

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R.SURESH KUMAR

C.R.P.(PD) No.3772 of 2019 and
C.M.P.No.24762 of 2019

- 1.Tamil Nadu Wakf Board,
Rep. by its Chairman,
No.1, Jaffer Syrang Street,
Valla Seethakathi Nagar, Chennai - 1.
- 2.The Chief Executive Officer,
Tamilnadu Wakf Board,
1, Jaffer Syrang Street,
Vallal Seethakkathi Nagar,
Chennai - 600 001.
- 3.The Election Officer,
Superintendent of Wakfs, Coimbatore Zone,
Office of Superintendent of Wakfs,
No.14-15, Avinashi Road,
Uppilipalayam, Coimbatore. ... Petitioners

Vs.

A.Abubacker ... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India, praying to set aside the petition and order passed in I.A.No.691 of 2019 in O.A.No.373 of 2019 dated 07.11.2019 on the file of the Tamil Nadu Wakf Tribunal at Chennai.

For Petitioners : Mr.S.Haja Mohideen Gisthi

For Respondent : Mr.N.A.Nissar Ahmed

ORDER

This revision petition has been filed by the Tamil Nadu Wakf Board and two others challenging the order passed by the Wakf Tribunal in I.A.No.691 of 2019 in O.A.No.373 of 2019 dated 07.11.2019.

2.There is a Wakf in the name of Sunnath Jamath Mosque and Masjid Noor Sunnath Jaint Mosque Wakf at Sultanpettai, Kodumudi

Taluk, Erode District. In order to elect the Managing Committee or Governing Body of the said notified Wakf, election notification was issued on 23.10.2019 by the Election Officer i.e., the 3rd petitioner herein, under which, an election schedule has been given, whereby final voter list would be released on 23.10.2019, nomination would be received till 30.10.2019 and after scrutiny, final contestant list would be released on 04.11.2019 and the voting will be taken place on 17.11.2019, on that date, result would be declared after counting the votes. In the said circumstances, the respondent, being one of the aspirant to contest in the election, seems to have filed his nomination to the Election Officer. However, the said nomination was rejected by the Election Officer, by proceedings dated 31.10.2019 on some reasons.

3. Aggrieved over the said rejection of nomination, the respondent herein, challenging the said order dated 31.10.2019, filed a writ petition in W.P.No.31074 of 2019, where the learned Judge of this Court, by order dated 04.11.2019, dismissed the said writ petition as withdrawn, with the liberty to the writ petitioner therein, who is the respondent herein, to approach the Wakf Tribunal to agitate the issue under the provisions of the Wakf Act.

4. In the said order, the learned Judge also observed that, since the election notification already been issued and it is scheduled to be conducted on 17.11.2019, the result of the impugned election would be subject to the outcome of the orders to be passed in those proceedings, which shall also be mentioned in the election proceedings by the respondents who is the petitioners herein.

5. Pursuant to the said order passed by the Writ Court on 04.11.2019, the respondent has approached the Tribunal by filing the present application with a prayer to stay all further proceedings, pursuant to the order dated 31.10.2019 whereby the candidature of the respondent was rejected or he has been disqualified and also sought for the prayer of direction, directing the Election Officer to receive and accept the nomination of the respondent herein.

6. In the said application, the Tribunal, by the impugned order dated 07.11.2019, has passed an order stating on the ground that, a prima facie case was made out by the applicant therein, who is the respondent herein and accordingly, the Tribunal not interfered with the go ahead of the election as scheduled, however, given a direction to the Election Officer, who is the 3rd petitioner herein to accept the nomination of the respondent herein and including the candidature/ nomination of the respondent the election was permitted to go on and the Tribunal posted the matter for further hearing on 21.11.2019.

7. Assailing the said order dated 07.11.2019 passed by the Tribunal, the Wakf Board and two others filed this revision with aforesaid prayer.

8. I have heard Mr. S. Haja Mohideen Gisthi, learned Standing Counsel appearing for the revision petitioners and Mr. N. A. Nissar Ahmed, learned counsel appearing for the respondent.

9. Though the aforesaid developments had been taken place at various forum, today it has been brought to the notice of this Court that, in the meanwhile, the 3rd petitioner/Election Officer, by proceedings dated 15.11.2019, had deferred the election, which was originally scheduled to be conducted on 17.11.2019 citing the reasons that, there has been litigation pending in various judicial forum.

10. Therefore, the fact remains that, as of now, the election has been deferred, it was not conducted on 17.11.2019 as originally scheduled.

11. The learned counsel appearing for the revision petitioners raised a prime ground against the impugned order stating that, the very prayer sought for by the respondent before the Tribunal in the said I.A. is to stay all further proceedings and to give a direction to the Election Officer to receive the nomination.

12. If that is the prayer, the Tribunal, without hearing the revision petitioners herein, who are the respondents in the said IA, allowed the IA, at the admission stage, exparte, whereby an exparte direction was given to the Election Officer to receive and accept the nomination from the respondent herein.

13. Therefore, the learned counsel would submit that, the said order, which is impugned herein passed by the Tribunal, cannot stand in the legal scrutiny, therefore, it has to be interfered with.

14. However, Mr. N. A. Nissar Ahmed, learned counsel appearing for the respondent would submit that, if at all the respondent earned any disqualification in the manner known to law, based on such ground and disqualification, if the nomination is rejected, it can be accepted. However, by proceedings dated 31.10.2019, the Election Officer simply rejected the nomination of the respondent only on the ground that, some allegations and complaint had been made against the respondent. Therefore, without deciding the veracity of such complaints and without coming to the conclusion that, those complaints or allegations have been proved against the respondent, which required disqualification of the respondent from contesting election, the

Election Officer ought not to have disqualified the respondent. Therefore, against the said order, when the respondent initially approached this Court by filing writ petition as stated above, this Court granted liberty to approach the Tribunal to agitate the issue. Accordingly, the respondent approached the Tribunal and agitated the issue, where the Tribunal, considering the prima facie case made out by the respondent and also in order to strike out the balance of convenience, which was in favour of the respondent herein, granted an interim order, as on 07.11.2019, there was no notification to defer the election and since the election was on the cards, to be conducted on 17.11.2019, the Tribunal had no other option, except to give such direction to the Election Officer to accept the nomination of the respondent and therefore, the said order passed by the Tribunal, which is impugned herein, cannot be found fault with.

15.I have considered the rival submissions made by the learned counsel appearing for the parties and also perused the materials placed before this Court.

16.The fact remains that, the Writ Court has directed the respondent to approach the Tribunal, accordingly, he approached the Tribunal and filed an application where he sought for two prayers, one is stay for further proceedings, another one is for direction to accept his nomination. As has been rightly pointed out by the learned counsel appearing for the revision petitioners, the Tribunal should have issued notice to the revision petitioners and after hearing the revision petitioners, orders could have been passed on merits, without which, if the Tribunal decides to pass an exparte order, it is a settled law that, an order by way of a mandatory act to do something either by way of mandatory injunction or by way of direction, normally would not be issued exparte without hearing the respondents.

17.Though such kind of interim orders are possible for granting exparte only in case of stay and injunction and not for the case of direction, therefore, this Court feels that, the Tribunal ought not to have issued an exparte direction to the Election Officer, who is the 3rd petitioner herein, to accept the nomination of the respondent for the then proposed election.

18.However, now the election has been deferred, therefore, the present reason now cited by the learned counsel for the respondent that, since there was no time to decide the issue finally, taking into account the prima facie case made out by the respondent, the Tribunal had given that direction to accept the nomination, since the election process was already on to be conducted on 17.11.2019, is no more available now.

19. Now the election since has been deferred, the Tribunal has got ample time to decide the issue raised by the respondent as to his qualification or disqualification, in the teeth of the order passed by the Election Officer dated 31.10.2019.

20. Therefore, this Court feels that, the present order dated 07.11.2019, which is impugned herein, as of now cannot be acted upon on the one side. On the other side, such kind of exparte interim direction ought not to have been given, without hearing the revision petitioners, who are the respondents before the Tribunal.

21. For all these reasons, this Court is inclined to interfere with the impugned order of course with some consequential suitable directions.

22. In the result, this civil revision petition is disposed of, with the following orders:

(i) That the impugned order is set aside and the matter is remitted back to the Wakf Tribunal for hearing and decision. In this process, opportunity shall be given to the respondents therein, who are the petitioners herein and the issue raised by the respondent herein, who is the applicant therein, can be decided on merits, for which, the Tribunal can take 30 days time from the date of receipt of a copy of this order, within which, finality shall be given in the said IA filed by the respondent.

(ii) Once the Tribunal decides the said issue finally, depending upon the outcome of the decision, the nomination of the respondent, whether to be accepted or not, can also be decided. Enabling the said process to be taken by the 3rd petitioner/Election Officer, who has already deferred the election, without giving any further schedule, he can wait till the decision to be taken by the Tribunal, as indicated above and thereafter, it is open to the Election Officer to issue a fresh election schedule/ notification, accordingly, the election can be conducted.

(iii) It is needless for this Court to state that, already election notification has been issued and subsequently, it was deferred, as of now it is incumbent officer to conduct the election at the earliest, therefore, within 30 days after the decision is made by the Tribunal, as indicated above, the Election Officer shall conduct the election.

23.With these observations and directions, this Civil Revision Petition is ordered accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

Sgl

To

The Tamil Nadu Wakf Tribunal,
Chennai.

+1cc to Mr.N.A.Nissar Ahmed, Advocate (SR.No.97725)

+1cc to Mr.S.Haja Mohideen, Advocate (SR.No.97390)

C.R.P.(PD).No.3772 of 2019

CP(CO)
BRI(21.05.2020)



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