

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 551 OF 2017

Durrani Abdullah Khan S/o
Durrani A. Latifkhan
Age: 51 years, Occ.: Social work
& Member of Maharashtra State
Board of Waqf,
R/o: Fakharabad Mohalla, Pathri,
Tq. Pathri, Dist. Parbhani. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Minority Development Department,
Mantralaya, Mumbai-32.
2. Maharashtra State Board of Wakf,
Through its Chief Executive Officer,
Panchakki, Aurangabad.
3. Ajmatulla Rahimatulla Qureshi,
Age : Major, Occu. Service,
R/o Office of District Legal Services
Authority, Nanded. .. Respondents

Shri V. J. Dixit, Senior Advocate i/by Shri Sushant V. Dixit,
Advocate for the Petitioner.

Shri P. S. Patil, Addl.G.P. for the Respondent No. 1.

Shri H. I. Pathan, Advocate for the Respondent No. 2.

Shri R. S. Deshmukh, Advocate for the Respondent No. 3.

**CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.**

Closed for Judgment on : 02.03.2017

Judgment Pronounced on : 05.05.2017

JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioner assails the Government Resolution dated 03.01.2017 thereby appointing the respondent No. 3 on deputation as Chief Executive Officer of the respondent No. 2/the Maharashtra State Board of Wakf, Aurangabad (herein after referred as to the "Board" for the sake of brevity).

3. Mr. Dixit, the learned senior advocate for the petitioner during the course of his erudite arguments put forth following propositions.

(i) The Chief Executive Officer of the respondent No. 2/Board has to be appointed from the panel of names recommended by the Board as required U/Sec. 23 of the Wakf Act 1995 (for short hereinafter referred as "Act"). Pursuant thereto the board had recommended three names on 24.08.2016. The said recommendation is still pending and no decision has been taken on the said recommendation.

(ii) Without taking any decision on the recommendations, the respondent No. 1 directed the respondent No. 2 to hold the meeting of the board and appoint the respondent No. 3 by letter dated 27.10.2016. The respondent held meeting on 04.11.2016 and passed the resolution that the board may consider on any other recommendation made by the respondent No. 1, only after the respondent No. 1 takes decision in respect of recommendation made by the respondent No. 2. Without considering the recommendations of the respondent No. 2, the respondent No. 1 appointed the respondent No. 3 as Chief Executive Officer of the respondent No. 2 on 03.01.2017.

(iii) While appointing the respondent No. 3 as Chief Executive Officer of the respondent No. 2, the respondent No. 1 did not make any consultation with the respondent No. 2 as is required under Rule 7 of the Wakf Rules. The appointment of the respondent No. 3 is also bad on account of lack of consultation. As per Rule 7 of the Wakf Rules, consultation is mandatory. The learned senior advocate relies on the judgment of the Division Bench of this Court in a case of **Sopanrao Onkarrao Sathe and another Vs. State of Maharashtra and others** reported in **2011(1) Mh. L. J. 739** and also the judgment of the Apex Court in a case of **Nirothilal Gupta and others Vs. Union**

of India and others reported in *1993 Supp. (1) SCC 731*.

(iv) It is further contended by the learned senior advocate that, Sec. 23 of the Act gives powers to the State Government to appoint full time Chief Executive Officer, but the same has to be from the panel of two names suggested by the Board, who shall not be below the rank of Deputy Secretary to the State Government and in case of non availability of Muslim Officer of that rank, a Muslim officer equivalent of the rank may be appointed on deputation. According to the learned senior advocate all Chief Executive Officers are required to be appointed on deputation only. The word 'and' appearing in the section will have to be read conjunctively. Whether the person is of the rank of Deputy Secretary or is of equivalent rank, in both the cases, the State Government has to appoint a full time Chief Executive Officer only from the panel of two names suggested by the Board. The learned counsel relies on the judgment of the apex Court in a case of M. Satyanarayana Vs. The State of Karnataka and anothe reported in *AIR 1986 SC 1162*.

(v) As the appointment of the respondent No. 3 is not on the recommendation of the respondent No. 2, nor in consultation with the respondent No. 2, the appointment of

the respondent No. 3 as Chief Executive Officer of the respondent No. 2 on Deputation is bad in law and deserves to be set aside.

04. The learned Additional Government Pleader for the respondent No. 1 submits that, out of three names recommended by letter dated 24.08.2016 by the Chairman, one Smt. Nasim Bano Nazir Patel, did not possess requisite qualification. The report regarding name of Mohammad Raza Khan and Qureshi Naimoddin Abdul were still awaited and thus, the board was directed to consider the name of the respondent No. 3 and was asked to pass resolution. A resolution to that effect was passed by the respondent No. 2/Board. Thereafter only the respondent No. 3 is appointed. As far as name of Razakhan is concerned, the Urban Development Department vide its letter dated 01.07.2016 informed that the decision has been taken to initiate departmental enquiry against him. The question of appointment of full time Chief Executive Officer was raised in Writ Petition No. 1745 of 2016 and Writ Petition No. 125 of 2016. In the aforesaid circumstances, the respondent No. 1 was stuck in following situation.

(1) The Chairman of the Maharashtra State Board of Wakf has suggested three names vide his letter dated 24/08/2016. This was not a recommendation as contemplated under the provisions of Sec. 23(1) of the Waqf Act, 1995.

(2) Out of the three names recommended, Smt. Nasimbano Nazir Patel was not fulfilling criteria and therefore could not be selected.

(3) A departmental enquiry was proposed under Rule No. 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 against Mr. Raza Khan, Deputy Director Town Planning, an officer, whose integrity is under doubt and against whom a departmental enquiry under serious charges is proposed, cannot be held fit to be appointed to such an important and sensitive post.

(4) In case of Qureshi Naimuddin, despite several attempts, much needed information regarding consent of the office to work on the said post, his application to that effect, confidential reports of last five years, service details and information regarding whether any departmental/judicial enquiry is proposed/pending against him, and a report regarding his integrity was not received from his parent department which was indicative of non-willing of that department to spare the said officer. (Later on, the Rural Development Department, vide its letter dated 29/12/2016 which was received in the office of Respondent No. 1 on 04/01/2016, has informed that it is not possible for them to make available the services of Shri Qureshi Naimuddin Abdul Rashi, Project Director.

05. It is submitted that, the consultation of the board is required, when the appointment is to be made under clause (1) i. e. from a panel of two names of the Muslim officers suggested by the board and which shall not be below the rank of Deputy Secretary. However, when a Muslim officer of that rank is not available, then it is the prerogative of the State Government to appoint Muslim Officer of equivalent rank on deputation as per clause (2) and in that event consultation of the board is not required. However, still the respondent No. 1 had consulted the board at the time of appointment of the respondent No. 3 also. There is derth of Muslim Officers in the rank of Deputy Secretary. Very few are eligible or not consenting for appointment and in order to avoid further complication rules were suitably amended in the year 2013 to enable the State Government to appoint Judicial Officers on the post in consultation and on recommendation of the Hon'ble High Court. Thus, out of three names recommended by the Chairman of the Board, two were not eligible and not fit and as far as third one is concerned, the office was not ready to relieve him. Thereafter following the procedure U/Sec. 23 of the Act read with clause (a) of Sub Rule (1) of Rule 7 of the Maharashtra Wakf Rules, the respondent No. 1 vide Government Resolution dated 03.01.2017 has appointed the respondent No. 3 who was working as Civil Judge Senior Division being the only available Muslim officer of the rank as provided by provision of Sec. 23 of the Act as Chief

Executive Officer of the respondent No. 2 for a period of three years from the date of publication of notification of appointment or until further orders whichever is earlier. The consultation has been properly done. To buttress his submissions that second part of Sec. 23 operate independently, the learned Addl. G. P. relies on the judgment of the Apex Court in a case of ***Vidyacharan Shukla Vs. Khubchand Baghel*** reported in ***1964 AIR (SC) 1099***. So also to show that, process of consultation has been followed, the learned Govt. Pleader relies on the ***judgment dated 06.10.1993*** of the Apex Court in a case of **Supreme Court Advocates-on-Record Association and another Vs. Union of India** in ***Writ Petition (Civil) No. 1303 of 1987***.

06. Mr. R. S. Deshmukh, the learned counsel for the respondent No. 3 submits that, the word "and" is normally conjunctive and the word or is normally disjunctive. However, wherein use of such word and/or produces any unintelligible or absurd result, the Court can read word "and" as "or" and vice versa. The learned counsel relies on the judgment of the Apex Court in a case of **Spentex Industries Limited Vs. Commissioner of Central Excise** reported in ***(2016) 1 SCC 780*** and another judgment of the Apex Court in a case of **Maharishi Mahesh Yogi Vedic Vishwavidyalaya Vs. State of Madhya Pradesh and others** reported in ***(2013) 15 SCC 677***.

7. We have considered the submissions canvassed by the learned counsel for respective parties.

8. The appointment of the respondent No. 3 as a Chief Executive Officer of the respondent No. 2/board by the respondent No. 1 is assailed basically on the count of non adherence to Sec. 23 of the Act.

9. Before we proceed to dilate on Sec. 23 of the Wakf Act, it would be necessary to re-produce provisions of Sec. 23 which existed prior to the amendment and as exists after amendment. The same would be necessary to understand the purport of Sec. 23 of the Act as it exists.

THE WAQF ACT, 1995

1.
2.

Sec. 23 Prior to amendment

23. Appointment of Chief Executive Officer and his term of office and other conditions of service.-- (1) There shall be a Chief Executive Officer of the Board who shall be a Muslim and shall be appointed by the State Government, in consultation with the Board by notification in the Official Gazette.

(2) The term of office and other conditions of service of the Chief Executive Officer shall be such as may be prescribed.

(3) The Chief Executive Officer shall be ex-officio Secretary of the Board and shall be under the administrative control of the Board.

Sec. 23 as amended in the year 2013.

23. Appointment of Chief Executive Officer and his term of office and other conditions of service.--[(1) There shall be a full-time Chief Executive Officer of the Board who shall be a Muslim and shall be appointed by the State Government, by notification in the Official Gazette, from a panel of two names suggested by the Board and who shall not be below the rank of Deputy Secretary to the State Government, and in case of non-availability of a Muslim officer of that rank, a Muslim officer of equivalent rank may be appointed on deputation.]

(2) The term of office and other conditions of service of the Chief Executive Officer shall be such as may be prescribed.

(3) The Chief Executive Officer shall be *ex-officio* Secretary of the Board and shall be under the administrative control of the Board.

(Maharashtra State Wakf Rules)

1.
2.

Rule 7 : Term of office and other conditions of service of the Chief Executive Officer :

(1) Appointment to the post of Chief Executive Officer under Sub-Section (2) of Section 23 of the Act shall be made by the consultation with the Board :

(a) By transfer on deputation of a person holding a post not below the rank of Deputy Secretary to Government in any department of Mantralaya; or Additional Collector at District level; or

(b) By Re-appointment of a suitable retired Government Officer, who has held a post not below the rank of Deputy Secretary to Government at the time of his retirement :

Provided that, a person, who has attained the age of sixty years, shall not be eligible

for appointment under this clause.

(2) The appointment under Sub-rule(1) shall be for a period not exceeding three years at a time, which may, on the recommendation of the Board, be further extended so, however, that the total period of appointment does not exceed five years:

Provided that, Government may recall the Officer who is appointed on deputation at any after consultation with the Board.

(3)(a) The person appointed under clause (a) of sub-rule (1) shall be entitled to draw pay in his own pay-scale alongwith such other allowances as may be fixed by the State Government from time to time.

(b) The person appointed under clause (b) of sub-rule (1) shall be entitled to draw such pay and allowances as may be admissible to him, under the relevant rules, made by the State Government.

(4) The person appointed as the Chief Executive Officer shall possess adequate knowledge of Urdu language.

10. The Wakf (Amendment) Act 2013 has received the assent of the President on 20th September, 2013 and published in the Gazette of India on 23rd September, 2013.

11. Sec. 23 as it existed prior to the amendment of the year 2013 empowered the State Government to appoint a Chief Executive Officer, who shall be a Muslim in consultation with the board. However, after the amendment to Sec. 23 in the Wakf Act 1995 in the year 2013 rigor of consultation of the board has been done away with. However, the State Government is empowered

to appoint Chief Executive Officer of the Board from panel of two names suggested by the board and who shall not be below the rank of the Deputy Secretary to the State government and in case non availability of Muslim officer of that rank, a Muslim Officer of equivalent rank may be appointed on deputation. Sec. 23 as it exist after amendment does not require the State government to consult with the board while appointing a full time Chief Executive Officer. It is for the reason that, the State Government has to appoint a Chief Executive Officer from the panel of two names suggested by the Board. It is because the State Government's powers have been restricted to the appointment of the Chief Executive Officer from the panel of two names suggested by the Board, the State is not required to consult the board. Prior to the amendment as the State Government could appoint any person as a Chief Executive Officer in that case consultation of the board was pre-requisite. However, after amendment in the year 2013, the State Government now can appoint the Chief Executive Officer of the board from the names recommended by the Board.

12. The Chief Executive Officer is *Ex-officio* Secretary of the Board and is under the administrative control of the Board and that is why he is required to be appointed from the panel of two names suggested by the board. The tenure of the Chief Executive Officer is of three years and cannot be more than five years. So also a person to be appointed cannot be more than 60 years of

age. As such a person who is appointed as a full time Chief Executive Officer of the Board, whether he is of the rank of the Deputy Secretary and above and in a case of non availability of the Muslim officer of that rank a Muslim officer of equivalent rank. Such officers will have to be appointed on deputation. As such, the expression may be appointed on deputation appearing in Sec. 23 will apply to the persons who are not below the rank of Deputy Secretary and even to a person of equivalent rank in case of non availability of a Muslim officer of the rank of Deputy Secretary and above. In both the contingencies the Chief Executive Officer will have to be appointed on deputation and that is why the Legislature has used the word "and" between both the contingencies.

13. In Sec. 23 of the Wakf Act, two contingencies are spelt out (i) the Chief Executive Officer of the Board shall be a Muslim and shall be appointed by the State Government by notification in official Gazette from the panel of two names suggested by the Board and who shall not be below the rank of Deputy Secretary to the State Government and (ii) in case of non availability of Muslim Officer of that rank, a Muslim Officer of equivalent rank may be appointed on deputation. Both these contingencies are conjoined by word "and".

14. The word "and" is normally conjunctive and word "or" is normally disjunctive. The word "and" is required to be given its

literal meaning. It is only if the use of word "and" conjunctively produces unintelligible or absurd result, then the Court has the power to read the word 'or' as 'and' and vice versa to give effect to the intention of the legislature. The interpretation has to depend on the text and the context. The words normally are be read in their ordinary, natural and grammatical meaning. The word 'or' as 'and' and 'and' as 'or' in a statute are read unless the same is obliged to do so. Reading of the word 'or' as 'and' and 'and' as 'or' is not to be resorted to unless some other part of the same statute or the clear intention of it requires to be done.

15. If we read the provisions of Sec. 23 prior to amendment, it required appointment of Chief Executive Officer by the State to be made in consultation with the board. By virtue of amendment the aspect of consultation is not required, however, the appointment is to be made by the State Government of the Chief Executive Officer of the board from the panel of two names suggested by the board. It is prerogative of the board to suggest two names to the State and the State Government is obliged to appoint a full time Chief Executive Officer of the Board from the panel of two names suggested by the board and that is why the aspect of consultation does not find place in the amended provision.

16. To read the provision in the manner that if a person not below the rank of deputy secretary to the State Government is

not available, then the State Government may appoint any Muslim Officer of equivalent rank without getting two names from the board, would be doing violence to the language of the word "and" appearing between two parts of Sec. 23(1) of the Wakf Act. Whether the person to be appointed as a Chief Executive Officer is a person not below the rank of Deputy Secretary and in case of non availability of such a Muslim officer of that rank, a Muslim officer of equivalent rank is to be appointed, the names will have to be suggested by the board. There is one more reason for interpreting it in that manner. The Chief Executive Officer is under the administrative control of the board. The Chief Executive Officer has to implement the directions given by the Board. It also has to exercise the function delegated to him by the board. The Board should be in a position to repose faith in Chief Executive Officer. The aspect of consultation has been removed by amendment to Sec. 23 of the Act and the powers of the State Government in appointing full time Chief Executive Officer are limited from the panel of two names suggested by the board. The said panel of two names suggested may be the persons not below the rank of Deputy Secretary or in case of non availability of persons of the rank of Deputy Secretary, a person of equivalent rank. Whether the person appointed is not below the rank of Deputy Secretary or of a equivalent rank, he will have to be appointed on deputation, because the Chief Executive Officer to be appointed as per Rule 7 cannot be more than 60 years of age at the time of appointment, his tenure would be

three years or at the most five years.

In the light of the above discussion, it will have to be held that, the word "and" between both the contingencies specified in Sec. 23 of the Act, will have to be read as conjunctive.

17. Though Rule 7 lays down that appointment of Chief Executive Officer is by the State in consultation with the board the same was in consonance with Sec. 23 of the Act as it stood prior to amendment. On amendment to Sec. 23 of the Act, the aspect of consultation does not find place in Sec. 23 of the Act, instead the State Government is required to appoint full time Chief Executive Officer only from the names suggested by the board. Rules are required to be subservient to the Act and the Rules have to supplement the statute and not supplant it. It appears that, after amendment made to Sec. 23 of the Act, the said rule has not been effectively amended to bring it in tune with Sec. 23 to the extent of non requirement of consultation.

18. In the present case, the name of the respondent No. 3 was not suggested by the board. If the names suggested by the board were of the persons not competent to be appointed, then the State could have called for other names from the Board and ought to have appointed a full time Chief Executive Officer from and amongst the names suggested by the Board. Of course, if some time is spent in it, then modalities can be workout for appointing

incharge Chief Executive Officer in the interregnum.

19. Considering the fact that, the name of the respondent No. 3 was not suggested by the Board, we pass following order.

O R D E R

- (i) The Board may suggest two names of the persons eligible to be appointed as full time Chief Executive Officer as required U/Sec. 23 of the Wakf Act and on receipt of the said names, the State Government may appoint any one eligible person from the said panel of two names suggested by the board as full time Chief Executive Officer preferably within two months of the receipt of the names from the Board.
- (ii) Till the full time Chief Executive Officer is appointed as observed in Clause (i) above, the respondent No. 3 shall continue to act as Chief Executive Officer.
- (iii) Rule accordingly made absolute in above terms. No costs.

Sd/-

[K. L. WADANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]