



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
25.10.2018	30.10.2018

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.(MD) No.14273 of 2018andW.M.P.(MD) Nos.12933 & 12934 of 2018

Ismail Nawaz @ Jahir Hussain

... Petitioner

vs.

1. The Government of Tamil Nadu
Rep.by its Principal Secretary
Backward Classes,
Most Backward Classes &
Minority Welfare Department
Fort.St.George, Chennai
2. The Tamil Nadu Waqf Board
Rep.by its Chief Executive Officer
No.1, Jaffar Sirang Street
Vallal Seethakathi Nagar
Mannadi, Chennai
- 3.The M.S.S.Waqf Board College
Rep by its Adhoc Secretary
K.K.Nagar, Madurai
4. N.Jamal Mohideen
Adhoc Secretary
M.S.S.Waqf Board
K.K.Nagar, Madurai

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records relating to the impugned notification issued by the 3rd respondent published in Thina thanthi news daily dated 29-05-2018 and quash the same is illegal.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents: Mr.A.Muthu Karuppan

Additional Government Pleader for R1

Mr.N.Mohideen Basha for R2

Mr.V.Ragavachari for R3

Mr.Babu Rajendran for R4

O R D E R<https://hcservices.ecourts.gov.in/hcservices/>

The petitioner is a resident of Madurai and Muslim by faith. He is a member of General Body of M.S.S.Waqf Board College



/ third respondent herein. The third respondent - College is a Minority Institution established and administered by the second respondent - Waqf Board. The third respondent - College is administered as per the Scheme framed in furtherance of a compromise decree made by this Court in A.S.No.435 of 1964 between the second respondent - Waqf Board and the family of the donors. The Government had also approved and framed a Constitution for the administration of the third respondent - College, vide G.O.(Ms). No.1127, Commercial Taxes and Religious Endowments Department, dated 09.09.1978. As per Clause-IV of the said Government Order, the third respondent - College is to be administered by a Governing Body consisting of 11 members, which includes the Chairman of the second respondent - Board. As per Clause-VII of the Government Order, the General Body is to consist of Muslim members, such of whom have donated Rs.35,000/- in lump sum to be admitted as patron members and who continue to pay Rs.100/- every year subsequent to such admission. As per the said Constitution, any amendment to the Constitution can be made only by the Government in concurrence with the second respondent - Waqf Board.

2. Originally, there was no limit to the members of the General Body. However, subsequently, vide G.O.(MS) No.56, Backward Classes, Most Backward Classes and Minorities Welfare (S2) Department, dated 19.10.2016, the Government had amended the Clause-VII of the Constitution by accepting the proposal of the Chief Executive Officer restricting the membership of the General Body to 100 and also enhanced the donation for admission as Patron Members from Rs.35,000/- to Rs.1,00,000/- and also to pay Rs.10,000/- at initial admission and annual contribution of Rs.1,000/- for every subsequent years. It appears that the said Government Order was put to challenge before this Court and there was an order in regard to enhancement of patron subscription to Rs.1,00,000/- from Rs.35,000/-.

3. Thereafter, the second respondent, vide proceedings dated 19.08.2015, requested the first respondent to constitute an Adhoc Committee in order to attend the day-to-day affairs of the third respondent - College till a new Governing Body is formed. An Adhoc Committee was approved by the first respondent, vide G.O. (Ms) No.5, Minorities Welfare Department, dated 13.01.2016. Thereafter, the Government issued G.O.(D) No.32, Backward Classes, Most Backward Classes and Minorities Welfare (S2) Department, dated 31.08.2017, forming a Governing Body of the third respondent - College by appointing the fourth respondent herein to act as Secretary and Correspondent of the third respondent - College, till the formation of new Waqf Board.

4. Prior to the appointment of fourth respondent as Secretary and Correspondent of the third respondent - College, vide proceedings dated 01.02.2017, he was nominated to the

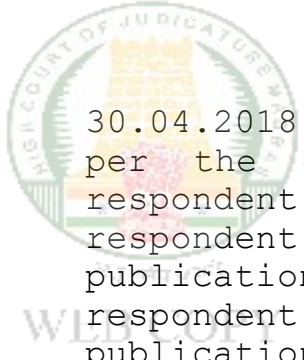


Governing Body of the third respondent - College, vide G.O.(D) No.3, Backward Classes, Most Backward Classes and Minorities Welfare (S2) Department. The said nomination of the fourth respondent to the Governing Body of the third respondent - College was subject matter of challenge in W.P.(MD) No.15788 of 2018. In the said writ petition, the nomination of the fourth respondent herein was challenged on the basis of the fact that he was admittedly removed from the primary membership of the General Body of the third respondent - College, vide resolution dated 15.12.2003, passed by the Governing Body, after finding him guilty of committing several irregularities due to his maladministration. Since the fourth respondent herein was not even a member of the General Body, he cannot be nominated to the Governing Body as per the Constitution of the fourth respondent - College.

5. While the said writ petition was pending, it appears that the fourth respondent, who was acting as Secretary and Correspondent of the third respondent - College, had called for applications from the eligible members for being admitted as members of the General Body, vide Paper Publication dated 29.05.2018. As per the Paper Publication, no ceiling was fixed as to the numbers of the members to be appointed and also provided for payment of Rs.1,00,000/- to the patron members and annual subscription of Rs.10,000/-, which according to the petitioner herein is against the interim order passed by this Court. The paper publication, according to the petitioner, was also against the amendment brought in by the Government by fixing limit to the number of members to the General Body as 100. In the said circumstances, the said paper publication is put to challenge in the present writ petition.

6. Mr.R.Prabhu Rajadurai, learned counsel appearing for the petitioner, would vehemently submit that the paper publication inviting applications from the eligible members to be admitted as members to the General Body of the third respondent - College is contrary to the interim order passed by this Court, wherein the increase in the subscription amount was subject matter of challenge. The learned counsel would further submit that the invitation of applications from the eligible members, without any cap on the maximum membership, is contrary to the amendment brought in by the Government vide G.O.(MS) No.56, Backward Classes, Most Backward Classes and Minorities Welfare (S2) Department, dated 19.10.2016. On these two reasons alone, the impugned paper publication is to be struck down.

7. In addition, the learned counsel for the petitioner would strongly submit that the fourth respondent was appointed as Secretary and Correspondent of the third respondent - College only on a temporary basis, till the new Waqf Board is constituted. In the instant case, the Waqf Board was constituted admittedly on



30.04.2018 itself. After constitution of the new Waqf Board, as per the order of appointment, dated 31.08.2017, the fourth respondent was ceased to become a Secretary of the third respondent - College. Therefore, the question of causing paper publication by the fourth respondent as Secretary of the third respondent - College did not arise at all and the said paper publication by the fourth respondent is *per se* invalid and illegal. Once the appointment of the fourth respondent as Secretary had come to an end after constitution of the Waqf Board, the fourth respondent acting as Secretary thereafter, was without authority of law and invalid. The learned counsel for the petitioner would also draw the attention of this Court to the contention of the fourth respondent that in the paper publication, it was clearly mentioned that membership was open only for a particular period i.e. from 01.06.2018 till 20.06.2018 and the last date for submitting applications seeking membership was fixed on 30.06.2018 and submit that such a stipulation of period by the fourth respondent was clearly intended to achieve collateral purpose with oblique motive, which was clearly intended to strengthen the hold of the third respondent - College by packing the General Body with his own men. The learned counsel for the petitioner would submit that when the nomination and appointment of the fourth respondent itself was under challenge, issuance of such paper publication by the fourth respondent, beyond the period of his nomination, was misuse of office of secretaryship vested with him. The learned counsel for the petitioner would, therefore, request this Court to set aside the paper publication as the same was issued for *mala fide* consideration.

8. Per contra, the learned counsel appearing for the fourth respondent would at the outset contest the writ petition on its maintainability, since, according to him, the writ petition was premature and liable to be rejected at the threshold. The learned counsel would submit that since his main point of contention is about the maintainability of the writ petition as the same being premature, according to him, there is no necessity to file any counter affidavit repudiating the averments contained in the writ affidavit. Therefore, one of the contentions of the learned counsel was that as per the Constitution of the third respondent - College, the admission of membership is subject to the ratification and approval by the both second respondent - Waqf Board and first respondent - Government. Unless and until such an alteration or deviation of the membership or any constitutional change is approved by the both second respondent - Board and first respondent - Government, the same would not come into effect at all. Therefore, the present writ petition is misconceived and premature since merely because there was a call for membership, through paper publication, the same would not confer any right on any existing member.



9. In this regard, the learned counsel for the fourth respondent would draw the attention of this Court to a decision in **MSS Wakf Board College and others vs. Haji M.Mohamed Ali Jinnah and Others**, reported in (2005) 5 CTC 256. The learned counsel, in support of his contentions, would draw the attention of this Court to the observations made by this Court, as found in Paragraph Nos.17 and 18, which are extracted hereunder:

"17. All the above details made it clear that the person or persons concerned must be a Muslim and subject to disqualification prescribed in Clause VIII, they are to be admitted as member of the General Body by the competent authority / authorities. Inasmuch as the Chairman and Secretary of the Governing Body and the Executive Committee shall act in the same capacity in the General Body, as rightly pointed out by Mr.R.Muthukumarasamy, learned Senior Counsel, the policy of expansion of members rests with the Wakf Board and the proposal of the Governing Body also. The Constitution of the College also clearly says that the sanction and concurrence of the Government shall be obtained whenever any deviation from the Constitution of the College is contemplated.

18. A perusal of the various clauses in the Constitution of the College makes it clear that the expansion of the General Body of the College is a matter of policy which can be taken by the appellant college with the approval of the Wakf Board and the Government. Hence the learned Single Judge committed an error in holding that once the amount is paid by any Muslim they become members of the General Body. We are also unable to accept the observation of the learned Single Judge that the Constitution of the College does not prescribe and nowhere it is stated that the patrons and members of the General Body have to be admitted only with the consent of the Government/Wakf Board. As rightly pointed out by Mr.R.Muthukumarasamy, learned Senior Counsel, the said finding is based on misreading of the Constitution of the appellant College, in which it is clearly mentioned that the Chairperson of the Tamil Nadu State Wakf Board shall be Ex-Officio Chairman of the Governing Body of the College and, therefore, any membership expansion can be made based on the recommendation of the Governing Body and with the final approval of the Wakf Board and Government."



10. The learned counsel for the fourth respondent would, therefore, submit that merely because a member had paid subscription on the basis of paper publication, he is not entitled to become a member, unless such a membership is ratified and approved by the both Waqf Board and Government. He would, therefore, submit merely because some apprehension was expressed on behalf of the petitioner, this Court cannot order the writ petition on the basis of bald apprehension of illegality being committed and the illegality or otherwise of the same can be decided only when a final decision is taken in the matter. According to the learned counsel, in the instant case, it is only a preliminary action by the General Body, subject to the ratification by the Authorities concerned and therefore, there need not be any presumption of any illegality happening.

11. The learned counsel for the fourth respondent would further submit that it was not the Secretary alone, who was responsible for issuance of the paper publication, but there was a resolution of the Governing Body, which was passed on 23.05.2018 and only on the basis of the said resolution, the paper publication was effected. At this juncture, the learned counsel for the petitioner would submit that in fact a Senior Counsel practicing in this Court has been nominated as a member of the Governing Body as a nominee of the second respondent - Board on 12.05.2018. Without even calling him or communicating about the meeting, on 23.05.2018, a resolution appears to have been passed. Therefore, on this ground alone, the resolution has to be interfered with. He would therefore submit that the writ petition may be rejected as being premature and not maintainable.

12. However, the learned counsel appearing for the fourth respondent would object this contention stating that the nomination of the Senior Counsel to the Governing Body had been communicated to the third respondent - College only on 24.05.2018 and therefore, the question of calling the Senior Counsel, a nominee of the second respondent - Board did not arise on 23.05.2018.

13. The learned Additional Government Pleader appearing for the first respondent has made his submissions without any counter affidavit being filed in the matter.

14. Heard the learned counsel on either side.

15. From the materials and the pleadings, as disclosed in the affidavit and the documents filed in support of the writ petition, it could be seen that the appointment of the fourth respondent as Secretary and Correspondent of the third respondent College, vide proceedings of the first respondent, dated 31.08.2017, was only adhoc arrangement, admittedly, till the



constitution of new Waqf Board. Once the Waqf Board was constituted on 30.04.2018, the fourth respondent had ceased to become a Secretary and Correspondent of the third respondent - College. Therefore, any action initiated under his name either on the basis of the resolution of the Governing Body or otherwise cannot be countenanced either in law or on facts. Therefore, this Court has to see whether the initiation of call for membership itself is legal or not in the circumstances of the case. The answer to this question is "Yes" for the simple reason that the fourth respondent, who has ceased to become Secretary and Correspondent of the third respondent - College, cannot be a party to any resolution as Secretary to the College.

16. Moreover, this Court is in agreement with the submissions made on behalf of the petitioner that the intention of the fourth respondent is quite clear that he wanted to admit as many members as possible within the short span of time in order to strengthen his hold on the third respondent - Institution. The manner, in which such a paper publication has been effected hurriedly, would show that the action is not guided by any *bona fide* intention, but, on the other hand, it was guided only by *mala fide* intention. The learned counsel for the fourth respondent kept harping that this Court cannot act on the basis of the apprehension and presumption. Such an argument is without any merit for the simple reason that the question of any presumption raised only when the initial action is found to be legal and in order. But, as far as the present case on hand is concerned, the very effect of paper publication itself is tainted with *mala fides* and the same is without the authority of law. Once the paper publication is found to be *per se* illegal, contrary to the Constitution of the third respondent - College and also contrary to the interim orders passed by this Court, question of waiting for final decision to emerge does not arise at all. When the initial action is found to be illegal, arbitrary and *mala fide*, why should this Court wait till the final decision making process. When this Court, on the basis of the materials and pleadings manifestly, finds something amiss in the action taken by the fourth respondent, the Court will always step in and prevent miscarriage of justice and illegality that would happen in the final decision. Prevention is always better than cure as the adage goes.

17. In view of the above findings of this Court, the order passed by the Honourable Division Bench of this Court (cited supra) has no application to the factual matrix of the present case, since factually the petitioner demonstrated that the impugned paper publication was issued with *mala fide* intention and also such publication suffers from vice illegality and *bona fide* intention. Further, this Court can also add one more reason for granting the relief as prayed by the petitioner for the



reason that the very nomination of the fourth respondent to the Governing Body, vide order dated 01.02.2017, which was the subject matter in W.P.(MD) No.15788 of 2018, which has been set aside and that writ petition being allowed by this Court.

18. For all the above reasons, this Court is of the view that the petitioner has made out a clear case.

19. In the aforesaid circumstances, the writ petition is allowed and the paper publication issued by the third respondent in Daily Thanthi Magazine, dated 29.05.2018, is hereby quashed as it being illegal. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS-II)

To:

The Principal Secretary,
Government of Tamil Nadu,
Backward Classes,
Most Backward Classes &
Minority Welfare Department,
Fort.St.George, Chennai.

+1cc to Mr.G.Prabhu Rajadurai, Advocate Sr.No.93369

+1cc to Mr.V.Ragavachari, Advocate Sr.No.93131

+1cc to Spl.Government Pleader Sr.No.93639

KRK

VB/SV/SAR2/19.11.2018/8P/5C

ORDER IN

W.P. (MD) No.14273 of 2018 and

W.M.P. (MD) Nos.12933 & 12934 of 2018

30.10.2018