipt of the letters, there was no response, therefore, the appellants along with some members hold a meeting on 05-10-2022 at the office premises of the Waqf Board and in the said meeting, it was resolved to submit a resolution to the Government for

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issuing notice of No-Confidence Motion against the Chairman. Pursuant to the said resolution, the appellants along with three other members of the Board, including the respondents No. 4 and 5 in WA No. 76 of 2023 submitted a notice for Motion of No-Confidence against the Chairman of the Waqf Board dated 07-10-2022 to the Secretary (Minority Affairs), Government of Manipur by complying with all the formalities as mandated under Section 20A of the Waqf Act, 1995. As no action was taken up by the authorities in connection with the said notice for Motion of No-Confidence, the appellants approached this court by filing WP(C) No. 1105 of 2022 with a prayer for issuing a direction to the authorities to fix time, date and place for holding a meeting of the Board for the purpose of No-Confidence Motion.

[5] The stand of the appellants before the learned Single Judge is that as per the provisions of Section 20A(d) of the Waqf Act, 1995, on receipt of notice of No-Confidence, the State Government is mandated to fix such time, date and place as may be considered suitable for holding a meeting for the purpose of the proposed No-Confidence Motion by giving at least 15 days prior notice of holding such a meeting and that the inaction on the part of the State Government is unlawful, illegal and arbitrary and such inaction has violated the fundamental rights of the appellants.

On the other hand, the respondents took the stand before the learned Single Judge that out of the five members who signed the notice for No-Confidence Motion, the appellant No. 1 namely, Md. Rabi Khan had been replaced by Md. Firoz Ahmad Khalid, the respondent No. 3 in WA No. 75 of 2023, as member of the Waqf Board since the appellant No. 1 is no

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longer a member of the Bar Council and that two other members viz., Mohammed Iqbal Ahamed and Mohammed Azad Khan, who are the respondents No. 4 and 5 in WA No. 76 of 2023, have withdrawn from the said requisition by submitting two separate applications, both dated 06-02-2023 to the Secretary/ Commissioner (Minority Affairs), Government of Manipur, as they are no longer interested in moving the said No-Confidence Motion and as such only two members would be deemed to have moved the notice for No-Confidence Motion. The stand of the respondents is that as only two members would be deemed to have made the requisition notice for No-Confidence Motion, the same is not in conformity with the mandate of Section 20A(b) which mandates that at least half of the total members of the Board should sign the notice for No-Confidence Motion and accordingly, the said No-Confidence Motion cannot be acted upon.

[6] During the pendency of WP(C) No. 1105 of 2022, the Secretariat, Minority Affairs Department, Government of Manipur issued an order dated 08-02-2023 appointing Md. Firoz Ahmad Khalid, the respondent No. 3 in WA No. 75 of 2023, as member of the Waqf Board vice Md. Rabi Khan, the appellant No. 1 herein, in exercise of the power conferred under Section 14(1)(b)(iii) & 14(3) of the Waqf Act, 1995. On coming to know about the issuance of the said order, the appellant No. 1 filed another writ petition being WP(C) 304 of 2023 before this court challenging the said order dated 08-02-2023.

[7] The case of the appellant No. 1 is that he was appointed as a member of the 7th Waqf Board, Manipur under Section 14(1)(b)(iii) of the

Waqf Act w.e.f. 01-04-2021 and as per Section 15 of the Waqf Act, the term of office is for a period of five years, which is yet to be lapsed and that no order has been issued by the authorities removing him from the membership of the Board and as such, he is to continue as a member of the 7th Waqf Board till the completion of his tenure. The appellant No. 1 also took the stand that unlike the members of the Parliament and/ or the members of the Legislative Assembly, whose term of office as members of the Waqf Board are co-terminous when they cease to be a member of the Parliament or member of the Legislative Assembly, there is no provision under the Waqf Act, 1995 that the term of office of a member of the Waqf Board appointed under Section 14(1)(b)(iii) will be co-terminous when he ceased to be a member of the Bar Council. Accordingly, the impugned appointment order dated 08-02-2023 appointing the respondent No. 3 as member of the Waqf Board in place of the appellant No. 1 is illegal and liable to be quash and set aside.

[8] The stand of the respondents before the learned Single Judge is that the appellant No. 1 was appointed as a member of the 7th Waqf Board, Manipur under the category of Muslim members of the Bar Council of the State as provided under Section 14(1)(b)(iii) of the Waqf Act, 1995. In the election of the members of the Bar Council of Manipur held on 17-10-2022, the appellant No. 1 contested the election and he was not elected and he ceased to be a member of the Bar Council of Manipur w.e.f. 26-12-2022. As the appellant No. 1 is no longer a member of the Bar Council of Manipur, he has no legal right to continue as a member of the Waqf Board and as such, he automatically ceased to be a member of the Waqf Board and the

State Government appointed Md. Firoz Ahmad Khalid, the respondent No. 3, as member of the Waqf Board in place of the appellant No. 1.

Another stand taken by the respondents before the learned Single Judge is that the writ petition suffers from concealment of material facts inasmuch as the appellant No. 1 did not disclose or concealed the fact that he is no longer a member of the Bar Council of Manipur and as such, the writ petition deserves to be dismissed.

[9] Accepting the stand of the respondents that since out of the five members who submitted the notice for No-Confidence Motion, the appellant No. 1 is no longer a member of the Waqf Board and the respondents No. 4 and 5 in WA No. 76 of 2023 have also withdrawn from the requisition, it shall be deemed that the notice was moved by only two members of the Board and it can no longer be acted upon as the same is not in conformity with the provisions of Section 20A(b), which mandates that at least half of the total members of the Board shall sign such notice, the learned Single Judge held that WP(C) No. 1105 of 2022 is not maintainable and accordingly, the same was dismissed.

[10] While deciding WP(C) No. 304 of 2023, the learned Single Judge accepted the stand of the respondents and held that the appellant No. 1 was appointed as member of the Waqf Board by virtue of being a Muslim member of the Bar Council of Manipur as provided under Section 14(1)(b)(iii) of the Waqf Act and that since the appellant No. 1 is no longer a member of the Bar Council of Manipur, Md. Firoz Ahmad Khalid, the respondent No. 3, who was the only Muslim member of the Bar Council of

Manipur, was nominated as member of the Waqf Board in place of the appellant No. 1 in exercise of the power conferred under Section 14(1)(b)(iii) and Section 14(3) of the Waqf Act and such nomination of the respondent No. 3 is valid. The learned Single Judge also held that the appellant No. 1 failed to disclose in his writ petition that he is no longer a member of the Bar Council of Manipur and approached the court by concealing and suppressing the material facts to mislead the court and that the appellant approached the court with unclean hands and as such, the learned Single Judge dismissed the writ petition as being devoid of merit.

[11] Mr. B.P. Sahu, learned senior counsel appearing for the appellants vehemently submitted before this court that the appellant No. 1 never concealed the fact that he is no longer a member of the Bar Council of Manipur before the learned Single Judge. In fact, the appellant No. 1 clearly stated in para 5 of WP(C) No. 304 of 2023, filed by him, that he was not re-elected as a member of the Bar Council of Manipur, however, there is no provision under the Waqf Act, unlike members of the Parliament and/or Legislative Assembly, that a member of the Waqf Board will cease to be a member if he is not re-elected or is not a member of the Bar Council and as such, he shall be deemed to be continuing as a member. The learned senior counsel submitted that the learned Single Judge has overlooked such clear-cut statement made by the appellant No. 1 in his writ petition and as such the findings given by the learned Single Judge that the appellant No. 1 has concealed material facts is totally wrong and accordingly the same is unsustainable and liable to be set aside. With regard to the other merits of both the cases, the learned senior counsel

reiterated the stand taken by the appellants before the learned Single Judge.

[12] Mr. M. Devananda, learned Addl. AG, Mr. H.S. Paonam, learned senior counsel and Mr. B.R. Sharma, learned counsel appearing for the respondents also reiterated the stand taken by the respondents before the learned Single Judge and submitted that there is no ground or reason for interfering with the impugned judgment rendered by the learned Single Judge. Mr. H.S. Paonam, learned senior counsel further submitted that the Explanation-II to clause (b) of sub-section(1) of Section 14 of the Waqf Act provides that if a Muslim member ceases to be a member of Parliament or ceases to be a member of the State Legislative Assembly, such member shall be deemed to have vacated the office of the member of the Waqf Board from the date from which such member ceases to be a member of the Parliament or a member of the State Legislative Assembly, meaning thereby that the membership of Waqf Board is co-terminous with the membership of the Parliament or State Legislative Assembly. The learned senior counsel further submitted that the provisions provided under the aforesaid Explanation-II is also applicable in the case of Muslim members elected from the State Bar Council and the provisions of Section 15 is not applicable in such cases.

[13] After hearing the rival submissions of the learned counsel appearing for the parties and on examination of the materials available on record, we are of the view that before considering the merit of the cases, it will be appropriate to examine the relevant provisions of the Waqf Act, 1995 (hereinafter referred to as “**The Act**”, for short). For the purpose of deciding

the limited issues raised in the present two appeals, it will be relevant to refer to the provisions of Section 14 of the Act which deals with composition of the Board, Section 15 which provides the term of office of the members of the Board and Section 20A which deals with removal of Chairperson by vote of No-Confidence. For ready reference, the relevant provisions of the aforesaid sections are reproduced hereunder:-

“Sec. 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) ***

(d) ***

(e) ***

(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) ***

(6) ***

(8) ***

(9) ***

“Sec. 15. Term of office.—The members of the Board shall hold office for a term of five years from the date of notification referred to in sub-section (9) of section 14.”

“Sec. 20A. Removal of Chairperson by vote of no confidence.—Without prejudice to the provisions of section 20, the Chairperson of a Board may be removed by vote of no confidence in the following manner, namely:—

(a) ***

(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 at least half the total members of the Board;

(c) ***

(d) ****”

[14] As per the provisions of Section 15 of the Act, the term of office of a member of the Board is five years from the date of notification under Section 14(9) of the Act. However, an exception had been provided under Explanation-II to Section 14(1)(b) of the Act. As per the said Explanation-II, the term of office of the members of the Waqf Board, who have been appointed under Section 14(1)(b)(i) & (ii) being a Muslim member of Parliament or being a Muslim member of the State Legislature, shall be

[14]

co-terminous as and when the said members cease to be members of the Parliament or cease to be members of the State Legislative Assembly. In such cases, the provisions of Section 15 will not apply. We are of the considered view that the exception given in the said Explanation-II above is very clear and unambiguous and the said exception is applicable to and confines only to those members of the Waqf Board who have been appointed under Section 14(1)(b)(i)&(ii), being a Muslim member of the Parliament from the State or being a Muslim member of the State Legislature.

[15] In the present case, the appellant No 1 was appointed as a member of the Waqf Board under the provisions of Section (1)(b)(iii) of the Act being a Muslim member of the Bar Council of Manipur. According to the learned counsel appearing for the respondents, the appellant No 1 ceased to be a member of the Bar Council when he was not re-elected as a member of the Bar Council and as such, he also ceased to be a member of the Waqf Board in view of the provisions/ explanation given under the Explanation-II to Section 14(1)(b) of the Act. We cannot agree with the submissions advanced by the learned counsel appearing for the respondents for the reason that the explanation given under the said Explanation-II is very clear, plain and unambiguous. It only mandates that in case, a member of the Waqf Board appointed under Section 14(1)(b)(i)&(ii) being a Muslim member of the Parliament or being a Muslim member of the State Legislature, ceases to be member of the Parliament or ceases to be member of the State Legislative Assembly, as the case may be, such member shall be deemed to have vacated the office of the member of the

Waqf Board from the date from which such member ceased to be a member of the Parliament or ceased to be a member of the State Legislative Assembly. In our considered view, there is no scope whatsoever under the said Explanation-II to bring in the members of the Waqf Board appointed under Section 14(1)(b)(iii) being a Muslim member of the Bar Council.

[16] The object and purpose of an explanation to a statutory provision has been succinctly explained by the Hon'ble Apex Court in the case of “**S. Sundaram Pillai & ors. Vs. V.R. Pattabiram & ors.**” reported in (1985) 1 SCC 591, wherein it has been held as under:-

“46. We have now to consider as to what is the impact of the Explanation on the proviso which deals with the question of wilful default. Before, however, we embark on an enquiry into this difficult and delicate question, we must appreciate the intent, purpose and legal effect of an Explanation. It is now well settled that an Explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision. Sarathi in Interpretation of Statutes while dwelling on the various aspects of an Explanation observes as follows:

- (a) The object of an Explanation is to understand the Act in the light of the explanation.*
- (b) It does not ordinarily enlarge the scope of the original section which it explains, but only makes the meaning clear beyond dispute.”*

“47. Swarup in Legislation and Interpretation very aptly sums up scope and effect of an Explanation thus:

Sometimes an Explanation is appended to stress upon a particular thing which ordinarily would not appear clearly from the provisions of the section. The proper function of an Explanation is to make plain or elucidate what is enacted in the substantive provision and not to add or subtract from it. Thus an Explanation does not either restrict or extend the enacting part; it does not enlarge or narrow down the scope of the original section that it is supposed to explain ... The Explanation must be interpreted according to its own tenor; that it is meant to explain and not vice versa.”

“48. Bindra in Interpretation of Statutes (Fifth Edn.) at page 67 states thus:

An Explanation does not enlarge the scope of the original section that it is supposed to explain. It is axiomatic that an Explanation only explains and does not expand or add to the scope of the original section.... The purpose of an Explanation is, however, not to limit the scope of the main provision... The construction of the Explanation must depend upon its terms, and no theory of its purpose can be entertained unless it is to be inferred from the language used. An 'Explanation' must be interpreted according to its own tenor.”

“49. The principles laid down by the aforesaid authors are fully supported by various authorities of this Court. To quote only a few, in *Burmah Shell Oil Storage and Distributing Co. of India Ltd. v. C.T.O.*, a Constitution Bench decision, Hidayatullah, J. speaking for the Court, observed thus:

Now, the Explanation must be interpreted according to its own tenor, and it is meant to explain clause (1)(a) of the Article and not vice versa. It is an error to explain the Explanation with the aid of the Article, because this reverses their roles.”

“50. In *Bihta Co-operative Development Cane Marketing Union Ltd. v. Bank of Bihar*, this Court observed thus:

The Explanation must be read so as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.”

“51. In *Hiralal Rattanlal* case, this Court observed thus: [SCC para 25, p. 225: SCC (Tax) p. 316]

On the basis of the language of the Explanation this Court held that it did not widen the scope of clause (c). But from what has been said in the case, it is clear that if on a true reading of an Explanation it appears that it has widened the scope of the main section, effect be given to legislative intent notwithstanding the fact that the Legislature named that provision as an Explanation.”

“52. In *Dattatraya Govind Mahajan v. State of Maharashtra*, Bhagwati, J. observed thus (SCC p. 563, para 9)

It is true that the orthodox function of an Explanation is to explain the meaning and effect of the main provision to which it is an Explanation and to clear up any doubt or ambiguity in it.... Therefore, even though the provision in question has been called an Explanation, we must construe it according to its plain language and not on any a priori considerations.”

“53. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is ---

- (a) to explain the meaning and intendment of the Act itself,*
- (b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,*
- (c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,*
- (d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and*
- (e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.”*

[17] Similar issue raised in the present appeals had also been considered and decided by a Division Bench of the High Court of Telangana in its judgment dated 08-02-2020 passed in WA No. 921 of 2019 **“Mr. Sultan Quan Vs. State of Telangana”**, wherein the Hon’ble High Court held as under:-

“A bare perusal of the above provision clearly reveals that the State Government is empowered to elect one and not more than two members from the Muslim Members of the State Legislature to be a member of the Wakf Board. Although Explanation II creates a legal fiction by enacting a deeming provision, Explanation II, on two occasions, uses the words "Member of the State Legislative Assembly. Explanation II no where uses the words "Member of the State Legislative Council". Since the Parliament is well aware of the fact that some State Legislatures consist of two chambers, namely the State Legislative Assembly, and the State Legislative Council, the fact that only the words "Member of the State Legislative Assembly have been mentioned twice in Explanation II clearly reveals the intention of the Parliament to exclude the Members of the Legislative Council from the deeming provision. In case the Parliament wanted to include all the Members of the State Legislature, nothing prevented the Parliament from merely prescribing that a person, who ceases to be a Member of the State Legislature shall be deemed to have vacated the membership of

the Board. But, in its wisdom, the Parliament has restricted the deeming provision only to "the Members of the Legislative Assembly", and has not extended it to "the Members of the Legislative Council".

Since there is no ambiguity in the plain and grammatical meaning of Explanation II, no other rules of interpretation need to be applied. Even if there is an omission, the said omission cannot be supplied by this Court. For, supply of such an omission, when the meaning is plain and clear, is to amend the law. Needless to say, this Court does not have the power to amend the law.

Of course, the learned counsel for the appellant has stressed on the use of the words "as required under sub-clause (ii) of clause (b)." However, the said words merely indicate that the Members of the State Legislative Assembly are included in the words "State Legislature" mentioned in Sub-clause (2) of Clause (b). Therefore, the use of the words "as required under sub-clause (2) of Clause (b)" cannot be interpreted to mean that Explanation II would also cover the cases of the Members of the Legislative Council. Hence, the interpretation being placed by the learned counsel for the appellant is clearly unacceptable.

Since the respondent No. 3 was a Member of the Legislative Council, even if his term has come to an end on 29-03-2019, even then he cannot be deemed to have vacated his membership of the Board. In fact, he shall continue to serve as a Member of the Board till the end of his tenure as a Member of the Board in terms of Section 15 of the Act."

[18] On perusal of the statement made by the appellant No. 1 in para 5 of WP(C) No. 304 of 2023 filed by him, it is found that the appellant No. 1 clearly stated that he was not re-elected as a member of the Bar Council of Manipur and as such, we are of the considered view that the findings and decisions given by the learned Single Judge that the appellant No. 1 failed to disclose in his writ petition that he is no longer a member of the Bar Council of Manipur and that he approached the court by concealing and suppressing material facts to mislead the court is found to be factually incorrect.

Taking into consideration the facts and circumstances of the present case and keeping in view the judgments quoted hereinabove, we

have no hesitation to come to the conclusion that the term of office of the appellant No. 1, who have been appointed as a member of the Waqf Board under the provisions of Section 14(1)(b)(iii) of the Act is not co-terminous when he ceases to be a member of the State Bar Council and that the appellant No. 1 shall continue to be a member of the Board till the end of his tenure in terms of Section 15 of the Act.

[19] So far as the other issue is concerned, the notice for No-Confidence Motion was initially submitted by five members of the Waqf Board, including the appellants and respondents No. 4 and 5 in WA No. 76 of 2023. During the pendency of the writ petitions, the said respondents No. 4 and 5 have withdrawn from the requisition for moving the said No-Confidence Motion by submitting two separate applications, both dated 06-02-2023 to the Secretary/ Commissioner (Minority Affairs), Government of Manipur, as they are no longer interested in moving the said No-Confidence Motion. Since two members, out of the five members, who submitted the said notice for moving No-Confidence Motion, have withdrawn from the said requisition, we are of the considered view that the said notice for No-Confidence Motion is no longer in conformity with the mandate of Section 20A(b) of the Act, which stipulates that at least half of the total members of the Board should sign the notice for No-Confidence Motion and as such, the said notice cannot be acted upon. In this regard, we concur with the findings and decisions given by the learned Single Judge in his judgment passed in connection with WP(C) No. 1105 of 2022 and we find no ground or reason for interfering with the same.

In the result, we disposed of the two writ appeals with the following directions:-

- (i) The findings and decisions given by the learned Single Judge in the impugned judgment dated 23-08-2023 passed in connection with WP(C) No. 304 of 2023 is hereby quashed and set aside. Consequently, the said WP(C) No. 304 of 2023 is hereby allowed by quashing and setting aside the order dated 08-02-2023 issued by the Commissioner-cum-Secretary (Minority Affairs), Government of Manipur appointing Md. Firoz Ahmad Khalid as member of the Waqf Board in place of the appellant No. 1 and respondents are directed to allow the appellant No. 1 to continue as a member of the 7th Waqf Board till the completion of the term of his office as provided under Section 15 of the Act; and
- (ii) We concur with the findings and decisions given by the learned Single Judge in his judgment dated 23-08-2023 passed in connection with WP(C) No. 1105 of 2022 and we accordingly upheld the same.

Parties are to bear their own costs.

JUDGE

JUDGE

FR / NFR

Dhananda