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Amanat Abbas Son of Syed Sibtey Ahmad R/o
Mughalpura, Chhoti Bazar, P.S. Khaje Kalan, P.O.-
Jhauganj, Patna City-8, District- Patna, Joint
Secretary of Anjuman-e-Sajjadia, Registered, Patna
City.

Versus

- ... Respondent/s

For the Petitioner/s: Mr. Y.V., Giri, Sr.Advocate
: Mr. Raj Dular Sah, Advocate
: Mr. A.K. Saxena, Advocate

For the Respondent No.4 : Mr. Khursheed Ahmad, Advocate
: Mr. Syed Asghar Najmi, Advocate

Date: 20-08-2018



notification (Annexure-1) dated 04.09.2015, constituting the Shia Wakf Board in the State of Bihar under the Wakf Act, 1995 (hereinafter referred to as the Act, 1995).

2. At the very outset, it is required to be noted that earlier the Division Bench of this Court observed that, *prima facie*, going through the counter affidavit filed on behalf of the respondent No.4, it is seen that the petitioner, in the garb of this public interest litigation, is trying to ventilate his personal grudge and the grievance against the Wakf Board in question and, therefore, *prima facie*, the Bench was inclined to dismiss the present writ petition in view of the fact that the petitioner is canvassing his vested interest in the matter (earlier order dated 12.02.2018). However, thereafter vide order dated 23.03.2018, the Division Bench observed that the Court would like to exercise *suo motu* power to examine the constitution of the Board vis-à-vis its fulfillment of the statutory requirement. The Division Bench also further observed that the Court is not inclined to entertain any other question raised by the petitioner in the present petition. Therefore, the Court proposed to deal with the issue with respect to constitution of the Board vis-à-vis its fulfillment of its statutory requirement in exercise of *suo motu* powers. Therefore, the question for consideration of this Court is,



the impugned notification dated 04.09.2015, constituting the Shia Wakf Board in the State of Bihar under the Wakf Act, 1995 inter alia on the ground that the same does not meet with the statutory requirement of the Wakf Act, 1995.

3. From the averments in the petition, it appears that it is the case of the petitioner that the constitution of the Shia Wakf Board in the State of Bihar vide notification (Annexure-1) dated 04.09.2015 is not in accordance with the requirement of the Section 14(1)(b) of the Wakf Act, 1995 (hereinafter referred to as the Act, 1995.).

3.1. It is the case of the petitioner that if the members belonging to Shia community for appointment under Section 14 of the Act, 1995 are not available in that case, a person belonging to Sunni Community of Bihar falling in a particular clause of Section 14 of the Act, 1995 is required to be appointed as member in the respective category as mentioned in Section 14 of the Act, 1995. Therefore, it is the case of the petitioner that nominating a person belonging to the Shia Community not falling in any of the category mentioned in Section 14(1)(b)(i)(ii)(iii) shall be contrary to the provisions of Section 14(1) of the Act, 1995.

3.2. It is also the case of the petitioner



that in Section 14 of the Act, 1995, the words used are "Muslim Members" and, therefore, when Shia community and Sunni community members are "Muslim Members", in case by constituting the Shia Wakf Board by notification dated 04.09.2015, if a person belonging to the Shia community i.e. if a Member of Parliament for the State; Member of State Legislature and/or the Member of the Bar Council of the State belonging to Shia community is not available in that case, the persons belonging to Sunni community, who are Muslim Members, are required to be nominated.

4. The present petition is vehemently opposed by Shri Lalit Kishore, learned Advocate General, appearing on behalf of the respondent-State of Bihar.

5. A detailed counter affidavit is filed on behalf of the State of Bihar.

5.1 It is submitted by Shri Lalit Kishore, learned Advocate General appearing on behalf of the State, that the impugned notification constituting the Shia Wakf Board in the State of Bihar is absolutely in consonance with statutory provision of the Wakf Board Act, 1995. It is vehemently submitted by learned Advocate General that with respect to Shia Wakf Board, in absence of availability of the Member of Parliament from the State; Member of State Legislature and Member of Bar Council of the State belonging



to Shia community, the persons belonging to Shia community are nominated and appointed as members of Shia Wakf Board in exercise of powers under Section 14(3) of the Act, 1995.

5.2. Mr. Lalit Kishore, learned Advocate General, has also heavily relied upon subsection 5 of Section 14 as well as Section 2(4) of the Act, 1995.

5.3. Making above submission, it is requested to dismiss the present petition.

6. Heard Mr. Y.V. Giri, learned senior counsel appearing on behalf of the petitioner and Shri Lalit Kishore, learned Advocate General appearing on behalf of the State of Bihar and perused the averments in the petition and the counter affidavit filed.

7. At the outset, it is required to be noted and as observed above what is required to be considered in present petition, is whether the impugned notification dated 04.09.2015, constituting the Shia Wakf Board in the State of Bihar under the provisions of Wakf Act, 1995, is in accordance with the requirement of Section 14(1)(b) of the Wakf Act, 1995 or not ?

8. In the State of Bihar, there are two Wakf Boards; one is Bihar State Sunni Wakf Board and another is Bihar State Shia Wakf Board representing Sunni and Shia communities, respectively. In the present case, the dispute is with respect to constitution of Shia Wakf



Board. The constitution of the Board is provided under Section 14 of the Act, 1995, which is as follows;

"14. Composition of Board.—(1) The Board for a State and the Union territory of Delhi shall consist of—

(a) a Chairperson;

(b) one and not more than two members, as the State Government may think fit, to be elected from each of the electoral colleges consisting of—

(i) Muslim Members of Parliament from the State or, as the case may be, the Union territory of Delhi,

(ii) Muslim Members of the State Legislature,

(iii) Muslim Members of the Bar Council of the State, and

(iv) mutawallis of the wakfs having an annual income of rupees one lakh and above;

(c) one and not more than two members to be nominated by the State Government representing eminent Muslim organizations;

(d) one and not more than two members to be nominated by the State Government, each from recognised scholars in Islamic Theology;

(e) an officer of the State Government not below the rank of Deputy Secretary.

(2) Election of the members specified in clause (b) of sub-section (1) shall be held in accordance with the system of proportional representation by means of a single transferable vote, in such manner as may be prescribed :

Provided that where the number of



Muslim Members of Parliament, the State Legislature or the State Bar Council, as the case may be, is only one, such Muslim Member shall be declared to have been elected on the Board :

Provided further that where there are no Muslim Members in any or the categories mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (1), the ex-Muslim Members of Parliament, the State Legislature or ex-member of the State Bar Council, as the case may be, shall constitute the electoral college.

(3) Notwithstanding anything contained in this section, where the State Government is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (1), the State Government may nominate such persons as the members of the Board as it deems fit.

(4) The number of elected members of the Board shall, at all times, be more than the nominated members of the Board except as provided under sub-section (3).

(5) Where there are Shia wakfs but no separate Shia Wakfs Board exists, at least one of the members from the categories listed in sub-section (1), shall be a Shia Muslim.

(6) In determining the number of Shia members or Sunni members of the Board, the State Government shall have regard to the number and value of Shia wakfs and Sunni wakfs to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination.

(7) In the case of the Union territory other than Delhi, the Board shall



consist of not less than three and not more than five members to be appointed by the Central Government from amongst the categories of persons specified in sub-section (1) :

Provided that there shall be one mutawalli as the member of the Board.

(8) Whenever the Board is constituted or re-constituted, the members of the Board present at a meeting convened for the purpose shall elect one from amongst themselves as the Chairperson of the Board.

(9) The members of the Board shall be appointed by the State Government by notification in the Official Gazette."

8.1. According to Section 14(1)(b)(i) of the Act, 1995, one and not more than two members are to be nominated from the Member of Parliament from the State of Bihar. However, it appears and so stated in paragraph- 7 of the counter affidavit, that there is no sitting M.P. in any of Houses from Shia community from Bihar. Similarly, there is no Shia member from Bihar Legislative Assembly and similarly, there is no member of the Bihar Legislative Council of the State belonging to Shia community. From the counter affidavit, it appears that all efforts were made to nominate the members as required under Section 14(1)(b) of the Act, 1995. The same can be appreciated from the counter affidavit filed on behalf of the State (paragraph Nos. 7 to 11 of the counter affidavit). In view of the aforesaid facts and circumstances and non-availability



of the Member of Parliament from the State, Member of State Legislature, Member of Bar Council of the State belonging to the Shia community, thereafter, the State Government in exercise of the powers under Sub-Section 3 of the Section 14 of the Act, 1995 has nominated the persons belonging to Shia community in a category of Section 14(1) (b) (i) (ii) (iii) (iv) of the Act, 1995. Therefore, the impugned notification dated 04.09.2015, constituting the Shia Wakf Board in the state of Bihar, as such, cannot be said to be contrary to Section 14 of the Act, 1995.

8.2. In so far as the submission of the petitioner that in case of non-availability of the persons belonging to Shia community, the Member of Parliament from the State, Member of State Legislature, Member of Bar Council of the State, in that case, the Member of Parliament from the State, Member of State Legislature, Member of Bar Council of the State, belonging to Sunni community are required to be nominated while constituting the Shia Wakf Board is concerned, the same has no substance. At the outset, it is required to be noted that in the present case, the dispute is with respect to constitution of Shia Wakf Board. There is already a separate Sunni Wakf Board in the State of Bihar. It is required to be noted that there is vast difference between "Shia Wakf Board" and "Sunni Wakf Board" and



"Shia Wakf Board" is governed by Shia law and "Sunni Wakf Board" is governed by Sunni law. Therefore, when the question is with respect to constitution of either Shia Wakf Board or Sunni Wakf Board, in that case, the persons belonging to Shia community are required to be nominated in the Shia Wakf Board and the persons belonging to Sunni community are required to be nominated in the Sunni Wakf Board. Therefore, the aforesaid shall be in the larger interest of both the communities namely, Shia and Sunni. At this stage, sub - sections 5 and 6 of Section 14 of the Act, 1995 are required to be referred to. Sub-Section 5 of Section 14 of the Act, 1995 provides that where there are Shia Wakfs but no separate Shia Wakfs Board exists, at least one of the category in sub-section 1 shall be a Shia Muslim. Sub-Section 6 of Section 14 of the Act, 1995, further provides that in determining the number of Shia members or Sunni members of the Board, the State Government shall have regard to the number and value of Shia Wakfs and Sunni Wakfs to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination. Therefore, considering the intents of the legislature, when there are separate Wakf Boards namely Shia and Sunni Wakfs Board, the members belonging to the Shia community are to



be nominated in Shia Wakf Board and the persons belonging to Sunni Community are required to be nominated in the Sunni Wakf Board. Therefore, in the present case, the constitution of the Shia Wakf Board in the State of Bihar as per the notification dated 04.05.2015 cannot be said to be contrary to the provisions of Section 14 of the Act, 1995 and or cannot be said to be in any way against the object and purpose of the constitution of the Shia Wakf Board in the present Case.

9. In view of the above and for the reasons, stated above, the present petition fails and the same deserves to be dismissed and is, accordingly, dismissed as the constitution of the Shia Wakf Board in the State of Bihar as per the impugned notification dated 04.05.2015 is just and proper and in consonance with the Section 14 of the Act, 1995. Notice discharged. NO costs.

(Mukesh R. Shah, CJ)

(Dr. Ravi Ranjan, J)

Brajesh/-

AFR/NAFR	AFR
CAV DATE	16.08.2018
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