



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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

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CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) No.15788 of 2018andW.M.P. (MD) Nos.14138, 14139, 16619, 16620, 14137, 17465 & 17466 of 2018

B.Sardar Basha

... 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
Jaffer Sirrang Street
Vallal Seethakadhi Nagar, Chennai
3. N.Jamal Mohaideen
4. The M.S.S.Waqf Board College
Represented by its Principal
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 order made by the 1st respondent in G.O.D.No.3 Backward Classes, Most Backward Classes And Minority Welfare S2 Department dated 01.02.2017 and Quash the same as illegal in so far as nominating the 3rd respondent to the Governing body of the 4th respondent College is concerned.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents: Mr.A.Muthu Karuppan

Additional Government Pleader for R1

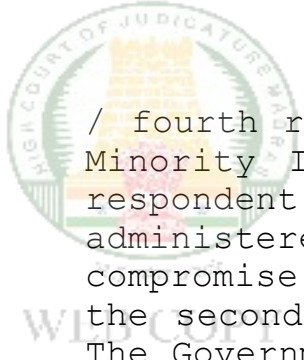
Mr.N.Mohideen Basha for R2

Mr.Babu Rajendran for R3

Mr.V.Ragavachari for R4

O R D E R

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



/ fourth respondent herein. The fourth respondent - College is a Minority Institution established and administered by the second respondent - Waqf Board. The fourth 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 fourth 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 fourth 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 the Constitution, the fourth respondent - College is to consist of three administrative bodies, namely, Governing Body, Executive Committee and the General Body. The members of the Governing Body of the fourth respondent - College hold the office for a period of three years and the primary function of the Governing Body is to oversee the academic affairs and administration of the College.

2. The third respondent herein was serving as Secretary and Correspondent of the fourth respondent - College for sometime and according to the petitioner, during the tenure of the third respondent, there was a widespread maladministration at the instance of the third respondent and several irregularities were committed by and on behalf of the third respondent. Several serious allegations were made against the third respondent and because of his conduct, he brought disrepute to the Institution / fourth respondent herein.

3. In the above circumstances, a meeting on behalf of the Governing Body was convened on 25.10.2003 under the Chairman of the second respondent - Waqf Board and in which, a resolution was passed finding the third respondent guilty of several allegations made against him. In furtherance of the same, the Governing Body, in its meeting held on 15.12.2003, removed the third respondent from the primary membership of the General Body as he was acting against the the interest of the Institution / fourth respondent herein and it would not be in the welfare of the Institution to retain him any further.

4. The third respondent challenged the resolution of the Governing Body meeting, dated 15.12.2003, by approaching this Court in W.P.No.37894 of 2003. The said writ petition was taken up for hearing during 2017 and this Court, by its order dated 29.06.2017, dismissed the writ petition by observing as follows:

*"3.The order was issued by the
Chairperson and the Writ Petitioner has not
preferred any further Appeal or representation to*



the authorities concerned and directly moved this Writ Petition. Further, he was removed from the primary membership in the year 2003 and now after lapse of fourteen years, it may not proper for this Court to consider the grounds raised in this Writ Petition. If any grievance is still left open, the writ petition is at liberty to approach the competent authorities to redress his grievances.

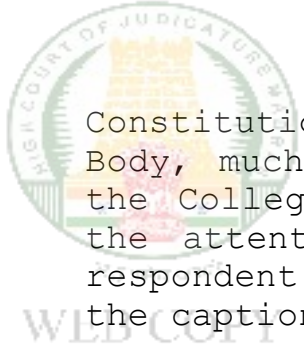
4. With these observations the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed."

Admittedly, as against the said order, no appeal has been filed and the same has become final.

5. While matter stood thus, the first respondent, who was very much aware of the conduct of the third respondent surprisingly passed an order vide G.O.(D) No.3, Backward Classes, Most Backward Classes and Minorities Welfare (S2) Department, dated 01.02.2017, nominating the third respondent to the Governing Body of the fourth respondent - College. Subsequently, by another order in G.O.(D) No.32, Backward Classes, Most Backward Classes and Minorities Welfare (S2) Department, dated 31.08.2017, the third respondent was appointed as Secretary and Correspondent of the fourth respondent - College, till the new Waqf Board is constituted. The present writ petition is filed challenging the order, dated 01.02.2017 questioning the nomination of the third respondent to the Governing Body and also the subsequent appointment of the third respondent, by order dated 31.08.2017, as Secretary and Correspondent of the fourth respondent - College, till the constitution of the Waqf Board.

6. Mr.T.Lajapathi Roy, learned counsel appearing for the petitioner would contend that admittedly the third respondent was removed from the primary membership of the General Body of the fourth respondent - College, vide resolution of the Governing Body dated 15.12.2003. The third respondent had questioned his removal of membership before this Court. However, this Court, vide order dated 29.06.2017, dismissed the writ petition in W.P.No.37894 of 2003 observing as extracted above. Thereafter, the third respondent had not approached any competent Authority and thus, the removal of the third respondent from the primary membership of the General Body of the fourth respondent - College had become final.

<https://hcservices.ecourts.gov.in/hcservices/> 7. When the third respondent was expelled as primary member of the General Body of the fourth respondent - College, as per the



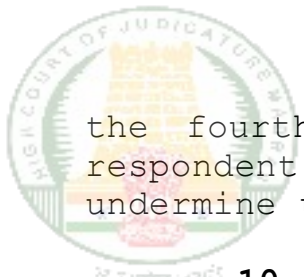
Constitution, he was not eligible to be nominated to the Governing Body, much less appointing him as Secretary and Correspondent to the College. The learned counsel for the petitioner would draw the attention of this Court to the Constitution of the fourth respondent - College, wherein Sub-Clause (2) of Clause-IV under the caption "Administrative Bodies" reads as under:

"No person shall be eligible to be nominated to the Governing Body unless he satisfies the conditions to become a member of a patron member of the General Body. Provided that nominee of the University and the Wakf Board and the representative of the Sirgaro family."

8. The learned counsel for the petitioner would also draw the attention of this Court to Clause VII, which provides Constitution of General Body, particularly, Sub-Clause (a), which reads as under:

"The General Body will consist of Muslims. Such of those who donate Rs.35,000/- in lump sum be admitted as Patron and those who contribute Rs.5,000/- in lump sum of entrance and also Rs.100/- per annum from the subsequent year shall be admitted as members of the General Body. Contributions paid will not be refunded on any account."

9. According to the learned counsel for the petitioner, when admittedly the third respondent was removed from the primary membership of the General Body, under the Constitution of the fourth respondent - College, he cannot be nominated to the Governing Body by the first respondent and therefore, the appointment of the third respondent as Secretary and Correspondent of the fourth respondent - College was *per se* unconstitutional, illegal and cannot be countenanced in law. Moreover, when the third respondent was working as Secretary and Correspondent of the fourth respondent - College, there were serious allegations made against him and the Governing Body, after deliberation, found him guilty of all allegations of maladministration and corruption and therefore, he was removed from the primary membership in order to protect the reputation and interest of the fourth respondent - College. When such being the case, the action of the first respondent nominating the third respondent, who had come under cloud and was found guilty, was against the interest and did not subserve the wellbeing of the Institution / fourth respondent herein. The learned counsel for the petitioner would, therefore, request this Court to set aside the order of the first respondent nominating the third respondent as member of the Governing Body of



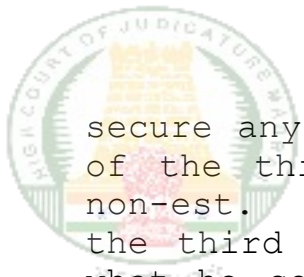
the fourth respondent - College, as continuance of the third respondent in whichever capacity of the Governing Body will undermine the integrity of the Institution.

10. The learned counsel appearing for the third respondent, vehemently denied the allegations made against the third respondent. He would, at the outset, submit that the Governing Body did not have the power to remove any member and therefore, the removal of the third respondent was non-est and did not exist in the eye of law. Even otherwise, this Court, while dismissing the writ petition filed by the third respondent, has given him liberty to approach the appropriate Authority and the appropriate Authority, being the Government, thought fit to nominate the third respondent to the Governing Body of the fourth respondent - College. Therefore, there was nothing wrong in nomination of the third respondent to the Governing Body of the fourth respondent - College and a detailed counter affidavit has been filed on behalf of the third respondent denying all the allegations made against him. The learned counsel for the third respondent would therefore submit that the writ petition lacks in *bona fides* as there was conspiracy by some vested interest for spoiling the reputation of the third respondent, who had a blemishless tenure during he was acting as Secretary and Correspondent of the fourth respondent - College. The allegations were without any basis and the same were made only to malign the third respondent.

11. Mr.A.Muthu Karuppan, learned Additional Government Pleader, entered appearance on behalf of the first respondent and made his submissions. He would submit that the Government has passed orders on the basis of the materials, which came up for consideration and therefore, there was no illegality in nominating the third respondent to the General Body of the fourth respondent.

12. Heard the learned counsel on either side.

13. The issue, as raised in this writ petition, is as to whether the nomination of the third respondent to the Governing Body of the fourth respondent - College by the impugned order of the first respondent is legal or not with reference to the Constitution of the College. Admittedly, the third respondent was removed from the primary membership of the General Body of the fourth respondent, vide its resolution dated 15.12.2003. This fact is evidenced by the documents filed on behalf of the petitioner, more particularly resolution of the Governing Body, dated 15.12.2003. If the Governing Body did not have jurisdiction to remove the third respondent from the primary membership of the General Body of the fourth respondent - College and such a removal was non-est in the eye of law as according to the learned counsel for the third respondent, then why the third respondent had chosen to challenge his removal before this Court and having failed to

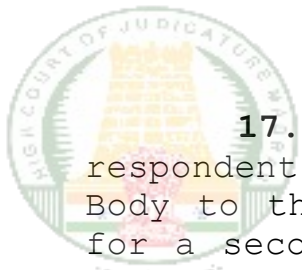


secure any orders before this Court, it does not lie in the mouth of the third respondent to contend that his removal was itself non-est. Such an argument put forth by the learned counsel for the third respondent is a desperate attempt to achieve something what he could not achieve through the writ petition filed before this Court.

14. Further, the argument advanced by the learned counsel for the third respondent that as per the observations of the learned Judge of this Court in his order dated 29.06.2017 in W.P.No.37894 of 2003, the first respondent was competent and therefore, the first respondent, by nominating the third respondent to the Governing Body vide impugned order dated 01.02.2017, has accepted the claim of the third respondent, is not a valid piece of submission. The fact of the matter is that the third respondent, admittedly has not approached either the Waqf Board or the Government against his removal from the primary membership of the General Body of the fourth respondent - College and there was no adjudication on that count at all. In the absence of such effort on the part of the third respondent, he cannot be allowed to take advantage of his nomination to the Governing Body by the first respondent under the impugned proceedings.

15. The Constitution of the fourth respondent - College is very clear and when the third respondent was not even a member of the General Body, this Court is unable to appreciate as to how he could be nominated to the Governing Body of the fourth respondent - College under the impugned proceedings. The action of the first respondent, in this regard, cannot be countenanced either in law or on facts. This Court is unable to understand under what circumstances, such a nomination came to be made by the first respondent in the teeth of removal of the third respondent from the membership of the General Body as early as on 15.12.2003 and also in view of the fact of the several serious allegations against the third respondent, while he was serving as Secretary and Correspondent of the fourth respondent - Institution for sometime and such allegations were found to be proved.

16. Therefore, this Court, in consideration of the above facts and materials, is of the view that nomination of the third respondent to the Governing Body of the fourth respondent - College is *mala fide* and colourable exercise, which cannot be countenanced in law. On behalf of the first respondent, no proper explanation has been forthcoming in regard to the basis of nomination of the third respondent to the Governing Body and also appointment as Secretary and Correspondent of the fourth respondent - College, till new Waqf Board is constituted. Such an action on the part of the first respondent was against the interest of the fourth respondent - College and certainly it did not augur well for good administration.



17. The initiation of the impugned action by the first respondent in nominating the third respondent to the Governing Body to the fourth respondent - College cannot be sustained even for a second in view of the reasons as discussed above, since it suffers from glaring arbitrariness and severe vice of illegality.

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18. For all the above reasons, the writ petition is allowed and the Government Order in the G.O.(D) No.3, Backward Classes, Most Backward Classes and Minority Welfare (S2) Department, dated 01.02.2017, is set aside insofar as it relates to nomination of the third respondent to the Governing Body of the fourth respondent - College. 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.V.Ragavachari, Advocate Sr.No.93132
+1cc to Mr.T.Lajapathi Roy, Advocate Sr.No.93646
+1cc to Mr.Babu Rajendran Advocate Sr.No.93304
+1cc to Spl.Government Pleader Sr.No.93405

KRK

VB/SV/SAR2/19.11.2018/7P/6C

ORDER IN
W.P. (MD) No.15788 of 2018 and
W.M.P. (MD) Nos.14138, 14139, 16619,
16620, 14137, 17465 & 17466 of 2018
30.10.2018