

Amk

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 1357 OF 2016

Ibrahim Gulam Nabi Shaikh	]	
Age-59 years, Chairman, Maharashtra State Haj	]	
Committee, residing at Ayesha Apartment,	]	
1st floor, 2nd Hasanabad Lane, Santacruz (West)	]	Petitioner
Mumbai - 400 054 and having his office at	]	
Sabu Siddick Musafirkhana, L. T. Marg,	]	
Mumbai - 400 001.	]	

Versus

- | | | | |
|----|--|---|-------------|
| 1. | State of Maharashtra |] | |
| | through Principal Secretary, Minorities |] | |
| | Development Department, Mantralaya, |] | |
| | Mumbai - 400 032. |] | |
| 2. | Union of India, through its Secretary (Haj) |] | |
| | Ministry of External Affairs, Jawaharlal Nehru |] | |
| | Bhavan, New Delhi 100 001. |] | |
| 3. | Haj Committee of India |] | Respondents |
| | a Committee duly constituted under the |] | |
| | provision of Haj Committee Act, 2002, through |] | |
| | its Chief Executive Officer, having its office at |] | |
| | Haj House, 7A, M R A Marg, (Palton Road), |] | |
| | Mumbai - 400 001. |] | |
| 4. | The Maharashtra State Haj Committee |] | |
| | through its Executive Officer having its office at |] | |
| | Sabu Siddick Musafirkhana, Mumbai - 400 001. |] | |

Mr. Hiralal Thacker, Senior Counsel a/w. Mr. Chirag Mody, Mr. Joseph Fernandes for the Petitioner.

Mr. Umashankar Upadhyay, AGP for the Respondent No.1-State.

Mr. Anil Singh, Additional Solicitor General a/w. Mr. Dhanesh R. Shah for respondent No.2.

**CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.**

Judgment Reserved on : 01.07.2016

Judgment Pronounced on : 28.07.2016

JUDGMENT : (Per Dr. Shalini Phansalkar-Joshi, J.)

1. Rule. Rule returnable forthwith. With the consent of both the parties, heard finally at the stage of admission itself.

2. In this writ petition, filed under Article 226 of the Constitution of India, a very short question is raised for consideration relating to the interpretation of Section 8(2) of Haj Committee Act, 2002. The exact nature of controversy is centered around the question as to whether a member, who was elected for more than 2 terms, can be eligible for renomination on the Haj Committee, considering the wording of Section 8(2) of the Act that, "an outgoing member shall be eligible for renomination on the Committee for not more than two terms."

3. For deciding this controversy, the relevant facts of the petition

can be stated as follows:

The petitioner is a citizen of India and is elected Chairman of respondent No.4-the Maharashtra State Haj Committee and is nominated as a representative of respondent No.4 to respondent No.3-Haj Committee of India for the State of Maharashtra-respondent No.1 herein. As per the petitioner, the Government of Maharashtra, vide its Notification No. Haj.2010/C.R. 175/Desk-5, Minorities Development Department, dated 5th September, 2014 has reconstituted the Maharashtra State Haj Committee, Mumbai. The tenure of the said Committee was to expire on 6th May, 2016. Hence, under the provisions of Section 8(1) of the Haj Committee Act, 2002, (hereinafter referred to 'the Act' for short) the Committee was to be reconstituted.

4. Accordingly, in the meeting of the Committee held on 9th February, 2016, the name of the petitioner was suggested for nomination as representative of Maharashtra State Haj Committee to Haj Committee of India. Two other members, present at the meeting, seconded the said motion. No other nomination was suggested by any other member and the motion was adopted unanimously. Since only one nomination of the petitioner came up for consideration, the question of taking formal election for this purpose did not arise and the petitioner was declared elected, unopposed, as a representative of Maharashtra State Haj Committee to

Haj Committee of India. The said decision was accordingly communicated to the Joint Secretary of the State of Maharashtra along with the Minutes of Meeting, which were confirmed in the meeting dated 25.03.2016. The said decision was thereafter communicated to the Union of India through its Secretary (Haj).

5. The Union of India, however, vide its communication dated 12th April 2016 directed Haj Committee of Maharashtra to elect the member other than the petitioner, in place of him, as a member of Haj Committee of India from the State of Maharashtra. The reason given for the same was that the petitioner was previously appointed as member of the Haj Committee of India for two tenures i.e. from 2008-2009 and 2010-2013. Hence, as per the provisions of Section 8(2) of the Haj Committee Act, he was ineligible to be appointed as a member of the Haj Committee of India for more than two terms.

6. It is this communication dated 12th April, 2016 of the Union of India (Haj Ministry), communicated to the petitioner by letter dated 6th May, 2016 by the Government of Maharashtra, which is challenged by the petitioner in this case by submitting that it is totally arbitrary, capricious, malafide and against the provisions of the Haj Committee Act, 2002.

7. According to learned counsel for the petitioner, the

disqualification laid down under Section 8 (2) of the Haj Committee Act pertains to "renomination" of "outgoing member" of Haj Committee of India and not for the new appointee, as in the case of the petitioner. It is urged that respondent No.2 has wrongly interpreted Section 8(2) of the Act, to the effect that the member of Haj Committee of India can be in office for maximum of two terms only. According to learned counsel for the petitioner, the words "two terms" have to be construed to mean, 'continuous two terms without a break'. Here in this case, the petitioner was elected as a member in the year 2008-09 and 2010-13, therefore, much earlier to the election in the year 2016. Hence, the petitioner is not at all an "outgoing member" of the Committee, the term of which has expired on 5th May, 2016.

8. It is further submitted that under Section 51 of the Haj Committee Act, the Union of India-respondent No.2 had no right to issue such a direction invalidating the election of a member or disqualifying a particular member of the State Haj Committee. Hence a plea is made that a writ of mandamus or a writ in the nature of mandamus be issued declaring the communication, issued vide letter dated 6th May, 2016 by respondent No.1 on the basis of communication dated 12th April, 2016 received from respondent No.2 as illegal and bad in law, in consequence respondent Nos.1 to 4 be directed not to take any action as contemplated in the letter dated 6th May, 2016.

9. On behalf of respondent No.1, affidavit of its Joint Secretary is filed on record stating that the action taken against the petitioner is perfectly according to law, considering the very object behind Section 8(2) of the Haj Committee Act. It is submitted that, in view of the said provision, an outgoing member is not eligible for renomination for more than two tenures. In the instant case, the nomination of the petitioner, which is for the third time, being in violation of the provision under Section 8(2), his nomination was rightly not accepted by respondent No.2. Section 51 of the Act is implicit with the powers in the Union of India of giving such direction, in exercise of its powers and performance of its function under the Act, to the Committee or the State Government or the State Committee, as the case may be and such Committee shall be bound to comply with such directions.

10. The learned Additional Solicitor General, while countering the submissions of Mr. Thacker appearing for the petitioner contended that we must not ignore the object and purpose in inserting the provisions like section 8(2) of the Act. If the intent and purpose is that a person who has already held the office as a member of Haj Committee should not again be nominated, he having held this office twice in the past and for nearly four years, such a person should not be renominated. It is immaterial whether he was a member or not in the past. The intent is to give an opportunity to

other eligible candidates and persons for nomination and repetition of the nominee would defeat the purpose. The object is also to suppress a mischief of the same person re-entering the office after some gap. Therefore, an interpretation, which would advance this object and purpose and suppress the mischief should be placed on the provision.

11. According to learned Additional Solicitor General, considering the fact that Section 8(2) of the Act holds a very salutary object, which is, the same member not being reappointed or renominated again and again for more than two terms, allowing the petitioner to continue as a member for the third time will be in violation of the express embargo laid down in Section 8(2) of the Act. Hence, according to learned Additional Solicitor General, the Central Government was perfectly within its right, powers and discretion to reject the nomination of the petitioner as representative of the State of Maharashtra to the Haj Committee of India. The said action being legal and valid, no interference is warranted therein.

12. In the instant case, it is undisputed that the petitioner was elected as member in the year 2008-09 and 2010-13.

13. Now the petitioner is nominated as representative of Maharashtra State Haj Committee on the Haj Committee of India after his nomination was accepted and adopted unanimously. He is the only

nominee. Therefore, he was elected in terms of the minutes of the meeting of the Maharashtra State Haj Committee held on 13th February, 2016.

14. It is in this context that we must note the submission of Mr. Singh the learned Additional Solicitor General. We have before us an Act to establish a Haj Committee of India and State Haj Committees for making arrangements for the pilgrimage of Muslims for Haj and for matters connected therewith. The term "Committee" is defined in Chapter I in section 2 clause (c) to mean the Haj Committee of India constituted under section 3. The term "member" means a member of the Haj Committee of India nominated under section 4 or of a State Haj Committee nominated under section 18, as the case may be, and includes the Chairperson and a Vice-Chairperson. The term "prescribed" is defined in section 2(g) and term "State Committee" is defined in section 2(h). Chapter II is entitled as "Haj Committee of India". This is a committee which is a body corporate having perpetual succession and a common seal with powers as are mentioned in section 2(3) and its headquarters are at Mumbai. Its composition is in terms of section 4 and it consists of three members of parliament in terms of clause (i) of section 4. Nine Muslim members of the committee shall be elected; three from those States sending largest number of pilgrims during last three years and one each from the zones as specified in the Schedule, in such manner as may be prescribed.

Thereafter, there are four persons not below the rank of Joint Secretary to the Government of India nominated by that Government to represent the Ministries of External Affairs, Home, Finance and Civil Aviation and shall be *ex officio* members and seven Muslim members; two members who have special knowledge of public administration, finance, education, culture or social work and out of whom one shall be a Shia Muslim; two women members, out of them one shall be Shia Muslim and three members who have special knowledge of Muslim theology and law, out of them one shall be a Shia Muslim. Therefore, this committee consists of members of Parliament nominated by the Speaker and the Chairman of the Council of States and nine elected Muslim members as specified in section 4(ii) and *ex officio members* and such Muslim members who possess expertise and special knowledge in terms of section 4(iv). The notification of their nomination is to be published in terms of section 5. Their term of office is specified by section 6 and by the proviso to sub-section (1), the term can be extended by the Central Government for the period specified in the proviso. Then comes the office of Chairperson and Vice-Chairperson. Section 7 in that regard reads thus:-

“7. Chairperson and Vice-Chairpersons. - (1) After the publication of the names of members of the Committee under section 5, the Central Government shall convene within forty-five days of such publication the first meeting of the Committee at which the Committee shall elect a Chairperson and two vice-Chairpersons from amongst its members:

provided that a Minister shall not be the Chairperson of

the Committee and ex officio member shall not take part in the election of the Chairperson or of the Vice-Chairpersons.

(2) If the Committee fails to elect the Chairperson or Vice-Chairpersons the Central Government may appoint a member of the Committee to be the Chairperson thereof or Vice-Chairpersons, as the case may be.

(3) The Chairperson shall exercise such powers and discharge such duties as may be prescribed.

(4) The Vice-Chairpersons shall exercise such powers and discharge such duties as may be determined by bye-laws made in this behalf by the Committee:

Provided that till such bye-laws are made, the Vice-Chairpersons shall exercise such powers and discharge such duties as may be determined by an order made by the Chairperson in this regard.

(5) The election of the Chairperson and the Vice-Chairpersons shall be notified by the Central Government in the Official Gazette.

(6) The term of office of the Chairperson and the Vice-Chairpersons, as the case may be, shall be co-terminus with the term of the Committee and no person shall hold office of the Chairperson or the Vice-Chairpersons, as the case may be, for more than two consecutive terms.

(7) Any casual vacancy in the office of the Chairperson or a Vice-Chairperson shall be filled for the remainder of the term in accordance with Sub-section (1) or Sub-section (2), as the case may be."

15. Section 8 of the Act, which is relevant for our purpose, provides for reconstitution of Committee and it reads as follows:

"8. Reconstitution of Committee -

(1) The Central Government shall take or cause to be taken all necessary steps for the reconstitution of a new

Committee at least four months before the expiry of the term, or the extended term, as the case may be, of the Committee.

(2) An outgoing member shall be eligible for renomination on the Committee for not more than two terms.

Provided that not more than fifty per cent, of the members may be re-nominated for a second term in such manner as may be prescribed."

16. A reading of the various sub-sections of this section and harmoniously would reveal that wherever the Legislature has in mind the term of office and to be co-terminus with the term of the Committee and no person shall hold office of the Chairperson or the Vice-Chairpersons, as the case may be, for more than two consecutive terms, then, the intent is spelt out. It is apparent that the office can be held, but not for more than two consecutive terms. In juxtaposition and comparison section 8 and when it talks of re-constitution of committee, at least four months before the expiry of the term or the extended term, as the case may be the Legislature has only stated that an outgoing member shall be eligible for re-nomination of the Committee for not more than two terms. By the proviso, not more than 50% of the members may be re-nominated for a second term in such manner as may be prescribed. The language of sub-section (2) of section 8 refers to "outgoing member". He shall be eligible for re-nomination to the committee for not more than two terms.

17. The word "outgoing" has been defined in the Advance Law

Lexicon by P Ramanatha Aiyar, 3rd Edition Reprint 2007 as something that has gone out. The word is not, however, highly definite in this significance and has upon several occasions been characterised by the courts as large in scope and must always be construed with reference to context and circumstances. It denotes going outward, departing, a person who is laying down an office. The word "outgoing" has been defined in Webster's Third New International Dictionary as going outward, departing, retiring or withdrawing from place or position, something that goes out. The word, therefore, must receive a meaning consistent with the other provisions enabling constitution of the committee. The proviso to sub-section (2) of section 8 does not rule out nomination of the members of the past committee for a second term in such manner as may be prescribed. However, such members should not exceed more than 50%. If an outgoing member as is referred to in sub-section (2) is eligible for re-nomination on the committee for not more than two terms, then, if all the sections in Chapter II read together and harmoniously with their sub-sections, it is evident that a member of the outgoing committee shall be eligible for re-nomination on the committee. However, his renomination is restricted to not more than two terms.

18. If the argument of Mr. Singh is to be accepted, then, the word "outgoing" would mean not a member departing or laying down office, but a member who had at one time held the office. He could have held that

office even in the remote past. He, then, need not be a member of the immediate past committee or the committee whose term has recently come to an end. If that had been the intent, the wording would have been different and to exclude from re-nomination any past member. The Legislature could have excluded any person who held this office not in a recent Committee but one of the past. Therefore, insertion of the word "outgoing" and before the words "member shall be eligible for re-nomination" would indicate that the same is a reference to the committee whose term or extended term has expired or is expiring.

19. It is in these circumstances that we are of the view that whenever the Legislature had in mind a embargo or prohibition, it has specifically carved out the same as in the sub-section (6) of section 7, where it states in no uncertain terms that the term of office of the Chairperson and the Vice-Chairperson, as the case may be, shall be co-terminus with the term of the Committee and no person shall hold office of the Chairperson or Vice-Chairperson, as the case may be, for more than two consecutive terms. Therefore, if such a person is holding office, his term is clear and the words "holding office for not more than two consecutive terms" conveys that if a person holds office of Chairperson or Vice-Chairperson, he shall not hold it for more than two consecutive terms. Holding office for two consecutive terms is, therefore, permitted.

20. It is in these circumstances that we must interpret the provisions in Chapter II and Chapter III enabling constitution of the Haj Committee and the State Haj Committees. These must receive an interpretation which also advances the object and purpose of constituting committees. These committees facilitate and in terms of their functions and duties the pilgrims to take the pilgrimage to Haj. It is for the benefit and welfare of the pilgrims that such committees are put in place at the Centre and the State level. An interpretation which will not create a vacuum in their functioning and working therefore should be placed on these provisions. It is not as if the terms can be disrupted. There is a clear contemplation by law for nomination or for continuation as a member of the committee. However, to urge that any member of the committee and who held such office in the remote past is not eligible for re-nomination would be doing violence to the plain language of section 8(2) and section 22(2) of the Act together with their provisos. That there can be a supersession of this committee is apparent by the provisions of Chapter V and particularly section 36. That these members do not hold an office of profit but are appointed bearing in mind the welfare and wellbeing of the pilgrims is apparent by sections 37, 39, 40, 42 and 43 of the Act. We have not been shown any rule in terms of clause (iv) of sub-section (1) of section 44, which would enable us to take any other view.

21. It is for the above reasons that though we concede to the

Central Government a power to give directions in the event the Haj Committee or State Haj Committees are not properly constituted or it is necessary to issue such directions as would facilitate the welfare of the pilgrims, yet, that power under section 51 cannot be resorted to, to put an end to the term of office of elected member contrary to the provisions of the Act. In other words, the power to issue directions ought to be utilised to further the Act and fully achieve its object and purpose and not to frustrate or defeat it.

22. For arriving at this conclusion, we may and can also derive considerable force from the decision of the Hon'ble Supreme Court of India in the case of *Harbhajan Singh Vs. Press Council of India*¹ wherein the identical controversy was raised for consideration in respect of Section 6(7) of the Press Council Act, 1978. Section 6 of the Press Council Act provides that the Chairman and the other members of the Council shall hold office for a period of three years; while sub-section 7 deals with the qualification or eligibility of its members by laying down that "retiring member shall be eligible for renomination for not more than one term".

23. The identical arguments were advanced in the said case by the Appellant submitting that all that this provision bars is a member holding two terms of the office successively; whereas, according to

¹ (2002) 3 SCC 722

respondent-council the total number of terms for which a member can hold office, whether in succession or otherwise, was two, as the provision makes it permissible for any member to seek renomination for one term only.

24. While dealing with this controversy, the Hon'ble Supreme Court held that as the language used in sub-section 7 of Section 6 is plain and simple and having regard to the connotation of the words used therein i.e. "retiring" and "renomination", it has to be held that, the use of the word "retiring" as qualifying "member", coupled with the use of the word "renomination", clearly suggests that a member is disqualified for being a member for the third time in continuation, in view of his having the office of membership for more than two terms just preceding, one of which terms, the later one, was held on renomination. Such an interpretation does not lead to any hardship, inconvenience, absurdity or anomaly and, therefore, the rule of ordinary and natural meaning being followed cannot be departed from.

25. In the present case also, the wording of Section 8(2) of the Haj Committee Act is plain, simple and just identical to the wording of Section 6(7) of the Press Council Act, 1978. Only difference is that in Section 6(7) the word "retiring" is used. Whereas in the instant case in Section 8(2) the word "outgoing" is used.

26. In this behalf, one can usefully refer to the meaning of the word "retire". The word, once again in Advance Law Lexicon by P Ramanatha Aiyar, 3rd Edition Reprint 2007 is defined to mean to withdraw from office, generally on superannuation, to withdraw from business, to withdraw to or into a place of seclusion, retire from service. It would take all forms of retirement in its fold.

27. The Hon'ble Supreme Court of India has made a very important distinction when such a word as "retiring" has been employed. It has specifically held that the word "retire", "retired" and "retiring" have definite connotation and meaning. The word "retiring director" or "retiring member" has been understood to mean, "retiring by rotation at the meeting", but not "retired".

28. Both, in Section 6(7) of the Press Council Act and Section 8(2) of the Haj Committee Act, the words "retiring" and "outgoing" respectively, are used in *presente* and coupled with the use of the word "renomination", thereby clearly suggesting that, in the instant case also, if the petitioner was being considered for nomination for the third term, in continuation of his earlier two terms, he would not have been eligible. However, as the petitioner was holding the office of the membership in the past in the year 2008-09 and 2010-13, he is definitely not an "outgoing member" at the time of nomination in the year 2016. His nomination was also not in

continuation of his earlier terms, hence it is not "renomination".

29. In view thereof, it has to be held that the petitioner was and is very much eligible for nomination to the membership of the Haj Committee of India. Hence, the impugned communication dated 6th May, 2016, issued by Respondent No.1, based on the communication dated 12.04.2016, issued by Respondent No.2, holding the Petitioner ineligible and thereby rejecting his nomination to the Haj Committee of India as representative of Haj Committee of State of Maharashtra is illegal, bad in law and hence liable to be quashed and set aside.

30. In consequence, the Writ Petition is allowed. The Rule is made absolute in the above said terms, holding the petitioner's nomination as valid, being made in accordance with law.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [S.C. DHARMADHIKARI, J.]