

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 103 OF 2016

Shri Sayed B. Makandar,
son of Budensha Makandar,
age 46 years,
resident of Housing Board Colony,
Rumdamol, Davorlim Goa.

The Attorney, constituted for representing
Sunni Al Madina Masjid-Wa-Madrassa
Society registered under the Societies
Registration Act, 1860
with its office at Rumdamol Hsg. Board,
Davorlim, Navelim, Salcete Goa.

.... Petitioner

V e r s u s

1. State of Goa,
Through its Chief Secretary,
with its Office at Secretariat,
Goa Legislative Assembly Complex,
Porvorim Goa.
2. The District Registrar,
Inspector General of Societies,
(South Goa),
with its Office at Osia Commercial Complex,
2nd floor, 'D' Wing, Salcete,
Margao Goa.
3. Shri Abdul Wahab Gokak,
H.No.P/52, Housing Board
Rumdamol, Davorlim Goa.
4. Shri Gaibusab Bijapur
Major of age,
Resident of P-66,
Housing Board
Rumdamol, Davorlim Goa.

5. Shri Abdul Shaikh,
major of age,
Resident of H.No.EWS453,
Housing Board,
Rumdamol, Davorlim Goa.
6. Shri Azif A. Narangi
Major of age,
Resident of
Rumdamol Davorlim,
7. Shri Irshad Ali Makandar,
major of age,
Resident of
Rumdamol Davorlim,
8. Mr. Abdul Kadar Kundoor
major of age,
r/o Rumdamol,
Davorlim Goa.

.... Respondents

Mr. Sudesh M. Usgaonkar and Ms. R. Pereira, Advocates for the petitioner.

Ms. S. Linhares, Addl. Government Advocate for the respondent nos. 1 and 2.

Mr. S. D. Padiyar and Mr. P. Arolkar, Advocates for the respondent nos. 3, 4, 6, 7 and 8.

**Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.**

Date:- 9th August, 2016

ORAL JUDGMENT (Per F. M. Reis, J)

Heard Mr. Sudesh Usgaonkar, learned counsel appearing for

the petitioner, Mr. S. D. Padiyar, learned counsel appearing for the respondent nos. 3, 4, 6, 7 and 8 and Ms. S. Linhares, learned Addl. Government Advocate appearing for the respondent nos. 1 and 2.

2. The above petition takes exception to the order passed by the learned Registrar dated 04.01.2016 finalizing the list of voters eligible to take part in the election process of ' Sunni Al Madina – Masjid – Wa- Madrasa' situated at Davorlim village. Upon extensively hearing Mr. Usgaonkar, learned counsel appearing for the petitioner and Mr. S. D. Padiyar, learned counsel appearing for the respondent nos. 3, 4, 6, 7 and 8, the basic grievance of Mr. Usgaonkar, learned counsel appearing for the petitioner is that in order to be a member of the subject Masjid, the voters have to be a Sunni Muslim (Barelvi School of Thought). It is further pointed out that in terms of the direction issued by this Court, the members in the voter list should be eligible on 14.12.2014. Mr. Usgaonkar, learned counsel points out that the learned Registrar while passing the impugned order has failed to examine whether the persons included in the voter list as Sunni Muslim profess Barelvi School of Thought. It is further pointed out that the learned Registrar has also included persons in the voter list who had even

applied after the cut off date fixed by this Court as 14.12.2014.

3. Considering that this is the main contention of the learned counsel appearing for the petitioner, we called upon Mr. Padiyar, learned counsel appearing for the respondent nos. 3, 4, 6, 7 and 8, whether such respondents represented by him in fact profess Barelvi School of Thought though are Sunni Muslim. Though Mr. Padiyar, learned counsel appearing for the respondent nos. 3, 4, 6, 7 and 8 strongly disputes that to be an eligible member, there is anything to suggest in the bye-laws that they have been professing Barelvi School of Thought, nevertheless, Mr. Padiyar, learned counsel appearing for the respondent nos. 3, 4, 6, 7 and 8 upon instructions of the respondents states that all the respondents who are represented by him in fact profess Barelvi School of Thought. Mr. Usgaonkar, learned counsel appearing for the petitioner however was not in a position to specifically point out the criteria to examine whether such Sunni Muslim profess Barelvi School of Thought. But however, as Mr. Padiyar, learned counsel has made a statement upon instructions, we find it appropriate to accept the statement of Mr. Padiyar, upon instructions so as not to delay further the election process which was due to be completed way back in the

year 2014 and consequently assume that all the respondents represented by Mr. Padiyar profess Bareli School of Thought.

4. Mr. Usgaonkar, learned counsel appearing for the petitioner has raised a dispute with regard to the list of 18 persons submitted by the respondent no.6 claiming that they were not residents of the concerned ward. But however, Mr. Padiyar, learned counsel has disputed such aspect. Considering that the learned Registrar has accepted that they are residents of the concerned ward/place the disputed question of fact on this aspect cannot be re-examined by this Court in the present petition.

5. With regard to the next contention of Mr. Usgaonkar, learned counsel appearing for the petitioner that most of the respondents represented by Mr. Padiyar, become eligible only after the cut off date namely 14.12.2014, we find that in fact besides the 20 members who were already members of the subject Masjid, the other remaining respondents became eligible only after 14.12.2014. In such circumstances, we find it appropriate to finalize the voter list based on the list submitted by the petitioner namely 432 members as shown at

pages 356 to 364 of the petition, besides 20 members who were eligible on 14.12.2014 as reflected in Annexure – J and Annexure - R at page 280 and 281 dated 09.09.2015. As such, the election for the remaining term of the concerned Masjid which is due to expire somewhere in October, 2017 shall be conducted based on the voter list as mentioned in Annexure – J and Annexure R referred to herein above.

6. In view of the above, we direct the petitioner to hold the election for the balance term which is due to expire on 02.10.2017 as expeditiously as possible under the supervision of the Inspector General of Societies or his delegate on mutually convenient date. The members referred to from Serial No. 433 onwards at page 365 up to Serial No.918 shall also be treated to be members of the subject Masjid for the subsequent election except 39 members referred to at page 190 attached to the letter dated 03.03.2015 (at Annexure K Colly). Rule stands disposed off accordingly. The petition stands disposed off accordingly.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

at*