

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

WRIT PETITION NO. 3073 OF 2018

Mr. Syed Jamil Ahmed Janimiyan and Ors. ...Petitioners

VERSUS

The State of Maharashtra & Ors. ...Respondents

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Miss. P.S. Talekar and Associates for Petitioners.

Mr.A.B. Girase Govt. Pleader with Mr. A.V. Deshmukh AGP for respondent No.1/State.

Mr. Y.B. Pathan, Advocate for respondent No.3.

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WITH
CIVIL APPLICATION NO. 4663 OF 2018
IN
WRIT PETITION NO. 3073 OF 2018

Shabbir Ahmed Ansari Shaikh Daud .. Applicant

Versus

Syed Jamil Ahmed Janimiya and ors. .. Respondents

Mr Biyabani Syed Moizuddin, Advocate for applicant

Ms P.S. Talekar, Advocate for petitioner in W.P.

Mr Y.B. Pathan, Advocate for respondent no.3

**CORAM : S.V.GANGAPURWALA AND
A.M.DHAVAL, JJ.**

DATE : APRIL 05, 2018

PER COURT :

1. We have heard Ms Talekar, learned counsel for the petitioners.

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2. Ms. Talekar, the learned counsel for the petitioners strenuously contends that the term of petitioner Nos. 1, 2 and 3 would come to an end on 3rd April, 2018. The strength of nominated members would be more than elected members and in view of section 14 (4) of the Wakf Act, 1995 (in short "the Act") would become defunct. The learned counsel submits that the term of the petitioner Nos. 1, 2 and 3 be continued till their successors are elected. The same is permissible. To buttress her submissions, the learned counsel relies on section 19 of the Act. The learned counsel submits that the contingency as has occurred in the present case is not taken care of in the Act. Inference can be drawn by referring to section 19 that even if members resign from the service from his post from his office, he is to be continued till his successor is appointed or nominated.

3. Mr. A. B. Girase, learned Government Pleader submits that the State would hold the election of the post occupied by the petitioners within a period of three months. The affidavit to that effect is filed. According to the learned Government Pleader, section 19 of the Act operates altogether in different situation. There is no provision for continuation of the term of office of the members.

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

(3)

5. Section 15 of the Act states that the members of the Board shall hold office for a term of five years from the date of notification referred to in sub-section (9) of section 14 of the Act. Section 22 of the Act provides that no act or proceeding of the Board shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.

6. Sub-section (4) of section 14, is subject to provision of sub-section (3) of section 14 of the Act. It provides that 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). Sub-section (3) of section 14 considers a situation, where it is not reasonably practicable to constitute electoral college, for any of the categories mentioned in sub-clauses 1 to 3 of clause B of sub-section (1). Sub-section (4) will have to be read with sub-section 3 of section 14.

7. Be that as it may, no legal right exists in the members to seek continuation as of right after their term is over.

8. In the light of that, the prayer of the petitioners for continuation of petitioners 1, 2 and 3 till their successors are elected, needs no consideration.

9. As far as prayer clause 'A' is concerned, same is taken care of by the affidavit of the respondents that they would hold

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election within a period of three months and fill in the vacancies and within three months they should also endeavour to issue notification accordingly.

10. It would appear that the democratically elected members are now less than the nominated members.

11. For a policy decision, participation of elected members would also be necessary and prudent.

12. In view of that, till the elections are held of the posts becoming vacant on completion of the term of the petitioner Nos. 1, 2 and 3, the Board shall not take major policy decision. However, this would not be an impediment for running day-to-day affair of the Board.

13. With these observations, the writ petition is disposed of.

14. In view of disposal of writ petition, the civil application also disposed of.

(A. M. DHAVAL, J.)

(S.V.GANGAPURWALA, J.)

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