

* The Hon'ble The Chief Justice Sri Raghvendra Singh Chauhan
and

The Hon'ble Sri Justice A. Abhishek Reddy

+ Writ Appeal No. 921 of 2019

% Dated 08.01.2019

Between:

Mr. Sultan Quan

... Appellant/respondent

and

The State of Telangana,
Rep. by its Principal Secretary,
Minority Welfare Department
Secretariat, Saifabad, Hyderabad, T.S. and 2 others

... Respondents

! Counsel for the Appellant: Mr. Abdul Muqeeth Qureshi

^ Counsel for respondent No. 1: Mr. Radheev Reddy, AGP

Counsel for respondent No. 2: Mr. Mirza Safiulla Baig

Counsel for respondent No. 3: Mr. D. Prakash Reddy,
Senior Counsel
for Mr. Sriram Polali

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? Cases cited:

2013 (1) ALT 577 (FB)
2016 Law Suit (Bombay) 871

High Court for the State of Telangana

The Hon'ble The Chief Justice Sri Raghvendra Singh Chauhan

and

The Hon'ble Sri Justice A. Abhishek Reddy

W.A. No. 921 of 2019

Date: 08-01-2020

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Mr. Sultan Quaan

...Appellant

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Rep. by its Principal Secretary,
Minority Welfare Department,
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Counsel for the appellants: Mr. Abdul Muqeeth Qureshi

Counsel for respondent No. 1: Mr. Radheev Reddy, AGP

Counsel for respondent No. 2: Mr. Mirza Safiulla Baig

**Counsel for respondent No. 3: Mr. D. Prakash Reddy,
Senior Counsel
for Mr. Sriram Polali**

The Court made the following:

Judgment: (per Hon'ble The Chief Justice Sri Raghvendra Singh Chauhan)

The appellant-petitioner has challenged the legality of the order dated 24-10-2019, passed by a learned Single Judge in W.P. No. 15086 of 2019, wherein he had challenged the continuation of the respondent No. 3, Mr. Mohammed Saleem, as Member of the Wakf Board. By the impugned order, the learned Single Judge has dismissed the said writ petition.

Briefly, the facts of the case are that the State of Telangana constituted a Wakf Board in pursuance of the direction issued by this Court in its order dated 12-09-2016, in W.P. No. 7023 of 2016. The respondent No. 1 had conducted elections for constitution of a Wakf Board as contemplated under Section 14 of the Wakf Act, 1995 (for short 'the Act'). By notification dated 23-02-2017, the respondent No. 1 notified the election of six members under Section 14 (1) (b) of the Act, and five members have been nominated under Section 14 (1) (c) to (e) of the Act. On 27-02-2017, Mr. Mohammed Saleem, the respondent No. 3, was elected as the Chairperson of the Wakf Board. According to the appellant, the respondent No. 3 was also

elected as a Member of the Legislative Council. However, his term as the Member of the Legislative Council expired on 29-03-2019. Therefore, the appellant claimed that with the expiry of his term as the Member of the Legislative Council, the respondent No. 3 could no longer continue to serve as the Chairperson of the Wakf Board. Since the respondent No. 3 was continuing as the Chairperson of the Wakf Board, the appellant filed a writ of *quo warranto* before the learned Single Judge. However, by order dated 24-12-2019, the learned Single Judge has dismissed the writ petition. Hence, this appeal before this Court.

Mr. A.M. Qureshi, the learned counsel for the appellant, has raised the following contentions before this Court:-

Firstly, the learned Single Judge is not justified in relying upon a Full Bench decision of this Court in **Shaik Fareed vs. Government of Andhra Pradesh**.¹ For, subsequent to the said judgment, on 01-11-2013, Section 14 of the Act was amended, and Explanation II was inserted in the said section.

¹ 2013 (1) ALT 577 (FB)

Secondly, Section 14 of the Act needs to be read in toto.

According to Sub-Section (1) Clause (b) thereof, one and not more than two members, as the State Government may think fit, be elected from each of the electoral colleges.

Section 14 (1) (b) prescribes four electoral colleges, one of which is “*Muslim Members of the State Legislature*” Moreover,

Explanation II clearly states that, “*in order to remove the doubts, it is hereby declared that in case a muslim member 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, from the date from which such member ceases to be a Member of the State Legislative Assembly*”.

According to the learned counsel, since the words employed in Explanation II are “*as required under sub-clause (ii) of clause (b)*”, the said words automatically refer to all the Members of the State Legislature. Therefore, a Member of the Legislative Council is deemed to have vacated the office of the member of the Board as and when his term in the Legislative Council comes to an end. According to the learned counsel, the said provision has not been interpreted properly by the learned Single Judge. Moreover, in order to buttress his contention,

the learned counsel has relied on the case of **Mohd. Firdoz Ahmed vs. Maharashtra State Board of Wakfs, State of Maharashtra; Zainuddin Mohsinbhai Zaveri**².

Lastly, since the respondent No. 3 ceased to be a Member of the Legislative Council on 29-03-2019, he cannot continue as the Chairperson of the Wakf Board. Therefore, according to the learned counsel, the impugned order deserves to be interfered with by this Court.

On the other hand, Mr. D. Prakash Reddy, the learned Senior Counsel for respondent No. 3, submits that while interpreting the provision of law, the golden rule of interpretation would necessarily have to be applied. In case the language of the provision is unambiguous, the plain and grammatical meaning of the provision would have to be adhered to. Even if there is an omission, the same cannot be supplied by the Court.

Secondly, while Section 14(1)(b)(ii) of the Act speaks of “*Muslim Members of the State Legislature*”, Explanation II clearly speaks of “*the Members of the State Legislative Assembly*”.

² 2016 Law Suit (Bombay) 871

Therefore, the Members of the State Legislative Council are not included in Explanation II. Therefore, the deeming provision of having vacated the membership of the Board is applicable *qua* the Members of the State Legislative Assembly. The deeming provision cannot, by any stretch of imagination, be extended to the Members of the State Legislative Council.

Thirdly, in case of **Mohd. Firdoz Ahmed** (supra), their Lordships of the Hon'ble Bombay High Court have not interpreted Explanation II of Section 14 of the Act in proper perspective. Therefore, the said judgment is not binding on this Court.

Lastly, since the respondent No. 3 happens to be a Member of the Legislative Council, and not a Member of the Legislative Assembly, there is no fiction of law, which prescribes that he is deemed to have vacated the membership of the Board. Therefore, the learned Senior Counsel has supported the impugned order.

Heard the learned counsel for the parties, and perused the impugned order.

The relevant portion of Section 14 of the Act is as under:

(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) xxxxxx]

(iv) xxxxxx

[Explanation I.-xxxxxx]

[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;]

A bare perusal of the above provision clearly reveals that the State Government is empowered to elect one and not more than two members from the Muslim Members of the State Legislature to be a member of the Wakf Board.

Although Explanation II creates a legal fiction by enacting a deeming provision, Explanation II, on two occasions, uses the words “*Member of the State Legislative Assembly*”. Explanation II nowhere uses the words “*Member of the State Legislative Council*”. Since the Parliament is well aware of the fact that some State Legislatures consist of two chambers, *namely* the State Legislative Assembly, and the State Legislative Council, the fact that only the words “*Member of the State Legislative Assembly*” have been mentioned twice in Explanation II clearly reveals the intention of the Parliament to exclude the Members of the Legislative Council from the deeming provision. In case the Parliament wanted to include all the Members of the State Legislature, nothing prevented the Parliament from merely prescribing that a person, who ceases to be a Member of the State Legislature shall be deemed to have vacated the membership of the Board. But, in its wisdom, the Parliament has restricted the deeming provision only to “*the Members of the Legislative Assembly*”, and has not extended it to “*the Members of the Legislative Council*”.

Since there is no ambiguity in the plain and grammatical meaning of Explanation II, no other rules of

interpretation need to be applied. Even if there is an omission, the said omission cannot be supplied by this Court. For, supply of such an omission, when the meaning is plain and clear, is to amend the law. Needless to say, this Court does not have the power to amend the law.

Ofcourse, the learned counsel for the appellant has stressed on the use of the words “*as required under sub-clause (ii) of clause (b).*” However, the said words merely indicate that the Members of the State Legislative Assembly are included in the words “State Legislature” mentioned in Sub-clause (2) of Clause (b). Therefore, the use of the words “*as required under sub-clause (2) of Clause (b)*” cannot be interpreted to mean that Explanation II would also cover the cases of the Members of the Legislative Council. Hence, the interpretation being placed by the learned counsel for the appellant is clearly unacceptable.

The learned counsel has relied on the case of **Mohd. Firdoz Ahmed** (supra). However, with respect, this Court does not agree with the decision of the Hon’ble Bombay High Court. For, in the said judgment, the Hon’ble Bombay High Court has opined as under:

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 Board 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. A declaration, as sought by the petitioner, would be necessary.

A bare perusal of the reasoning given by Their Lordships of the Bombay High Court clearly reveals that Their Lordships have not critically analysed the contents of Explanation II of Section 14 of the Act. In fact, their Lordships have ignored the fact that Explanation II of Section 14 of the Act uses the words “*Members of the State Legislative Assembly*”, and does not use the words “*Members of the State legislative Council*”. Despite the fact that the said words are conspicuously missing from Explanation II, Their Lordships of the Bombay High Court have concluded that Explanation II includes the Members of the State Legislative Assembly, and it would also include the Members of the State Legislative Council. Their Lordships have ignored the fact that the Explanation II of Section 14 does not use the words “*the Members of Legislative Council*”. Therefore, the case of **Mohd. Firdoz Ahmed** (supra) is not binding on this Court.

Since the respondent No. 3 was a Member of the Legislative Council, even if his term has come to an end on

29-03-2019, even then he cannot be deemed to have vacated his membership of the Board. In fact, he shall continue to serve as a Member of the Board till the end of his tenure as a Member of the Board in terms of Section 15 of the Act.

For the reasons stated above, this Court does not find any merit in the writ appeal. It is, hereby, dismissed.

As a sequel, miscellaneous petitions, pending if any, stand dismissed as infructuous.

(Raghvendra Singh Chauhan, CJ)

(A. Abhishek Reddy, J)

Dt: 08-01-2020

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