

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

* * * *

WP No.15086 of 2019

Between:

SULTAN QUAAN

...Petitioner

&

THE STATE OF TELANGANA, REP. BY ITS PRINCIPAL
SECRETARY, MINORITY WELFARE DEPARTMENT, HYDERABAD,
TS & OTHERS

...Respondents

DATE OF JUDGMENT PRONOUNCED: 24-10-2019

SUBMITTED FOR APPROVAL:

1. Whether Reporters of local newspapers
may be allowed to see the Judgment? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to
see the fair copy of the Judgment? Yes/No

A. RAJASHEKER REDDY, J

***THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY**

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T.S. & OTHERS

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< **GIST:**

> **HEAD NOTE:**

! Counsel for Petitioner: Sri Abdul Muqeeth Qureshi

^Counsel for 1st Respondent : Learned Advocate General

^Counsel for 2nd Respondent : Sri MA Mujeeb, learned SC Wakf Board

^Counsel for 3rd Respondent : Sri D. Prakash Reddy, learned Sr. Counsel

? Cases referred

1. 2016 LAW SUIT (KERALA) 1233
2. 2016 LAW SUIT (BOMBAY) 871
3. (2013) 1 ALT 577 (FB)
4. (1985) 1 SCC 591
5. (2001) 7 SCC 71
6. (2017) 14 SCC 663

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDYWP No.15086 of 2019ORDER::

This writ petition is filed questioning the propriety of the 3rd respondent in continuing as Chairperson of the Telangana State Wakf Board though the term of the 3rd respondent as Member of Legislative Council (MLC) has been completed by 29-03-2019; membership of the Wakf Board is co-terminus with his term as MLC having been elected as a Member of the Wakf Board under Section 14(1) (b) (ii) of the Wakf Act, 1995, (for brevity, "the Act") continuing in the said post as being illegal arbitrary and unconstitutional and to pass appropriate consequential orders in the interest of justice.

02. The matter rests on a narrow compass. The Government of Telangana in GO Ms.No.9, MW(Estt-II), Department, dated 23-02-2017 constituted Telangana State Wakf Board and as per the constitution thereof, it consists of six elected members and five nominated members and out of the six elected members, the 3rd respondent was elected as Member of the Wakf Board being a Member of State Legislative Council (MLC) under Section 14(1) (b) (ii) of the Act. All the elected and nominated members of the Wakf Board, by an unanimous resolution, elected the 3rd respondent as Chairperson of the Wakf Board and his appointment as such was notified by the Government vide GO Rt. No.51, Minorities Welfare (Estt-II), Department, dated 27-02-2017. The 3rd respondent was elected as Member of State Legislative Council on 14-03-

2013, the tenure of MLC being for a period of six years, ended by 29-03-2019.

03. The grievance of the petitioner is that the 3rd respondent who has been elected under Section 14(1)(b)(ii) of the Act, being the Member of State Legislative Council and his term as MLC ended by 29-03-2019, he ceased to be a Member of the Wakf Board and is deemed to have vacated the office of the Member of Wakf Board, the post of Member of the Wakf Board being co-terminus, from the date he ceased to be the Member of the State Legislative Council as enunciated under Explanation-II of Section 14 of the Act. Hence this writ petition.

04. The 1st respondent represented by the Secretary to Government (FAC), Minorities Welfare Department, filed counter affidavit wherein *inter alia* it is stated that the elected and nominated members of the Wakf Board have met on 24-02-2017 and unanimously elected the 3rd respondent as Chairperson of the Wakf Board and notified as such vide GO Rt.No.51, dated 27-02-2017. That as per Section 15 of the Act, the Members, whether elected or nominated shall hold office for a term of five years from the date of the notification. That Explanation-II of Section 14 of the Act is applicable to a Member of State Legislative Assembly, but not for a Member of the State Legislative Council as Explanation-II refers to “*ceases to be a member of the State Legislative Assembly*” but not to the Member of the Legislative Council. That Explanation-II of Section 14 of the Act would not apply in case of the 3rd respondent as he has been a Member of the Legislative Council.

05. Counter affidavit is filed by the 3rd respondent. It is stated that the term *State Legislature* has a specific connotation as defined under Article 168 of the Constitution of India in States which have bicameral (two-tier) legislation and one such State is the State of Telangana which consists of the Legislative Assembly and the Legislative Council. The composition of Legislative Assembly and the Legislative Council, respectively has been provided under Articles 170 and 171 of the Constitution of India and they contain distinct and different schemes for election/nomination of the members of the two houses and a clear distinction exists between a Legislative Assembly and a Legislative Council. That Explanation II to Section 14 of the Act makes it lucidly clear that a member who has been elected in the category of a member of a State Legislative Assembly ceases to be so; is deemed to have vacated the office of the Member of the Wakf Board, but a member of the State Legislative Council is not covered within the Explanation. That the right of the 3rd respondent to continue as a Member of the Wakf Board is protected under Section 15 of the Act by virtue thereof he is entitled to continue for a period five years from the date of his election as Member to the Wakf Board.

06. Heard Sri Abdul Muqeeth Qureshi, the learned counsel for the petitioner; the learned Advocate General for the 1st respondent, Sri MA Mujeeb, the learned Standing Counsel for the 2nd respondent-Wakf Board and Sri D. Prakesh Reddy, the learned Senior counsel for the 3rd respondent.

07. Learned counsel for the petitioner contended that under Section 3 (h) of the Act, Member means a Member of the Board and includes the Chairperson of the Wakf Board and such Member and Chairperson is not different and as such continuation of 3rd respondent as Chairperson of the Wakf Board on the cessation of his tenure as MLC is illegal, void and against statutory intendment. It is also stated that State legislature means both the houses *viz.*, State Legislative Assembly and State Legislative Council as contemplated under Article 168 of the Constitution of India. It is contended that the words “.....*Members of the State Legislature*” employed in sub-Clause (ii) of Clause (b) of sub-Section (1) of Section 14 of the Act is to be construed as both State Legislative Assembly and State Legislative Council and Explanation-II thereto cannot override the language used in the substantive provision; explanation to a provision is clarificatory in nature and to dispel the doubts if any which surround on a reading of the substantive provision. Division Bench decisions in **T.A.AHAMMED KABEER vs. STATE OF KERALA¹ & MOHD FIRDOZ AHMED vs. MAHARASHTRA STATE BOARD OF WAKFS²** rendered by the High Court of Kerala and the High Court of Bombay (*Nagpur Bench*) are relied on.

08. Learned Advocate General appearing for the 1st respondent submits that a reading of Explanation-II of Section 14 of the Act clearly reflects that the Legislature in its wisdom while enacting the said Explanation-II consciously ignored the words “Members of the State

¹ 2016 LAW SUIT (KERALA) 1233

² 2016 LAW SUIT (BOMBAY) 871

Legislature” and only referred to the words “Member of the State Legislative Assembly” as such it can be made applicable only to a Member of the State Legislative Assembly, and not in respect of a Member of the Legislative Council. It is submitted that where the words of a provision are clear, there is little scope for applying the principles of interpretation and presumptions could be drawn in case of ambiguity in the provision to redress the mischief it seeks to cause. Reliance is placed on the Full Bench decision of this Court in **SHAIK FAREED vs. GOVERNMENT OF ANDHRA PRADESH**.³

09. Learned Senior Counsel appearing for the 3rd respondent submits that Explanation-II appended to the provision, it excludes the Member of the State Legislative Council and therefore vacating the office of the Chairmanship by the 3rd respondent does not arise as it is no longer a post, co-terminus with the post of MLC. It is contended that the Members are entitled to continue for a full term of five years as prescribed under Section 15 of the Act, except for the disqualifications under Section 16 of the Act. It is argued that Explanation-II to Section 14 of the Act does not restrict the scope and ambit of the substantive provision and it is in conjunction of what is provided under sub-Clause (ii) of Clause (b) of sub-Section (1) of Section 14 of the Act and in no way runs counter to it but explain and clarify the provision. The decisions in **SUNDARAM PILLAI vs. PATTABIRAMAN**⁴, **DADI JAGANNADHAM vs. JAMMULU**

³ (2013) 1 ALT 577 (FB)

⁴ (1985) 1 SCC 591

RAMULU⁵ & MUKUND DEWANGAN vs. ORIENTAL INSURANCE CO.

LIMITED⁶ are relied on.

10. Having considered the submissions made in the matter, for appreciating the contentions, it is worthwhile to refer to certain provision of the Act.

14. Composition of Board: (1) *The Board for a State and 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, the National Capital Territory of Delhi;*

(ii) *Muslim Members of the State Legislature;*

(iii) *xxxxx (omitted) and*

(iv) *xxxxx (omitted);*

Explanation I—For the removal of doubts, it is hereby declared that the members from categories mentioned in sub-clauses (i) to (iv), shall be elected from the electoral college constituted for each category.

Explanation II—For the removal of doubts it is hereby declared that in case a Muslim member ceases to be a Member of Parliament from the State or National Capital Territory of Delhi as referred to in sub-clause (i) of clause (b) or ceases to be a Member of the State Legislative Assembly as required under sub-clause (ii) of clause (b), such member shall be deemed to have vacated the office of the member of the Board for the State or National Capital Territory of Delhi, as the case may be, from the date from which such member ceased to be a Member of Parliament from the State or National Capital Territory of Delhi, or a Member of the State Legislative Assembly, as the case may be;]

(c) *xxxx (omitted);*

(d) *xxxx (omitted);*

(e) *xxxx (omitted);*

(1A) to (9) *xxx (omitted);*

11. Section 15 of the Act prescribes the term of Office of Members, which reads as under:-

“15. Term of office--*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.”*

12. Section 16 of the Act speaks of disqualifications, which is thus:-

⁵ (2001) 7 SCC 71

⁶ (2017) 14 SCC 663

“16. Disqualification for being appointed, or for continuing as, a member of the Board: A person shall be disqualified for being appointed, or for continuing as, a member of the Board if:

- (a) he is not a Muslim and is less than twenty-one years of age;
- (b) he is found to be a person of unsound mind;
- (c) he is an un-discharged insolvent;
- (d) he has been convicted of an offence involving moral turpitude and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;
- (da) he has been held guilty of encroachment on any waqf property;
- (e) he has been on a previous occasion—
 - (i) removed from his office as a member or as a mutawalli, or
 - (ii) removed by an order of a competent court or tribunal from any position of trust either for mismanagement or for corruption

“Section 20. Removal of Chairperson and Member:—

(1) The State Government may, by notification in the Official Gazette, remove the Chairperson of the Board or any member thereof if he—

- (a) is or becomes subject to any disqualifications specified in Section 16; or
- (b) refuses to act or is incapable of acting or acts in a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the Auqaf; or
- (c) fails in the opinion of the Board, to attend three consecutive meetings of the Board, without sufficient excuse.

(2) Where the Chairperson of the Board is removed under sub-Section (1), he shall also cease to be a member of the Board.

“168. Constitution of Legislature in States—(1) For every State there shall be a Legislature which shall consist of the Governor, and

- (a) in the States of Andhra Pradesh, Bihar, Maharashtra, Karnataka, Tamil Nadu, Telangana, and Uttar Pradesh, two Houses;
- (b) in other States, one House

(2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly.”

13. The germane point that arises for consideration is whether the 3rd respondent is entitled to continue in office as Chairperson of the Wakf Board in the light of Explanation-II appended to Section 14 of the Act ?

14. There is no dispute that the very election of the 3rd respondent as member of the Wakf Board is due to he being a Member of the Legislative Council under sub-Clause (ii) of Clause (b) of sub-Section (1) of Section 14 of the Act. When once the person from a particular category is elected as Member of the Wakf Board, he/she is entitled to

continue in office of the said post for a period of five years, as stipulated under Section 15 of the Act unless incurs any disqualification under Section 16 of the Act or for any violation of the statute for the time being in force. Sub-clause (ii) refers “to the State Legislature”. As per for the meaning assigned under Article 168 (2) of the Constitution of India, it includes both the Houses i.e. State Legislative Assembly and State Legislative Council. But what is distorting is Explanation-II appended to the provision which specifically excludes the Member of the Legislative Council and only refers to a Member of the State Legislative Assembly. Generally understood, the Explanation appended to the provision is construed to clarify certain ambiguities which might crop up while applying the provision. What is the impact of the Explanation appended to a provision has been succinctly explained by the Hon’ble Supreme Court in **S. Sundaram Pillai’s** case (4 supra). Paras 46 to 53, reads as under:-

46. *We have now to consider as to what is the impact of the Explanation on the proviso which deals with the question of wilful default. Before, however, we embark on an enquiry into this difficult and delicate question, we must appreciate the intent, purpose and legal effect of an Explanation. It is now well settled that an Explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision. Sarathi in Interpretation of Statutes while dwelling on the various aspects of an Explanation observes as follows:*

(a) The object of an Explanation is to understand the Act in the light of the explanation.

(b) It does not ordinarily enlarge the scope of the original section which it explains, but only makes the meaning clear beyond dispute.

47. *Swarup in Legislation and Interpretation* very aptly sums up the scope and effect of an Explanation thus:

“Sometimes an Explanation is appended to stress upon a particular thing which ordinarily would not appear clearly from the provisions of the section. The proper function of an Explanation is to make plain or elucidate what is enacted in the substantive provision and not to add or subtract from it. Thus an Explanation does not either restrict or extend the enacting part; it does not enlarge or narrow down the scope of the original section that it is supposed to explain.... The Explanation must be interpreted according to its own tenor; that it is meant to explain and not vice versa.”

48. *Bindra in Interpretation of Statutes (5th Edn.)* at p. 67 states thus:

“An Explanation does not enlarge the scope of the original section that it is supposed to explain. It is axiomatic that an Explanation only explains and does not expand or add to the scope of the original section... The purpose of an Explanation is, however, not to limit the scope of the main provision.... The construction of the Explanation must depend upon its terms, and no theory of its purpose can be entertained unless it is to be inferred from the language used. An ‘Explanation’ must be interpreted according to its own tenor.”

49. *The principles laid down by the aforesaid authors are fully supported by various authorities of this Court. To quote only a few, in *Burmah Shell Oil Storage and Distributing Co. of India Ltd. v. CTO* [(1961) 1 SCR 902 : AIR 1961 SC 315 : (1960) 11 STC 764] a Constitution Bench decision, Hidayatullah, J. speaking for the Court, observed thus:*

“Now, the Explanation must be interpreted according to its own tenor, and it is meant to explain clause (1)(f) of the Article and not vice versa. It is an error to explain the Explanation with the aid of the Article, because this reverses their roles.”

50. *In *Bihta Cooperative Development Cane Marketing Union Ltd. v. Bank of Bihar* [(1967) 1 SCR 848 : AIR 1967 SC 389 : 37 Com Cas 98] this Court observed thus:*

“The Explanation must be read so as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.”

51. In *Hiralal Rattanlal case* [(1973) 1 SCC 216 : 1973 SCC (Tax) 307] this Court observed thus: [SCC para 25, p. 225: SCC (Tax) p. 316]

“On the basis of the language of the Explanation this Court held that it did not widen the scope of clause (c). But from what has been said in the case, it is clear that if on a true reading of an Explanation it appears that it has widened the scope of the main section, effect be given to legislative intent notwithstanding the fact that the Legislature named that provision as an Explanation.”

52. In *Dattatraya Govind Mahajan v. State of Maharashtra* [(1977) 2 SCR 790 : (1977) 2 SCC 548 : AIR 1977 SC 915] Bhagwati, J. observed thus: (SCC p. 563, para 9)

“It is true that the orthodox function of an Explanation is to explain the meaning and effect of the main provision to which it is an Explanation and to clear up any doubt or ambiguity in it.... Therefore, even though the provision in question has been called an Explanation, we must construe it according to its plain language and not on any a priori considerations.”

53. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is—

- “(a) to explain the meaning and intendment of the Act itself,*
- (b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,*
- (c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,*
- (d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and*
- (e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.”*

15. In this case Explanation-II appended to Section 14 of the Act in no way interfering with, nor is there any ambiguity or vagueness nor is running counter to the substantive provision. What the expression seeks to clarify is only in respect of Member elected from among the category of Legislative Assembly and nothing more. What is mentioned in the substantive provision is explained and clarified in Explanation-II.

Explanation-II conspicuously omitted a Member elected from among the category of Legislative Council though the words “State Legislature” which includes both the Houses of Legislative Assembly and Legislative Council as appearing in Article 168 (2) of the Constitution. The golden rule of statutory construction is that the words and phrases or sentences of a provision should be interpreted according to the intent of the Legislature that passed the Act. When the words used in the statutes are in themselves precise and unambiguous, the words, or phrases or sentences themselves alone signifies the intended meaning, then no more can be necessary than to expound those words or phrases or sentences in their natural and ordinary sense. To construe and interpret Explanation-II to give a different meaning and expand the scope to include a Member of Legislative Council, could amount to legislation, when the scope is strictly limited and made applicable only to a Member of the Legislative Assembly. The principle of *casus omissus*, meaning thereby a content which should find place in the Statue, but has not been mentioned, it is not open for supplement by the Courts. **(see KUMAR KAMALARANJAN ROY vs. SECRETARY OF STATE, AIR 1938 PC 281).** In this case there is no ambiguity or uncertainty with what is employed in sub-Clause (ii) of Clause (b) of sub-Section (1) of Section 14 of the Act viz-a-viz the Explanation-II thereof. But what is circumscribed in the Explanation-II is the meaning of State Legislature as appearing in sub-Clause (ii), restricted and limited to a Member of the State Legislative Assembly. Such restriction in Explanation-II appended

to Section 14 of the Act could be a mistake in drafting or is it the intention of the Legislature to exclude a Member of the Legislative Council is for the Legislature to clarify. If it viewed from equality clause, as enunciated under Article 14 of the Constitution, though the discrepancy is not challenged, if it allowed to stay in the statue, it amounts to a class in class and allowing a premium to a Member of the Legislative Council over a Member of the Legislative Assembly.

16. In *SHAIK FAREED vs. GOVERNMENT OF ANDHRA PRADESH*,⁷

on a reference to the Full Bench for an authoritative pronouncement on the issue as to whether the term of the Members of the Wakf Board under Section 14 (1) (b) (i) and (ii) of the Act is co-terminus with their terms as the Members of Parliament and the State Legislative Assembly, (Sri CVNR,J) at paras 20, 24 and 38 and 48 observed as under:-

“20. The scheme of the Act as a whole does not give any scope for the assumption, much less a presumption, that at every given point of time, the members specified under Section 14(1)(b) of the Act must continue to be the Members of the respective bodies which they represented at the time of their election as the Members of the Wakf Board. Section 16 of the Act is a self-contained provision in itself. It provides for specific contingencies by which a Member of the Wakf Board becomes disqualified. Besides Section 16 of the Act, there is no provision which deals with disqualification of a Member of the Wakf Board. The expiry of term of a Member of Parliament, Legislature or Bar Council, is not included in this provision as a disqualification for continuing as a Member of the Wakf Board.

24. This provision is not circumscribed by, or hedged-in, with any conditions whatsoever. It gives one and the only meaning and the same does not admit of any other meaning. It mandates that the members of the Board shall hold office for a term of five years. The right

⁷ (2013) 1 ALT 577 (FB)

vested in a member of the Board for holding office for a term of five years is curtailed or taken away only by application of Sections 20 and 21 of the Act. Section 19 of the Act gives liberty to the Chairperson or any member to resign his office by writing to the State Government. None of these provisions either expressly or by necessary implication brought in the eventuality of expiry of the tenure of a Member of Parliament or the Legislative Assembly or the Bar Council, as a ground for cessation of the membership in the Wakf Board or disqualification under Section 16 of the Act on a close scrutiny, we find no basis for the above mentioned submission of the learned Counsel.

38. *The event of expiry of the term of Members of Parliament, the State Legislature and the Bar Council of the State, is something which happens in its natural course by efflux of time. Therefore, it cannot be presumed that such event was not in the contemplation of the Parliament when it has enacted the provisions of the Act. In contrast, under Section 4 of the Haj Committee Act, 2002, a specific provision for cessation of such members is prescribed. A fortiori, non-inclusion of this event as a ground for disqualification in Section 16 of the Act has to be necessarily attributed to the legislative wisdom. The aspect whether the omission of this event in Section 16 of the Act is proper or not, does not fall for examination by this Court, for, the function of the Parliament is to legislate law and that of the Courts is to interpret the law as it is enacted. Had it been the intention of the Parliament to make the Membership in the Wakf Board co-terminus with that of the Parliament, the State Legislature or the Bar Council of the State, it would have simply added one more clause to Section 16 of the Act providing for their disqualification to continue as Members of the Wakf Board on the expiry of their terms as the Members of Parliament, Legislature or Bar Council, as the case may be. In the absence of such a provision, to hold that the membership of a Member of Parliament, or a Member of Legislative Assembly or of a Member of Bar Council of the State, in the Wakf Board, is co-terminus with his membership in the body which he represents, amounts to supplying a clause in Section 16 of the Act by the Court. It is neither the function nor the forte of the Courts to legislate or to interpret the plain language of a legislation in the manner which will fit into their thinking of what should be the law. If something in the opinion of the Court which ought to have been included is not included in a legislation, the Court cannot supply such omissions as the same is forbidden by the doctrine of casus omissus.*

48. *On the premises as above, our answer to the reference is as under:*

The term of the elected members under Section 14(1)(b)(i), (ii) and (iii) of the Act, is not co-terminus with their tenure as the Members of Parliament, State Legislature or State Bar Council and that their term as the Chairperson or Members of the Wakf Board, as the case may be, will last till completion of five years as envisaged under Section 15 of the Act unless they resign, or, are removed by the State Government by applying the provisions of Section 20 of the Act.”

17. Sri PVSJ for himself and Sri VE,J while affirming the view expressed by Sri CVNRJ at paras 74 and 75 observed as under:-

74. *Thus, precedential wisdom weighs in favour of giving full meaning to the actual language used in the statute. Viewed thus, there is no getting over the fact that the Act of 1995 does not prescribe a disqualification, whereby Members of Parliament or of the State Legislature automatically cease to be Members of the Wakf Board upon completion of their office as Members of Parliament or of the State Legislature. Significantly, Section 4 of the Haj Committee Act, 2002, dealing with composition of a Haj Committee, provides that a Member of Parliament nominated as a Member of the Haj Committee shall, upon ceasing to be a Member of Parliament, cease to be a Member of the Committee. No such provision is made in the Act of 1995. It is also pertinent to note that Members of Parliament and of the State Legislature are elected by the electoral college as Members of the Wakf Board, unlike earlier when they were nominated by the State Government the present provision also contemplates former Members of Parliament and of the State Legislature being elected as Members of the Wakf Board in certain circumstances. Thus, there is no statutory mandate that only sitting Members of Parliament and of the State Legislature should be elected as Members of the Wakf Board. There is therefore no manifest dictate in the legislation that Membership of the Wakf Board under Section 14(1)(b)(i) and (ii) of the Act of 1995 would terminate upon such Members of Parliament/State Legislature ceasing to be so. We therefore agree with the view taken by our learned brother to the extent that the Act of 1995 does not contemplate cessation of Membership of the Wakf Board of Members of Parliament and of the*

State Legislature upon their demitting office as such upon expiry of their term.

75. However, our conclusion, unlike our learned brother's, is not absolute as is evident from the language in which we have couched it. The nature of cessation of office of such Members of Parliament and of the State Legislature would be utmost relevant to decide their entitlement to continue as Members of the Wakf Board. Demission of office by them upon successful completion of their term, as stated supra, would have no impact on their continuance as Members of the Wakf Board for a full term. There may however be other circumstances in which their office could be cut short.

18. What is discernable from the Full Bench reference order is that demission of office by Members of Parliament and of the State Legislature upon successful completion of their term, would have no impact on their continuance as Members of the Wakf Board for a full term. At the time when the reference was answered by the Full Bench of this Court in the above case, Explanation-I and Explanation-II to Section 14 of the Act was not available on the statute book. Explanation-I and II have been added to Section 14 of the Act by way of Amendment (Act 27 of 2013) with effect from 01-11-2013. In the light of the authoritative pronouncement by the Full Bench in **SHAIK FAREED's** case (7 supra), it is clear that the Members elected to the Wakf Board under the category of MLAs and MLCs are entitled to continue for a full term of five years as stipulated under Section 15 of the Act, save for disqualifications if any under Section 16 or under any statute for the time being in force.

19. But as it stands, Explanation-II added by way of amendment (Act 27 of 2013) to Section 14 of the Act is to be understood to have

disqualified only the Member of the Legislative Assembly to hold the office as Member of the Wakf Board appointed being a Member of the Legislative Assembly on completion term of his office as MLA. Our Constitution provides that Parliament shall consist of the Hon'ble President of India and the two Houses known respectively as the Council of States (Rajya Sabha) and the House of the People Lok Sabha. It is not known why the Member of Rajya Sabha within sub-Clause (ii), which is not the subject matter in this writ petition, referred but for comparison, and the Member of the Legislative Council are distinguished and left out from the Explanation appended to the provision. Since it is not in conflict with the provision to which it is appended, it is to be read and interpreted harmoniously.

20. In **DADI JAGANNADHAM's** case (5 supra), the Constitution Bench of the Hon'ble Supreme Court while enunciating the principles of interpretation at para 13 held thus:-

13. We have considered the submissions made by the parties. The settled principles of interpretation are that the court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly if there is a defect or an omission in the words used by the legislature, the Court would not go to its aid to correct or make up the deficiency. The Court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The Court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there."

21. The decisions in **MOHD FIRDOZ AHMED's** case (2 supra) wherein the Division Bench of the Bombay High Court (*Nagpur Bench*) considered similar issue, which is post amending Act 27 of 2013 held that the post of Member of a Wakf Board is co-terminus, on cessation of being a Member of the Legislative Council, by applying Explanation I and II to Section 14 of the Act, the 3rd respondent therein can not continue to function as a member of the Wakf Borad. Para 7 of the order reads as under:-

“7. On a reading of the provisions of Section 14 of the Act, specially the Explanation-II to Section 14 thereof, it appears that the respondent no.3 is deemed to have vacated the office of the Member of the Wakf Borad on 19-06-2012, the day, on which he ceased to be a Member of the Legislative Council. Section 14 provides for the election of the members from four electoral colleges namely, (i) the Muslim Members of the Parliament from the State, (ii) the Muslim Members of the State Legislature, (iii) the Muslim Members of the Bar Council of the concerned State and (iv) the Mutawallis of the Wakfs having annual income of rupees one lakh and above. Admittedly, the respondent No. 3 was elected from the electoral college of the Muslim Members of the State Legislature. The respondent No.3 was a Member of the Legislative Council and was elected as a member of the Wakf Board in terms of the provisions of Section 14(1) (b) (ii) of the Act. The respondent No. 3 ceased to be the member of the Legislative Council on the expiry of the term on 19-06-2012. In view of Explanation-II to Section 14(1) of the Act, the respondent No.3 is deemed to have vacated the office of the member of the Wakf Board with effect from 19-06-2012, since he ceased to be a member of the Legislative Council on that day. As Explanation-II to the provisions of Section 14(1) of the Act was inserted only for the purpose of removal of doubts and it was made clear that a Member of Parliament or a Member of the State Legislative Assembly would be deemed to have vacated the office of the member of the Wakf Board from the date from which he ceases to be a Member of Parliament from the State or

a Member of State Legislative Assembly, the respondent No.3 is deemed to have vacated the office as the member of the Wakf Board with effect from 20-06-2012. The respondent No.3 could not have continued to function as a member of the Wakf Board after he ceased to be a Member of the Legislative Council as his tenure on the Wakf Board was co-terminus with his tenure as a Member of the Legislative Council. The respondent No.3 cannot continue as the member of the Wakf Board till the completion of the normal tenure of five years as per Section 15 of the Act as he ceases to be a member of the Board, no sooner than he ceases to be the Member of the Legislative Council in view of the provisions of Explanation-II to Section 14 (1) of the Act.”

22. The Full Bench of this Court in **SHAIK FAREED’s** case (7 supra), has held that besides Section 16 of the Act, there is no provision which deals with disqualification of a Member of the Wakf Board and the expiry of term of a Member of Parliament, Legislature or Bar Council, is not included in Section 16 as a disqualification from continuing as a Member of the Wakf Board, now included by way of Explanation-II limiting it to a Member of the Legislative Assembly. The decision in **MOHD FIRDOZ AHMED’s** case (2 supra), the Division Bench of the Bombay High Court (*Nagpur Bench*) applied the clarification given in Explanation-II in respect of a Member of a Legislative Assembly to even a Member of a Legislative Council, though the Explanation-II limited it to a Member of Legislative Assembly as such I am not able to subscribe to the said view. The Full Bench of this Court which was rendered prior to Act 27 of 2013 has held that the Members elected under sub-Clause (ii) (b) (1) of Section 14 of the Act are entitle to continue as Members of the Wakf Board and demission of office by them upon successful completion

of their term would have no impact on their continuance as Members of the Wakf Board for a full term. Explanation-II only refers to a Member of the Legislative Assembly and in respect of a Member of the Legislative Council, the explanation is silent and in the light of the ratio laid down by the Full Bench judgment of the this Court in **SHAIK FAREED's** case (7 supra), the 3rd respondent, who has been elected being an MLC is entitled to continue as Member of the Wakf Board without reference to his demission of office as MLC. It is for the Legislature in its prudence to rectify the palpable anomaly and not for this Court to read something into the statue which is not there.

23. In the circumstances, the writ petition fails and it is accordingly dismissed. As a sequel to the dismissal of the writ petition, miscellaneous petitions, if any, pending in the writ petition also shall stand dismissed. There shall be no order as to costs.

A.RAJASHEKER REDDY, J

Dated: 24-10-2019
NRG

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP No.15086 of 2019

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24-10-2019

