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

**WRIT PETITION NO. 7752 OF 2016
WITH CA/10915/2016 IN WP/7752/2016 WITH CA/12146/2016 IN
WP/7752/2016**

**SYED JAMIL AHMED JANIMIYAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**...
Advocate for Petitioner : Miss Talekar P.S.
Mr.V.J.Dixit, Sr.Counsel as a Spcial Counsel for
Respondent-State.
Mr.V.D.Salunke, Adv. For R.5.
...**

**CORAM : S.C.DHARMADHIKARI &
MANGESH S. PATIL,JJ.**

DATE : 06/07/2017

PER COURT :-

1] The petitioner is aggrieved and dissatisfied with the order passed on 2nd July 2016 by the respondent no.4, copy of which is annexed as Exh.Z-4 to the petition.

2] This order came to be passed by the State of Maharashtra through the Department of Minority Development..

3] This order according to the petitioner seeks to remove him as a Member of the Wakf Board.

4] Our attention is invited to Section 20 of the Wakf Act, 1995. That Section reads as under :

“20. Removal of Chairperson and member –
 (1) The State Government may, by notification in the Official Gazette, remove the Chairperson of the Board or any member thereof if he -

(a) is or becomes subject to any disqualifications specified in section 16; or

(b) refuses to act or is incapable of acting or acts in a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the Wakfs;

(c) fails in the opinion of the Board, to attend three consecutive meetings of the Board, without sufficient excuse.

(2) Where the Chairperson of the Board is removed under sub-section (1), he shall also cease to be member of the Board. “

5] Though it is not conceded by Miss. Talekar appearing for the petitioner that this Provision could have been invoked and in the teeth of the order passed in civil proceeding, alternatively and without prejudice it is urged that even this power which is to be exercised is drastic in nature. It is of removal of Chairman and Member. The State Government by sub-section 1 has a discretion to remove the Chairperson of the Board or any Member thereof by issuance of notification in the official gazette if he interalia, refuses to act or is incapable of acting or acts in a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the Wakfs.

6] According to Miss.Talekar, this presupposes that the State must record a satisfaction that the party like the petitioner has either refused to act or is incapable of acting or acts in the manner which the State Government, after hearing the explanation that he may offer considers to be prejudicial to the interests of the Wakfs. If it is a

later part of this clause(b) of sub-section 20 then, there is no opportunity ever offered to submit explanation. This presupposes that the principles of natural justice are inbuilt and ought to be read into this provision. Since there was no hearing to the petitioner and no opportunity to controvert any of the allegations and charges, the order suffers from a patent illegality and serious infirmity.

7] Upon such a submission, we called upon Mr.V.D.Dixit, learned Senior Counsel appearing on behalf of the State and the Wakf Board, as to whether the State of Maharashtra is ready and willing to grant a personal hearing to the petitioner and given his apprehension that he has a term of nine months which is shortly coming to an end, expeditiously and pass a reasoned order.

8] Mr.Dixit sought time in the morning session to take instructions. At his request, we posted the matter at 4.30 p.m. On taking instructions, Mr.Dixit makes a statement that the petitioner can appear before the Minister of Minority Development Department, Government of Maharashtra, Mantralaya, Mumbai on **11th July, 2017** and the concerned Minister will pass an order on or before 31st July 2017.

9] It is stated by Mr.Dixit that the petitioner can raise all contentions including based on the grounds in this Petition and the Minister shall pass a speaking order.

10] In view of this submission made on instructions by Mr.Dixit, we dispose of this Writ Petition with the following order and directions :

A] In view of the submission of Mr.Dixit, the order passed on 2nd July 2016 does not survive.

B] The petitioner would be heard on the footing that all the allegations in the impugned order are in the nature of show cause notice and the petitioner cannot insist on a show cause notice being issued separately to him.

C] The petitioner can offer an explanation in terms of the legal provisions without prejudice to all his rights and contentions including on the point of jurisdiction and maintainability of the proceeding.

D] The Minister will pass speaking order dealing with all these objections and explanations and while passing the order, he will not be influenced by any earlier observations, findings and conclusions. The petitioner must cooperate with the Minister in disposal of the proceeding by not seeking any unnecessary adjournment. Before the petitioner makes oral submissions he may be allowed to inspect the records by the Wakf Board and equally by the State.

[E] Once the impugned order does not survive, it goes without saying that the petitioner shall be treated as a Member of the Wakf Board but given the nature of the proceeding and in the peculiar facts and circumstances of the case, he shall not alienate, transfer or dispose of any of the Wakf properties till the Minister passes the order.

11] We clarify that we expressed no opinion in the rival contentions of the parties. Writ Petition is disposed of. In view of disposal of Petition, Civil Application stands disposed of.

(MANGESH S. PATIL,J.)

(S.C.DHARMADHIKARI,J.)

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