

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 29143 of 2017

Order:

Heard learned Senior Counsel Sri Vedula Venkata Ramana appearing for the petitioner, learned Government Pleader for the respondents 1 and 2, learned Sanding Counsel for the respondents 3 and 4 and learned counsel for the fifth respondent.

The petitioner states that he is a Mutawalli of Wakf Institution falling under Section 14(1)(iv) of the Wakf Act, 1995 (for short 'the Act') and his name is found as one of the voters in the electoral roll published by the Election Authority. He filed the nomination for the post of member of Wakf Board before the Election Officer on 24.08.2017 along with five other candidates including the fifth respondent. The nomination of the petitioner as well as that of the fifth respondent was accepted by the Election Officer in spite of raising an objection by the petitioner with regard to acceptance of nomination of the fifth respondent. In those circumstances, he filed the present Writ Petition challenging the action of the third respondent, Election Officer in accepting the nomination of the fifth respondent.

The Government issued an election schedule under G.O.Ms.No.31, Minorities Welfare (IDM) Department, dated 10.08.2017, giving the tentative schedule of elections for issuance of notification and as per the same the schedule reads as follows.

"TENTATIVE SCHEDULE OF ELECTIONS FOR ISSUANCE OF NOTIFICATION

- (i) Publication and Display of draft Electoral Roll on the Notice Board of Election Authority and A.P. State Waqf Board: 11.08.2017
- (ii) Last date for filing claims/objections before the Election Authority i.e., Ex-officio Principal Secretary to Government, Minorities Welfare Department: 21.08.2017

- (iii) Final Publication of Electoral Roll: 23.08.2017
- (iv) Last date for filing nomination before the Election Officer for above two categories at the office of A.P. State Waqf Board, 4th floor, Imdad Ghar, Vijayawada (Time: from 11.00 AM to 04.00 PM): 24.08.2017
- (v) Scrutiny of nominations and publication of valid nominations on the Notice Board of A.P. State Waqf Board: 28.08.2017
- (vi) Withdrawal of Nominations: 29.08.2017 (03.00 PM)
- (vii) Finalization of Nominations: 29.08.2017 (05.00 PM)
- (viii) Date of Polling: 31.08.2017 (from 11.00 AM to 04.00 PM) Place of Polling: Moti Mosque, Shadi Khana, Chitti Nagar, Vijayawada.
- (ix) Date of counting and declaration of results: 31.08.2017 (05.00 PM)”

The nomination was filed by the petitioner as well as by the fifth respondent within the time prescribed, but the issue in the present Writ Petition is with regard to acceptance of the nomination of the fifth respondent.

Learned Senior Counsel appearing for the petitioner submits that the Andhra Pradesh State Wakf Board, by proceedings dated 12.04.2016, appointed the fifth respondent as Mutawalli along with another Janab Shaik Mustafa as joint Mutawalli and, hence, as per the definition in Section 3(i) of the Wakf Act, 1995, there shall be only one Mutawalli eligible to be included as a voter in the voters list and entitled to file nomination in the elections.

Learned counsel appearing for the fifth respondent submitted that the joint Mutawalli gave his consent to the fifth respondent to represent the Wakf institution pursuant to the office order issued by the Andhra Pradesh State Wakf Board on 27.02.2017, under Clause 4(a)(i) of the Andhra Pradesh State Wakf Board Conduct of Election Rules, 1996 and, accordingly, the fifth respondent is entitled to represent the Wakf institution and his name was included in the list of voters published on

11.08.2017. He further submitted that if the petitioner had any objection for inclusion of the name of the fifth respondent, he should have raised an objection after publication of draft electoral roll and having failed to raise any objection it is not open to the petitioner to raise the objection when the fifth respondent filed his nomination.

There is no dispute that the fifth respondent was appointed as a Mutawalli along with another Joint Mutawalli and the joint Mutawalli executed a letter on 25.07.2017 authorizing the fifth respondent to represent the Wakf institution. Rule 4 of the Andhra Pradesh State Wakf Board Conduct of Election Rules, 1996 reads as follows:

“4. Electoral roll:- (1) The Election authority shall obtain the list of persons eligible to vote in the categories (i), (ii), (iii) and (iv) of Section 14(i)(b) of the Act, from the Officers specified in sub-rule (2) below; and the list of such persons subject to any modification as per Rule 5 below, shall form the Electoral College for that category and the persons whose name finds place in the list shall be the electors for that category of members.

(2) The lists shall be obtained-

- (a) for category 14(1)(b)(i) from the Secretary, Andhra Pradesh State Legislative Assembly.
- (b) for category 14(1)(ii) from the Secretary, Andhra Pradesh State Legislative Assembly;
- (c) for category 14(1)(iii) from the Secretary, Bar Council of Andhra Pradesh.
- (d) for category 14(1)(b)(iv) from the Secretary, Andhra Pradesh State Wakf Board.

4A. For the purpose of preparing the Electoral roll under clause (d) of Rule 4, which shall constitute the electoral college, the Chief Executive Officer-cum-Secretary of the Wakf Board shall give one week time to the Mutawalli, or as the case may be, to the Managing Committee to elect:-

- (i) one from among themselves to be the representative of such Wakf institution in case where a Wakf institution is having more than one Mutawalli; and
- (ii) (x x x)

Provided that if the Wakf institution fails to so elect and communicate to the Chief Executive Officer-cum-Secretary, the

senior Mutawalli in the case of a Wakf institution having more than one Mutawalli and the President of the Managing Committee where a Wakf institution is being administered by such committee shall be deemed to have been elected; and the same shall be incorporated in the electoral roll for the purpose of constituting the electoral college.”

In view of the availability of more than one Mutawallis and committee of members managing the institutions, only one person can be nominated and accordingly the fifth respondent was selected to represent the Wakf institution. His name was also included in the draft list of voters and as rightly submitted by the learned counsel for the fifth respondent, no objection was taken on the inclusion of his name in the draft voters list. The final publication of electoral roll took place on 28.08.2017 and thereafter also at no point of time objection was raised. But, when the fifth respondent filed the nomination it appears that the petitioner raised an objection before the Election Officer and it is for the Election Officer to decide either to accept the nomination or reject the same in accordance with law. If a nomination is improperly accepted or rejected, the aggrieved party has an alternative remedy. At this juncture, it is not for this Court to interdict the election process as the petitioner has an alternative remedy to challenge the election by raising an objection with regard to acceptance of nomination.

Learned Senior Counsel for the petitioner relied on a decision reported in K. Venkatachalam v. A. Swamickan¹, and the said case deals with a case which was filed after declaration of result relating to a disqualification incurred by the petitioner therein.

In the instant case, as stated above, the name of the fifth respondent was included in the voters list and *prima facie* he is entitled to

¹ (1999) 4 SCC 526

file his nomination. In the circumstances, this Court sees no ground to entertain the present Writ Petition.

The Writ Petition is, accordingly, dismissed with costs of Rs.5,000/- (Rupees Five Thousand only) payable to the second respondent within a period of two weeks. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions pending in this Writ Petition, if any, shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 30.08.2017
Nsr

