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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 12.02.2018.

Date of Decision: 09.03.2018.

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W.P.(C) 9980/2017 & C.M.No.40710/2017 (stay).

RANA PARWEEN SIDDIQUI

..... Petitioner

Through Mr.A.S.Chandhiok, Sr.Adv
with Mr.Sudarshan Rajan, Mr.Arjun
Gadhoke, Mr.Tejaswi Chaudhary,
Ms.Monika Tyagi, Mr.Ramesh Rawat &
Mr.Archit Arora, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondent

Through Mr.S.R.Windlesh, Advocate for
R-1.
Mr.Naushad Ahmed Khan, Advocate for R-
2&3.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

JUDGEMENT

REKHA PALLI (J)

1. The Petitioner, a practicing advocate, has approached this Court vide the present petition under Article 226 of the Constitution of India *inter alia* seeking a direction to the Respondents to conduct the proposed elections for the constitution of Delhi Waqf Board by taking into account the mandate of Section 14 (1)(b)(iii) of the Waqf Act, 1995 and thereby include the representation of a Muslim member of the Bar Council of Delhi as one of the members of the electoral

colleges of the Board. For the sake of convenience it may be appropriate to reproduce the prayers made by the Petitioner, which read as under:-

- “a. Direct Respondent no.3 to conduct the election for constitution of the Board by taking into account the mandate of Section 14(1)(b)(iii) of the Act by including in the process the representation of the Muslim Member of the Bar Council of Delhi as one of the Members of the Board;*
- b. As a consequence of grant of prayer ‘a’ direct the Respondent no.3 to issue a corrigendum/addendum to the public notice dated 28.09.2017 by including the post of Member, Bar Council of Delhi in the same and considering the Petitioner for the said post being the only Muslim Member in the present Bar Council of Delhi;*
- c. In the alternate, direct the Respondents to consider the Petitioner for the post of Member of the Board in the category of Ex-Muslim member of the Bar Council of Delhi under second proviso to section 14(2) of the Act as per the mandate of the Act;*
- d. Pass such other further order or orders as this Hon’ble Court may deem fit and proper in the facts of the case and in the interest of justice.”*

2. The Waqf Act, 1995 (hereinafter referred to as ‘the Act’) was enacted for better administration of Waqf and matters connected therewith. Chapter IV of the said Act, 1995, which was amended in 2013, deals with the establishment of the Waqf Board and its functions. While Section 14 deals with the composition of the Board, Section 16 thereof prescribes the term of its members to be five years as a result whereof, members of the Waqf Board are appointed after every five years, partly by election and partly by nomination.

3. On 27.12.2011, the Petitioner was elected as a member of the Delhi Waqf Board under Section 14 (1)(b)(iii) of the Act by virtue of her being a member of the Bar Council of Delhi. The Petitioner claims that she was subsequently elected as the Chairperson of Delhi Waqf Board, but on account of the failure on part of Respondent no.3 to issue the requisite notification, the Petitioner preferred a writ petition being W.P.(C)No.4226/2015 before this Court.

4. While her aforesaid writ petition was pending, an order was issued by Respondent no.1 on 08.10.2015 superseding the Delhi Waqf Board, which action was also challenged by the Petitioner by way of W.P.(C)No.10047/2015, wherein this Court vide its interim order dated 10.02.2016 directed that the vacancy in respect of the muslim member of the Bar Council of Delhi would not be filled up. While the aforesaid two petitions filed by the Petitioner were pending before this Court, the tenure of the Delhi Waqf Board was determined by efflux of time on 26.12.2016.

5. On 28.09.2017, the Respondent no.3 issued a Public Notice displaying the electoral roll for the election of members of Delhi Waqf Board. This electoral roll contained names of person in categories under Sections 14(1)(b)(i), 14(1)(b)(ii) and 14 (1)(b)(iv) but did not include any name in the category under Section 14 (1)(b)(iii) of the Act, in which category the Petitioner claims to be the only eligible person.

6. Upon issuance of the public notice, the Petitioner being aggrieved by the non-inclusion of her name in the electoral roll, filed her objections thereto, which were rejected by the Respondent no.3 on 30.10.2017. In view of the public notice dated 28.09.2017, the Petitioner withdrew both her earlier writ petitions with a liberty to file a fresh petition and in these circumstances, preferred, the present petition.

7. The basic grievance as articulated by the learned Senior Counsel for the Petitioner is, that the Respondent nos.2 & 3, while displaying the electoral roll for the election of members of Delhi Waqf Board vide public notice dated 28.09.2017, have failed to act in accordance with the mandate of Section 14(1)(b)(iii) of the Act as they have totally ignored the category of a muslim member of the Delhi Bar Council. The Petitioner claims that she being the only muslim member of the Bar Council of Delhi or atleast an ex- member (muslim) of the Bar Council of Delhi, was statutorily entitled to be a part of the electoral roll.

8. Learned Senior Counsel for the Petitioner submits that Section 14 of the Act while laying down the composition of the Board, first lays down the electoral roll for election of members of the Board vide Section 14(1)(b) of the Act and thereafter vide Section 14(2) prescribes the manner in which election of the members in Section 14(1)(b) has to be held. The contention of the learned Senior Counsel for the Petitioner thus is, that it was incumbent upon the Respondents to first prepare the electoral roll

in accordance with the criteria and procedure prescribed in Section 14(1)(b) & 14(2) of the Act and it is only in case where there is no muslim person available to constitute the electoral college in category of 14(1)(b)(iii) meaning thereby that there is no existing muslim member of State Bar Council or ex-member of the State Bar Council, that the power to nominate any Senior Muslim Advocate from the State or Union Territory, can be exercised by the Government.

Mr.Chandhiok, further submits that in view of the admitted position that the Petitioner was an elected member of the Bar Council of Delhi and fresh elections for the Bar Council of Delhi are yet to be held, the Petitioner continues to be a member of the Bar Council of Delhi.

9. Mr. Chandhiok, places reliance on the letter dated 26.06.2015 issued by the Bar Council of India in support of his contention that after the expiry of the extended tenure of Bar Council of Delhi on 29.06.2015, even though a special three member committee had been appointed under Section 8A of the Advocates Act, 1961, all the elected members of the Delhi State Bar Council including the Petitioner had been directed to continue to function under the special committee and directed to discharge the routine functions of the Council.

10. However without prejudice to his submission, that the Petitioner continues to be treated as a muslim member of the Bar Council of Delhi, Mr. Chandhiok submits that even if the Petitioner is treated only as an ex-member (muslim) of the Delhi

State Bar Council, she would still be entitled to be a part of the electoral roll by the application of the second proviso to Section 14 (2) of the Act. He further submits that in view of the mandatory provisions of Section 14 (1)(b)(iii) & 14(2) of the Act, it was incumbent upon the Respondents to notify the electoral roll by including the member from the category of Delhi Bar Council in terms of the mandate of Section 14 (1)(b)(iii) of the Act and in any case, in view of the second proviso to 14(2) of the Act which provides that in case there is no muslim member in the State Bar Council, the ex-member of the State Bar Council, shall constitute the electoral college. The plea, thus, is that in the absence of any muslim member in the State Bar Council, the Respondents have to first consider whether an ex-member of the State Bar Council is available and only if no such ex- member is available, can the Respondents resort to nominating a Senior Muslim Advocate.

11. On the other hand, Mr.Naushad Ahmed Khan, learned counsel for the Respondent nos.2 & 3 opposes the writ petition as being pre-mature on the ground that till date no member under the category envisaged under Section 14(1)(b)(iii) had been nominated. He also contends that the tenure of the Petitioner as member of the Bar Council of Delhi having been expired and fresh elections having been announced, she cannot be treated as member of the Bar Council of Delhi and states that “*as per the knowledge and understanding of Respondent no.3*”, presently there is no muslim member of Delhi Bar Council.

12. Mr.Naushad Ahmed Khan, thus disputes the very eligibility of the Petitioner to be notified as a part of the electoral roll for election of members of the Delhi Waqf Board in the category envisaged under Section 14(1)(b)(iii) of the Act and contends that the Respondents would exercise their right to nominate any Senior Muslim Advocate in terms of proviso to Section 14(1)(b)(iii) of the Act. He submits that the application of the second proviso to Section 14(2) of the Act to include an ex-member of Delhi Bar Council in the electoral college, comes into operation only post exhaustion of its right to nominate a Senior Muslim Advocate under the proviso to Section 14(1)(b)(iii) of the Act.

13. Having heard the learned counsel for the parties and considered their rival contentions, I find that the only issue which arises for consideration, revolves around the provisions of Section 14(1)(b) and 14(2) of the Act and, therefore, before dealing with the rival contentions, it would be appropriate to refer to Section 14 (1),(2), (3) and (4) of the Act, which reads as under.

“14. Composition of Board.—(1) The Board for a State and¹ [the National Capital 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, ¹ [the National Capital Territory of Delhi];

(ii) Muslim Members of the State Legislature;

²[(iii) Muslim members of the Bar Council of the concerned State or Union territory:

Provided that in case there is no Muslim member of the Bar Council of a State or a Union territory, the State Government or the Union territory administration, as the case may be, may nominate any senior Muslim advocate from that State or the Union territory, and]

(iv) mutawallis of the 1 ³[auqaf] having an annual income of rupees one lakh and above.

⁴[Explanation I.— xxxxx]

[Explanation II.— xxxxx]

(c) xxxxx

(d) xxxxx

(e) xxxxx

(1A) xxxxx

(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 of 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)."

14. The basic and in fact, the only plea, of the learned Senior Counsel for the Petitioner is that as per the Scheme of the Act, it is first essential for the Respondent to issue the electoral roll under Section 14(1)(b) by including members from all the four categories envisaged in Section 14(1)(b)(i) to 14(1)(b)(iv) and then proceed to elect one or two members from the said list in accordance with provisions of Section 14(2) of the Act. The contention thus is that it is mandatory to correctly issue the electoral roll in accordance with Section 14(1)(b) of the Act and there is no discretion with the Respondent to exclude persons from any of the four categories i.e. Section 14(1)(b)(i) to (iv) of the Act.

15. Mr.Chandhiok's contention is that by deliberately failing to include a person from category under Section 14 (1)(b)(iii) of the Act, the Respondent have acted illegally and de hors the Scheme of the Act, especially when it cannot be denied that the Petitioner is a muslim member of the Delhi Bar Council or atleast an ex-member(muslim) of the Delhi Bar Council and, therefore, is qualified to be included in the category under Section 14(1)(b)(iii) of the Act. He contends that the power to

nominate a Senior Muslim Advocate can be exercised only if it is found that there is no present muslim member or an ex-member of the State Bar Council.

16. On the other hand, the plea of the learned counsel for the Respondents is that since there is no existing muslim member of the Delhi Bar Council, the Respondents would have to resort to the proviso to Section 14(1)(b)(iii) of the Act, which provides for nomination of any Senior Muslim Advocate and, therefore, merely because the Petitioner is an ex-member (muslim) of the Delhi Bar Council, she cannot claim to be a part of the electoral roll. His contention, thus, is that the second proviso to Section 14(2) of the Act comes into play only when the Respondents are unable to nominate any Senior Muslim Advocate in terms of the proviso to Section 14(1)(b)(iii) to the Act.

17. Having considered the scheme for appointment of members of the Waqf Board under the Act, I find that there are two modes for appointing members of the Delhi Waqf Board, one by election and the other by nomination, though there is a plenary power also under Section 14(3), where the Government has the power to make nominations provided, it is satisfied for reasons to be recorded in writing, that it is reasonable to constitute an electoral college for any of three categories in clause (i) to (iii) of Section 14(1)(b) of the Act. However, since no such plea of resort to Section 14 (3) has been raised by the respondents, it is not necessary for me to examine this provision in the present case.

18. In my considered opinion, a conjunct reading of Section 14(1)(b)(i) to (iv) and the Section 14(2) makes the intent of the Legislature absolutely clear that the electoral college would comprise of persons from each of the following four categories:-

“(i) Muslim Members of Parliament from the State or, as the case may be,¹ [the National Capital Territory of Delhi]

(ii) Muslim Members of the State Legislature;

(iii) Muslim members of the Bar Council of the concerned State or Union territory:

(iv) mutawallis of the ³ [auqaf] having an annual income of rupees one lakh and above.”

The proviso to Section 14 (2) of the Act clearly states that where there is no muslim member in category (iii) of Section 14(1) (b) of the Act, the ex-member of the State Bar Council of Delhi of 'shall' constitute the electoral college. It thus becomes evident that the Scheme of appointment under the Act provides for inclusion of an existing muslim member of Delhi Bar Council to form part of the electoral college and in case of there is no existing muslim member, the ex-member of the State Bar Council shall form part of the electoral college. It is only in the event none of them is available, that resort to the proviso to Section 14(1)(b)(iii), providing for nomination of a Senior Muslim Advocate, can be made.

19. The fact that, election is the preferred mode for appointment of members, in the categories stipulated in Section 14 (1)(b)(i) to (iv) of the Act, is also fortified by the provisions of

Section 14 (3) of the Act, which clearly provides that only if it is found to be not reasonably practicable to constitute the Electoral College for any of categories under Section 14(1)(b) (i) to (iii) of the Act, can the State Government make a resort to the process of nomination. As observed hereinabove, it is not the Respondents' case either in their rejection letter or in their counter affidavit that it was not reasonably practicable for them to constitute the Electoral College for the category provided under Section 14(1)(b)(iii) of the Act. The plea of the Respondents that they have to first exhaust their right of nomination of a Senior Muslim Advocate as per proviso to Section 14(1)(b)(iii) before including an ex-member of the State Bar Council in terms of proviso to Section 14(2) of the Act, runs contrary to the intent and scheme of the Act, which is based on the underlying principle that an elected representative must preferably represent each of the categories in Section 14(1)(b)(i) to (iv) in the Waqf Board.

20. The plea of the Respondents that in the absence of a present muslim member of the State Bar Council, they have to resort to exercise of their power to nominate a Senior Muslim Advocate qua category Section 14(1)(b)(iii), also runs contrary to the mandate of Section 14(4) of the Act as it would increase the number of nominated members of the Delhi Waqf Board to four, the remaining three nominated coming from sub-section 14(1)(c) to (e) which provides for 'nomination'. Once the statute makes two distinct categories and provides for four elected members and three nominated members with a specific rider in Section

14(4) of the Act which provides that “*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)*”, the Respondents cannot be allowed to circumvent the intent of the Legislature by resorting to nomination of Senior Muslim Advocate even when an ex-member of the Delhi Bar Council i.e. the Petitioner is very much available.

21. In my considered opinion, the power to nominate in terms of the proviso to Section 14(1)(b)(iii) of the Act, would come into play only when there is no existing muslim member or an ex-member (muslim) of the State Bar Council. Any other interpretation thereof, would make the second proviso of Section 14(2) of the Act absolutely redundant.

22. In every case, where there is no existing muslim member in the State Bar Council, if it were held that the Respondents would have the power to resort to nominate a Senior Muslim Advocate by invoking the proviso to Section 14(1)(b)(iii), the second proviso to Section 14(2) which specifically states that “*provided further that where there are no Muslim Members in any of 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*”, will virtually become meaningless and despite the use of the words “**shall constitute the electoral college**” for an ex-member of the State Bar Council in the Act, an ex-member of the

State Bar Council would be easily ousted by nominating a Senior Muslim Advocate. This certainly cannot be permitted.

23. I am fortified in my aforesaid conclusion by the observations of the Hon'ble Supreme Court in para 21 of ***Commissioner of Income Tax v. Hindustan Bulk Carriers*** reported as (2003) 3 SCC 57, which read as under:

“21. The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a “useless lumber” or “dead letter” is not a harmonised construction. To harmonise is not to destroy.”

24. In the light of the conclusion at which I have arrived, by holding that the power to nominate a Senior Muslim Advocate can be exercised only if there is neither any existing muslim member or an ex-member of the State Bar Council, I have refrained from examining the question as to whether the Petitioner can be treated as an existing muslim member of the Delhi Bar Council, since there is no denial to the fact that the Petitioner has been a member of the Delhi Bar Council and would be covered atleast in the category of Muslim Member of Delhi Bar Council.

25. For all the aforesaid reasons, the petition is entitled to succeed and the action of the Respondents in not including the available ex-member of the Bar Council of Delhi in the electoral roll issued on 28.09.2017, cannot be sustained.

26. Since the Respondents have not denied the fact that the Petitioner is the only ex-member (muslim) of Delhi Bar Council, the Respondents are directed to issue a corrigendum to the public notice dated 28.09.2017 by including name of the Petitioner, as a part of the electoral roll for the election of members of Delhi Waqf Board.

27. The writ petition is allowed in the above terms with no order as to costs.

(REKHA PALLI)
JUDGE

MARCH 09, 2018
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