

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14759 of 2018

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Gulnaaz Fatma W/o M.W. Haider, R/o Mohalla- Moghalpura, Foujdari Kuan,
P.S.- Khajekalan, District- Patna- 800008.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Minority Welfare Department, Government of Bihar, Old Secretariat, Patna-15.
2. The Bihar State Shia Waqf Board, through its Chief Executive Officer, 2nd Floor, Haj Bhawan, 34, Ali Imam Path, Harding Road, Patna-800001.
3. Sri Syed Ghulam Hussain, resident of Line Bazar, Purnia.
4. Sri Syed Israr Hussain Soghra Begarn Wakf Estate, Wakf No. 64, Muzaffarpur, Chandwara, Muzaffarpur.
5. Sri Irshad Ali Azad Villa, River View Colony, Loharwa Ghat Alamganj, Patna- 800007.
6. Moulvi Sarwar Qummi, Imam Shia Jama Masjid, Hat Churipatti, Kishanganj, Bihar.
7. Mirza Arif Raza, Chandwara Muzaffarpur.
8. Sri S.M Shamim Rizvi Wakf Estate House, P.O. Gulzarbagh, Patna-7
9. Sri Wasif Hussain, Pakdariba Lane, P.S.- Khaje Kelan, P.O. Jhauganj, Patna City, Patna- 800008.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Lakshmindra Kumar Yadav
For the Respondent/s	:	Mr.Durgesh Nandan- Aag14

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

3 20-02-2020 Heard learned counsel for the petitioner and learned
counsel for the respondents.

Petitioner has prayed for the following reliefs:



“(A) For quashing the notification of Minority Welfare Department, Government of Bihar, in exercise of its power u/s 14(i)(B) of the Wakf Act, 1995, as contained in No. 02-01/Shia-11/2015-1336 dated 04.09.2015 issued by Amir Subhani, Principal Secretary to the Government of Bihar, whereby and whereunder respondent no. 3 to 9 have been notified to have been appointed as members of Bihar State Shia Wakf Board constituted u/s 14(9) of the Wakf Act, 1995.

(b) For quashing the Notice, as contained in 02-01/Shia-11/2015-58, dated 04.09.2015, issued by Principal Secretary to the Government of Bihar, Department of Minority Welfare, authorized officer to conduct election with the newly appointed Member State Shia Wakf Board to participate in the meeting convened on 11.09.2015 at 2:30 P.M. for the election of the Chairman of Bihar State Shia Wakf Board constituted u/s 14(9) of the Wakf Act, 1995.

(c) For quashing the subsequent proceeding dated 11.09.2015 at 2.30 P.M. whereunder Sri Irshad Ali Azad, respondent no. 5 has been declared elected as Chairman of newly constituted Bihar State Shia Wakf Board who had secured 4 votes out of total 7 votes and rest 3 votes went to runny candidate Syed Ghulam Hussain, Respondent No. 3.”

It is the common prayer of the parties that present petition needs to be disposed off in terms of the judgment rendered by this Court in CWJC No. 5821 of 2017, titled as *Amanat Abbas v. The State of Bihar & Ors.*



The operative portion of the aforesaid judgment reads
as under:

“7. At the outset, it is required to be noted and as observed above what is required to be considered in present petition, is whether the impugned notification dated 04.09.2015, constituting the Shia Wakf Board in the State of Bihar under the provisions of Wakf Act, 1995, is in accordance with the requirement of Section 14(1)(b) of the Wakf Act, 1995 or not ?

8. In the State of Bihar, there are two Wakf Boards; one is Bihar State Sunni Wakf Board and another is Bihar State Shia Wakf Board representing Sunni and Shia communities, respectively. In the present case, the dispute is with respect to constitution of Shia Wakf Board. The constitution of the Board is provided under Section 14 of the Act, 1995, which is as follows;

“14. Composition of Board.—(1) The Board for a State and the Union 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 Union territory of Delhi,

(ii) Muslim Members of the State Legislature,

(iii) Muslim Members of the Bar Council of the State, and

(iv) mutawallis of the wakfs having an annual income of rupees one lakh and above;

(c) one and not more than two members to be nominated by the State Government representing eminent Muslim organizations;



(d) one and not more than two members to be nominated by the State Government, each from recognised scholars in Islamic Theology;

(e) an officer of the State Government not below the rank of Deputy Secretary.

(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 or 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). (5) Where there are Shia wakfs but no separate Shia Wakfs Board exists, at least one of the members from the categories listed in sub-section (1), shall be a Shia Muslim.

(6) In determining the number of Shia members or Sunni members of the Board, the State Government shall have regard to the number and value of Shia wakfs and Sunni wakfs to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination.

(7) In the case of the Union territory other than Delhi, the Board shall consist of not less than three and not more than five members to be appointed by the Central Government from amongst the categories of persons specified in sub-section (1) :

Provided that there shall be one mutawalli as the member of the Board.

(8) Whenever the Board is constituted or re-



constituted, the members of the Board present at a meeting convened for the purpose shall elect one from amongst themselves as the Chairperson of the Board.

(9) The members of the Board shall be appointed by the State Government by notification in the Official Gazette.”

8.1. According to Section 14(1)(b)(i) of the Act, 1995, one and not more than two members are to be nominated from the Member of Parliament from the State of Bihar. However, it appears and so stated in paragraph- 7 of the counter affidavit, that there is no sitting M.P. in any of Houses from Shia community from Bihar. Similarly, there is no Shia member from Bihar Legislative Assembly and similarly, there is no member of the Bihar Legislative Council of the State belonging to Shia community. From the counter affidavit, it appears that all efforts were made to nominate the members as required under Section 14(1)(b) of the Act, 1995. The same can be appreciated from the counter affidavit filed on behalf of the State (paragraph Nos. 7 to 11 of the counter affidavit). In view of the aforesaid facts and circumstances and non-availability of the Member of Parliament from the State, Member of State Legislature, Member of Bar Council of the State belonging to the Shia community, thereafter, the State Government in exercise of the powers under Sub-Section 3 of the Section 14 of the Act, 1995 has nominated the persons belonging to Shia community in a category of Section 14(1)(b)(i)(ii)(iii)(iv) of the Act, 1995. Therefore, the impugned notification dated 04.09.2015, constituting the Shia Wakf Board in the state of Bihar, as such, cannot be said to be



contrary to Section 14 of the Act, 1995.

8.2. In so far as the submission of the petitioner that in case of non-availability of the persons belonging to Shia community, the Member of Parliament from the State, Member of State Legislature, Member of Bar Council of the State, in that case, the Member of Parliament from the State, Member of State Legislature, Member of Bar Council of the State, belonging to Sunni community are required to be nominated while constituting the Shia Wakf Board is concerned, the same has no substance. At the outset, it is required to be noted that in the present case, the dispute is with respect to constitution of Shia Wakf Board. There is already a separate Sunni Wakf Board in the State of Bihar. It is required to be noted that there is vast difference between “Shia Wakf Board” and “Sunni Wakf Board” and “Shia Wakf Board” is governed by Shia law and “Sunni Wakf Board” is governed by Sunni law. Therefore, when the question is with respect to constitution of either Shia Wakf Board or Sunni Wakf Board, in that case, the persons belonging to Shia community are required to be nominated in the Shia Wakf Board and the persons belonging to Sunni community are required to be nominated in the Sunni Wakf Board. Therefore, the aforesaid shall be in the larger interest of both the communities namely, Shia and Sunni. At this stage, sub-sections 5 and 6 of Section 14 of the Act, 1995 are required to be referred to. Sub-Section 5 of Section 14 of the Act, 1995 provides that where there are Shia Wakfs but no separate Shia Wakfs Board exists, at least one of the category in sub-section 1



shall be a Shia Muslim. Sub-Section 6 of Section 14 of the Act, 1995, further provides that in determining the number of Shia members or Sunni members of the Board, the State Government shall have regard to the number and value of Shia Wakfs and Sunni Wakfs to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination. Therefore, considering the intents of the legislature, when there are separate Wakf Boards namely Shia and Sunni Wakfs Board, the members belonging to the Shia community are to be nominated in Shia Wakf Board and the persons belonging to Sunni Community are required to be nominated in the Sunni Wakf Board. Therefore, in the present case, the constitution of the Shia Wakf Board in the State of Bihar as per the notification dated 04.05.2015 cannot be said to be contrary to the provisions of Section 14 of the Act, 1995 and or cannot be said to be in any way against the object and purpose of the constitution of the Shia Wakf Board in the present Case.

9. In view of the above and for the reasons, stated above, the present petition fails and the same deserved to be dismissed and is, accordingly, dismissed as the constitution of the Shia Wakf Board in the State of Bihar as per the impugned notification dated 04.05.2015 is just and proper and in consonance with the Section 14 of the Act, 1995, Notice discharged. No costs.”

As such, the present petition also stands disposed off



in the same terms as contained in the judgment dated
20.08.2018 passed in CWJC No. 5821 of 2017, titled as *Amanat
Abbas v. The State of Bihar & Ors.*

(Sanjay Karol, CJ)

(S. Kumar, J)

sujit/-

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