



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2020

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.6786 of 2020
and W.M.P. (MD).No.6181 of 2020

Hajee T.S.Ahamed Ibrahim

... Petitioner

Vs.

1.The Special Officer,
Tamil Nadu Wakf Board,
No.1, Zaffar Sirang Road,
Mannadi, Chennai.

2.The Returning Officer / Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Zaffar Sirang Road,
Mannadi, Chennai.

3.The Election Officer / The Superintendent Auqaf
Madurai Zone,
M.S.S. Wakf Board College,
Madurai.

4.The M.S.S. Wakf Board College,
represented by its Principal,
K.K.Nagar, Madurai.

5.N.Jamal Mohideen
B-6, 8th Floor, Max Vista Apartment,
Madurai - 625 018.

... Respondents

(R5 is suo motu impleaded vide court order dated 15-07-2020)

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the Impugned Election Notification issued by the 3rd respondent in Rc.No.NS.24/SW-MDU/ED/M.S.S.W.B.C./2020, dated 02.06.2020 for constitution of Executive Committee and Governing Body of the 4th respondent College and quash the same as illegal.

For Petitioner : Mr.R.R.Kannan



For Respondents : Mr.S.A.Ajmal Khan for R1, R3 & R4
Mr.V.Lakshmi Narayanan for R2
Mr.J.Hariharan for R5.

O R D E R

Heard the learned counsel appearing for the writ petitioner, learned Standing counsel for the Wakf Board and the learned counsel appearing for the 5th respondent.

2.The petitioner challenges the impugned notification, dated 02.06.2020 issued by the Election Officer / The Superintendent of Waqfs /3rd respondent, informing the members of the General body of the 4th respondent college about the holding of elections for electing the members of the Executive committee and the Governing body of the college. The election to the Executive committee was scheduled to be completed on 08.07.2020. The election of members of Governing body was scheduled to be concluded on 21.07.2020.

3.The petitioner is a member of the General body of the college. The petitioner is having two other grievances. The petitioner submits that voter list has been improperly prepared. According to him, even some members who are presently no more have also been included in the voters list. He also alleges that the fifth respondent namely Thiru N.Jamal Mohideen ought not to have been included in the list of members of the General body. His further allegation is that when the entire State is under lock down, holding of election cannot be said to be appropriate. He would point out that a number of General body members are presently at Chennai and that in view of travel restrictions much and other related issues, they may not be in a position to travel down to Madurai to cast their votes. In such a situation if the election is held, participation will be quite restricted and the eventual outcome will not be fair.

4. The matter was listed for admission on 16.06.2020 and a learned Judge of this Court was pleased to grant interim stay. The respondents have since entered appearance and also filed their counter affidavits. They wanted me to vacate the interim order and permit the third respondent to take the process to its logical conclusion.

5.The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition.

6.The learned Standing counsel appearing for the Wakf Board at the outset fairly stated that there was a typographical error in para 3 of the notification for Governing body election. Instead of 'four', it was wrongly typed as 'eight' in the election notification.



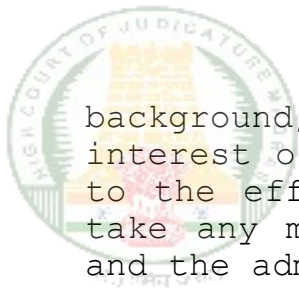
7.The learned Standing counsel further submitted that the third respondent would issue an errata once this Court disposes of this petition and permits them to conduct the election. In other words, the mistake pointed out by the petitioner would be rectified. He further pointed out that the entire process ought not to have been stalled, merely because a typing mistake had crept into the notification.

8.The learned Standing counsel also submitted that though the 5th respondent was originally removed from the primary membership on 25.10.2003, by the Governing body, relying on the decision of the Honourable Division Bench in ***MSS Wakf Board College, represented by its Secretary and Correspondent, K.K.Nagar, Madurai and others Vs. Haji M.MOHamed Ali Jinnah and others***, reported in (2005) 4 MLJ 262, he would contend that for removing a member from the General body, the approval must be granted by the Wakf Board, which alone is competent. I pointed out that the challenge mounted by the 5th respondent in W.P.(MD).No.37894 of 2003 resulted in his being relegated to the Government by order dated 26.06.2017 and that the Government also has not given any relief to him. But the learned Standing counsel drew my attention to the interim order of Stay granted in W.A.(MD).No.91 of 2019 on 11.02.2019 in favour of the 5th respondent. The learned Standing counsel would further contend that when once the election process had commenced, it would not be open to the Court to stall the same in the midway. He also reiterated the other contentions projected in the counter affidavit.

9.The learned counsel appearing for the 5th respondent also strongly contended that the 5th respondent is very much a member of the Governing body and that his removal on 25.10.2003 is void. He also adopted the arguments of the learned Standing counsel in this regard. His contention is that the removal of the 5th respondent from the Governing body is contrary to the constitution of the 4th respondent college. He would also states that the 4th respondent college is a minority institution and that at the earliest management should be handed over to the community itself. This is possible only by conducting the election. The 5th respondent also took me through the pleadings and also the typed set filed by him.

10.I carefully considered the rival contentions.

11.The petitioner strongly relied on the interim order dated 20.03.2019 in W.P.(MD).No.6583 of 2019 to sustain his contentions that election should not be held. In fact, interim order granted in this writ petition rests on that interim order. But a reading of the aforesaid order dated 20.03.2019 would indicate that the Honourable Division Bench did not relish the induction of Thiru N.Jamal Mohideen into the college management. The Honourable Division Bench also noted that the complaint alleging recruitment scam has been referred for investigation by the CBI. In this



background, the Honourable Division Bench, in order to protect the interest of the institution, granted an order of interim injunction to the effect that the Governing council of the college shall not take any major policy decision in relation to the academic issues and the administration of the institution until further orders.

WEB COPY

12.I am afraid that grant of such an interim order cannot come in the way of holding the elections to the Executive committee and the Governing council. By permitting the impugned election process to go on, the college will only get a new Executive committee and a new Governing council. Therefore, in my view, the interim order dated 20.03.2019 made in W.P.(MD).No.6583 of 2019, cannot be a stumbling block for conducting the impugned election.

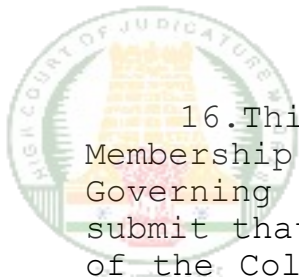
13.The learned counsel for the petitioner rightly pointed out that the notification pertaining to the election is defective. This has been conceded by the Wakf Board. In para 8, the following averment has been made.

"8.I humbly submit now the 4th respondent college is running without Governing Body and Executive members. The 3rd Respondent issued the election notification, dated 02.06.2020 for electing the Governing Body, Executive members, election process and most of the process were completed. The impugned notification is valid one and there was no illegality. I denied the para 9 of the affidavit, there was a typographical error in the para 3 in the election notification of Governing body election dated 21.07.2020, instead of 'Four' wrongly typed as 'Eight' in the election notification of impugned communication. It can be rectified by the Election Officer, even before the election time. All the members very much aware of the Governing body election procedure, so it is not a point for destroying the election process."

In view of the offer made by the respondents 1 to 3 that a errata will be issued, this contention of the petitioner also does not survive.

14.The petitioner's counsel alleged that the voters list includes even some dead persons. The learned standing counsel after getting instructions, makes a firm statement that the final voters list published by the third respondent does not include any dead member. This submission made by the learned standing counsel is recorded.

15.Now that leaves me with two more contentions. The question is whether the voters list can continue to retain Thiru N.Jamal Mohideen.



16.Thiru N.Jamal Mohideen was removed from the Primary Membership on 15.12.2003 by virtue of the decision taken by the Governing body. The learned counsel for the respondents would submit that this decision is not in consonance with the constitution of the College. But, the fact remains that Thiru N.Jamal Mohideen filed W.P.(MD)No.37894 of 2003, challenging the resolution of the Governing body. The validity of the said decision expelling Thiru N.Jamal Mohideen was specifically put to test in the aforesaid writ proceeding. Unfortunately, Thiru N.Jamal Mohideen could not succeed in getting the said resolution set aside. Instead, his writ petition was dismissed, vide order dated 29.06.2017 which only gave him liberty to approach the competent authorities to redress his grievances. Availing the said liberty, the 5th respondent filed an appeal before the Government.

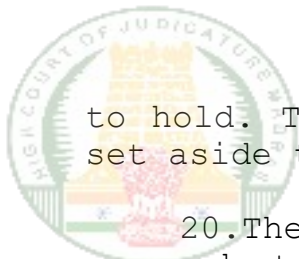
17.The Honourable Division Bench while dealing with W.A.(MD) Nos.91 and 123 of 2019, by order dated 16.10.2019, observed as follows:

"It is submitted by the learned counsel for the appellant in W.A.(MD).No.91 of 2019 that the representation is pending before the Government, wherein decision has to be take nby the Government whether the removal of the petitioner from the basic membership of the MSS Wakf Board College, General Body is valid or not.

Pendency of the writ appeal will not be a bar for the Government to consider the representation. Copy of the representation has been handed over to the learned Additional Advocate General, who shall issue necessary instructions and render opinion to the Government to consider the representation in accordance with law after affording an opportunity to all the parties. It is needless to state that before decision is taken, report of the Tamil Nadu Wakf Board shall be obtained."

18.From the above, one can safely come to the conclusion that it was for the Government to take a decision on the validity of the expulsion of the 5th respondent from the General body. Now, the said petition filed by the 5th respondent had been disposed of by the Government vide letter No.4553/S2/2018-16 dated 24.07.2020. The Government had taken a view that in view of the above matter being subjudice the question of rejecting the resolution dated 15.12.2003 by the Government, does not arise.

19.Though the learned standing counsel as well as the learned counsel for the 5th respondent would argue that this decision of the Government does not amount to rejection of the 5th respondent appeal, admittedly his appeal was not allowed either. In other wards, the Government had tossed the ball back to the Court. Thus, the factual position is that the resolution expelling the 5th respondent from the primary membership of the General body continues



to hold. This is all the more so because the Government refused to set aside the resolution of the Governing body passed on 15.12.2003.

20. There is one another formidable circumstance against the 5th respondent. When the resolution dated 15.12.2003, was cancelled by the subsequent resolution of the Governing body dated 23.05.2018, the same was stayed by the Honourable Division Bench in W.P.(MD) No.4028 of 2019 vide order dated 21.02.2019.

21. It is true that the 5th respondent herein had secured an interim order in his favour at the hands of another Honourable Division Bench on 11.02.2019 in W.A.(MD)No.91 of 2019. But, that grant of interim order in W.A.(MD)No.91 of 2019 cannot come to his rescue for the present purposes. Thiru N.Jamal Mohideen was nominated as a Governing nominee in the Governing body by the Government vide G.O.(D).No.3, dated 01.02.2017. Questioning the same, one Sardar Basha filed W.P.(MD).No.15788 of 2019. The said writ petition was allowed and the learned Judge by order dated 30.10.2018, quashed the same insofar as the nomination of the 5th respondent herein. Questioning the same, N.Jamal Mohideen filed W.A.(MD).No.91 of 2019 before the Honourable Division Bench of this Court. The learned Senior counsel appearing for N.Jamal Mohideen submitted that the learned single Judge had not taken note of the fact that Jamal Mohideen was not removed from the General body. This submission was not controverted by the official respondents. In that view of the matter, interim stay was granted by the Division Bench. This interim order cannot come to the petitioner's avail, in view of the subsequent developments which have already been narrated above. Therefore, retention of the 5th respondent in the voters list cannot be said to be legal. It may even amount to contempt of the order dated 21.02.2019 in W.P.(MD)No.4028 of 2019.

22. There is also considerable merit in the contention of the learned counsel for the petitioner that the third respondent should not rush through with the election process, when the entire State is under lock down. This Court will have to take note of the fact that the State of Tamilnadu had issued a G.O. extending the tenure of Executive committees which have already expired till 31.12.2020.

23. The third respondent is directed to issue a revised voters list by deleting the name of the 5th respondent. The notification will be issued within a period of two weeks from the date of receipt of a copy of this order. The election process will be concluded within a period of six weeks thereafter.

24. I specifically task the third respondent with the duty of intimating and reaching out to all the members of the General body who are mentioned in the voters list. The third respondent will have to persuade them to take part in the election process. If the General body members are elsewhere, the District Administration should ensure that they are given e-passes without any difficulty.



The third respondent is directed to co-ordinate in that record.

25.This writ petition is disposed of on these terms. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

TM

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Special Officer,
Tamil Nadu Wakf Board,
No.1, Zaffar Sirang Road,
Mannadi, Chennai.

2.The Returning Officer / Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Zaffar Sirang Road,
Mannadi, Chennai.

3.The Election Officer / The Superintendent Auqaf
Madurai Zone,
M.S.S. Wakf Board College,
Madurai.

+1 CC to M/s.R.R. KANNAN, Advocate (SR-15337[F] dated 31/08/2020)

+1 CC to M/s.S.A. AJMAL KHAN, Advocate (SR-15489[F] dated 01/09/2020)

W.P. (MD)No.6786 of 2020
28.08.2020

AP(02/09/2020) 7P 6C