

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on: 08th January, 2016

+ LPA 861/2015 & CM Nos.28790/2015, 28791/2015 & 28793/2015

RANA PARVEEN SIDDIQUI AND ANR Appellant
Through: Mr.Sudarshan Rajan and Md.Qamar
Ali, Advocates

Versus

UNION OF INDIA AND ORS Respondents
Through: Mr.Akshay Makhija, CGSC with
Ms.Mahima Bahl, Advocate for R-1
& 3.
Mr.Santosh Kumar Tripathi, ASC
with Mr.Wasim S.Qadri and
Ms.Shilpa Dewan, Advocates for
GNCTD.

AND

+ LPA 862/2015 & CM Nos.28797/2015, 28801-03/2015

RANA PARVEEN SIDDIQUI Appellant
Through: Mr.Sudarshan Rajan and Md.Qamar
Ali, Advocates

Versus

THE GOVT OF NCT OF DELHI Respondents
Through: Mr.Santosh Kumar Tripathi, ASC
with Mr. Wasim S. Qadri and
Ms.Shilpa Dewan, Advocates for
GNCTD.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

J U D G M E N T

G.ROHINI, CHIEF JUSTICE:

1. These two appeals are preferred against the order dated 18.11.2015 passed by the learned Single Judge declining to grant interim relief pending W.P.(C) No.10047/2015 and W.P.(C).4226/2015.
2. We have heard the learned counsel appearing for both the parties.
3. In exercise of the powers conferred under Section 13 and Section 14 of the Waqf Act, 1995 (hereinafter referred to as 'the Act'), the Government of National Capital Territory of Delhi constituted Delhi Waqf Board (for short referred to as 'the Board') vide Notification dated 27.12.2011.
4. In terms of Section 14(1)(b) of the Act, the said Board consisted four elected members from the electoral college constituted for each category mentioned therein, namely, one member of Parliament from the State, one member of the State Legislature, one member of Delhi State Bar Council and *Mutawalli* apart from three members nominated by the State Government in terms of Section 14(1)(c) of the Act.
5. The appellant herein falls under the category specified in Section 14(1)(b)(iii) i.e. Muslim member of the Bar Council. Initially, the elected member of the Legislative Assembly was the Chairperson of the Board.

However, due to the dissolution of the Delhi Legislative Assembly on 04.01.2014, he ceased to hold office. The appellant states that in the meeting of the Board held on 20.01.2015, she was unanimously elected as Chairperson by four out of six members in terms of sub-Section (8) of Section 14 of the Act.

6. While so, elections were held to the Delhi Legislative Assembly. Apprehending that the newly elected Muslim member of the State Legislature falling under the category Section 14(1)(b)(ii) may be appointed as Chairperson of the Board, the appellant herein filed W.P.(C) No.4226/2015 in April, 2015 seeking a direction to issue a *mandamus* directing the respondent/Government of NCTD to issue a notification of her election as Chairperson without further delay. This court by order dated 29.04.2015 directed that status quo vis-à-vis the position of the Chairperson be maintained.

7. During the pendency of the said writ petition, by Notification dated 08.10.2015 issued by the Government of NCTD in exercise of the powers conferred under Section 99(1) of the Waqf Act, the Delhi Waqf Board has been superseded with immediate effect for a period of six months declaring that in accordance with Section 99(2)(b) of the Act, all the powers and duties of the Delhi Waqf Board shall be exercised and performed by the Secretary (Revenue), Government of NCT of Delhi from the date of the said notification. Challenging the said Notification dated 08.10.2015, W.P.(C) No.10047/2015 has been filed by the Delhi Waqf Board contending *inter alia* that the impugned supersession without notice to show cause is illegal. The further contention is that though the impugned notification dated

08.10.2015 is stated to have been issued "by order and in the name of Lieutenant Governor of NCTD", in fact the file was not sent to the Lieutenant Governor of Delhi and thus, the impugned notification is in nullity being contrary to the provisions of Section 99 (1) of the Waqf Act, 1995 read with Rule 2(1)(n) and (p) of the Delhi Waqf Rules, 1997.

8. When W.P.(C) No.10047/2015 was taken up by the learned Single Judge on 05.11.2015 along with W.P.(C) No.4226/2015, it was represented by the respondents that supersession was effected because out of total seven members comprising the Delhi Waqf Board, five members had resigned and that three vacancies are required to be filled up by nomination by the State Government and the remaining two are to be filled up by holding an election from amongst the Muslim members of Parliament and Muslim members of Legislative Assembly of Delhi.

9. On 18.11.2015, the learned Single Judge while directing the respondent Nos.1 to 3 in W.P.(C) No.10047/2015 i.e. the Union of India and the Government of NCT of Delhi to file their respective counter affidavits, declined to grant interim stay of the impugned Notification dated 08.10.2015 observing that the Board which is to comprise of seven members cannot be allowed to function when five of its members are unwilling to function. Having regard to the fact that out of the seven members of the Board, five had submitted their resignations and the notification of supersession has been challenged by the only remaining two members, it was also observed that it is not in public interest to allow the remaining two members to function as the Waqf Board. The learned Single Judge also declined to

extend the interim order of status quo granted earlier in W.P.(C) No.4226/2015.

10. Aggrieved by the same, the present appeals have been filed.

11. It is vehemently contended by the learned counsel appearing for the appellants that the supersession of the Board without providing an opportunity to the Board to show cause why it should not be superseded is arbitrary and illegal apart from being violative of the mandatory requirement under Section 99(1) of the Act. It is also contended that the supersession under Section 99(1) of the Act can be ordered only on the grounds specified thereunder and since none of the said contingencies have arisen, the impugned supersession is unwarranted and illegal.

12. It may, at the outset, be mentioned that the main petitions are yet to be heard on merits by the learned Single Judge. Admittedly, the petitions stand posted to 01.02.2016. The learned Single Judge declined to grant the interim relief in view of the admitted fact that only two members are left in the Board after the resignation of five members and that the quorum for any meeting of the Board is five members and therefore it is not in public interest to allow the Board to function only with two members. We do not find any justifiable reason to hold that the learned Single Judge has committed any error in declining to stay the notification of supersession impugned in the writ petition in the peculiar facts and circumstances of the case.

13. The contention of the appellant that the impugned supersession is not in conformity with the statutory provisions needs consideration in the main

petitions after the counter affidavits are filed by the respondents. Hence, the interference by us at this stage is not warranted on any ground whatsoever. However, further steps if any taken by the respondents pursuant to the impugned notification dated 08.10.2015 shall be subject to result of the writ petitions.

14. Both the appeals are accordingly disposed of. All pending applications shall also stand disposed of.

CHIEF JUSTICE

JAYANT NATH, J

JANUARY 08, 2016
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