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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.3162 of 2017
and C.M.P.No.19484 of 2017

A.V.Sirajudeen

.. Appellant

Vs.

- 1.The Secretary to Government of Tamil Nadu/Election Authority,
Backward Classes, Most Backward Classes and Minorities
Welfare Department,
Fort Saint George,
Chennai - 600 009.
- 2.The Deputy Secretary to Government of Tamil Nadu/Returning
Officer,
Backward Classes, Most Backward Classes and Minorities
Welfare Department,
Fort Saint George,
Chennai - 600 009.
- 3.The Under Secretary to Government of Tamil Nadu
Assistant Returning Officer,
Backward Classes, Most Backward Classes and Minorities
Welfare Department,
Fort Saint George,
Chennai - 600 009.
- 4.Syed Ali Akbar
- 5.The Chief Executive Officer,
Tamil Nadu Waqf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar, Chennai - 1.

(R5 Suo motu impleaded as respondent vide Court order dated
22.02.2018 made in CMP.No.19484 of 2017 in CMA.No.3162 of 2017
(NKKJ))

...Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 23 (2)
of the Tamil Nadu Wakf Board (Conduct of Election for Members)



Rules, 1997, praying to set aside the entire process of elections adopted or followed by the respondents 1 to 3 as well as pronouncing the fourth respondent herein as a 'successful returned candidate' who is not even eligible to contest the election to the Tamil Nadu Wakf Board as contrary to Rule 23(2) of Tamil Nadu Election Conduct Rules, 1997, by election results dated 10.10.2017, G.O(2D).NO.24 of the 1st respondent as null and void.

For Appellants : Mr.Haja Nazirudeen
for Mr.P.Hari Babu

For Respondent

R1 to R3 : Mr.Y.T.Aravind Gosh, AGP(CS)
R5 : Mr.V.Lakshminarayanan.

J U D G M E N T

The appellant filed this application to set aside the entire process of election adopted or followed by respondents 1 to 3 as well as pronouncing the fourth respondent herein as a 'successful returned candidate' who is not even eligible to contest the election to the Tamil Nadu Wakf Board as contrary to Rule 23(2) of Tamil Nadu Election Conduct Rules, 1997, by results dated 10.10.2017, G.O.(2D).No.24 of the 1st respondent as null and void.

2. The appellant herein is the President of Masjid Al Haramain, Selaiyur for composition of a new Wakf Board, since the tenure of Board has come to cessation by virtue of efflux of time stipulated in terms of the statutory provisions under Section 19 of the Wakf Act, 1995. In pursuance thereof, notification dated 05.09.2017, bearing No.574 was issued by the Election Authority/Secretary to Government, Backward and Most Backward Classes Chennai, for conducting election amongst the Muthawallis of the wakf having income of more than Rs.1,00,000/- per annum for Constitution of the Wakf Board in terms of Rule 2 (13) of Tamil Nadu Election Conduct Rules, 1997, for electing two members as the elected members and the dates also fixed to file nomination up to preparation of the final electoral roll from 07.09.2017 to 19.09.2017.

3. In exercise of powers conferred under Rule 2 (13) of Tamil Nadu Election Conduct Rules, 1997, pursuant to the notification published in the Tamil Nadu Gazette cited supra, Mr.A.M.Aandiappan, Deputy Secretary to Government, Chennai and Mr.S.Syed Khaseem, Under Secretary to Government, were appointed as the Returning Officers. Originally, there was an electoral roll comprising the Muthawallis of the Wakfs having income of Rs.1,00,000/- and above numbering 956, who were found to be eligible and the same was published on 19.07.2017 and the final list was prepared with 958 eligible persons on



30.08.2017, after deletion/inclusion of some Muthawallis without any valid reasons and some additions were also made in the final electoral roll by including the name of the fourth respondent herein (hereinafter called as 'returned candidate').

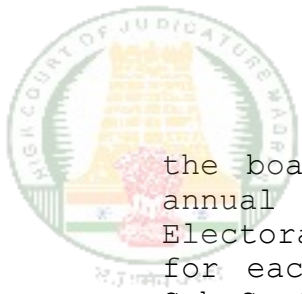
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4. The learned counsel for the appellant submitted that the said returned candidate has not been recognised by the Tamil Nadu Wakf Board as a Muthawalli, in view of certain clandestine acts perpetuated by him in relation to maintenance of accounts pertaining to Wakf properties. Furthermore, Wakf Application No.5 of 2014 filed by one K.Sadiq Hussain with regard to the above election is also pending for pronouncement of orders by the Wakf Board.

5. It is further submitted that contrary to Rule 2(13) of Tamil Nadu Election Conduct Rules, 1997, without any substantial basis, the fourth respondent herein/returned candidate has been included in the final electoral roll which is supplementary by virtue of proviso to Rule 2(13) of the Act. After the declaration of result of election, if a candidate who has contested the election or a voter whose name is included in electoral roll is aggrieved of election malpractices or procedures prescribed in these rules or on election of a candidate may file an appeal within 30 days before the High Court.

6. The appellant herein, who contested the election but get defeated is bound to prove that returned candidate as a disqualified person, who became the member in the electoral roll in contravention to the Rule relevant to (Tamil Nadu Election Control Rules). So he prayed to pass an order to set aside the entire process of election adopted by the respondents 1 to 3 as well as pronouncing the 4th respondent herein as successful returned candidate as null and void and pass a suitable orders as to (i) Whether the respondents 1 to 3 miserably erred in accepting the returned candidate to include in the final electoral roll to facing punitive action before the Wakf Board in Application No.5 of 2014? and (ii) Whether the authority not followed Rule 2(13) of the Tamil Nadu Election Control Rule and the final electoral roll was prepared by including 31 members ineligible?

7. By way of reply, the learned Additional Government Pleader appearing for the respondents 1 to 3 submits that the allegations levelled against the respondents 1 to 3 as well as 4th respondent are false. He submits that Wakf Board is a statutory board. The terms of office members of the board is five years and in 2017, the said period was expired. The Government taken action as per Section 14 of the Act as maintained by the Wakf Act 2013. The election of two members of



the board under the category of Mutawallis of the Wakf having annual income of Rs.1,00,000/- and above. As per Rule 4 of the Electoral rolls provides that there shall be an electoral roll for each of the electoral colleges specified in clause (b) of Sub-Section (1) of Section 14 of the Act. The Election Authority shall obtain the roll of members of the parliament and the State Legislative from the Secretary, State Legislative Assembly Secretariat that of the Bar Council from the Secretary, State Bar Council and that of the Muthawallis from the Chief Executive Officer cum Secretary, Tamil Nadu Wakf Board. Accordingly, electoral roll had been obtained from the respective authorities.

8. With regard to draft electoral roll of Muthawallis Wakf, who are having an annual income of Rs.1,00,000/- and above, it has been obtained from Chief Executive Officer of the Board and published in the notice board of the Election Authority, the board and the Offices of the Zonal Superintendents of Wakfs on 19.07.2017 as per the rule 5 of the Rules. Apart from that, the publication of the draft electoral roll calling upon the persons, who are entitled to lodge any claim for inclusion or non-inclusion of name in the draft electoral roll to file objection petition before the Election Authority within one week, i.e., before 26.07.2017 from the date of display of the draft electoral roll. After considering the objections, final electoral roll was published. The election authority notified the schedule of dates for various stages of election and postal ballots were sent through registered post and the Returning Officer received the requests for postal ballot in the prescribed manner from 645 muthawallis. The Returning Officer received 618 postal votes from the Muthawallis till the stipulated date. It is submitted that as notified in the Notice of election dated 06.09.2017, poll was held on 04.10.2017 by secret ballot under the supervision of the polling agents and the total number of the Muthawallis voted in person were 210. The counting of the vote took place for the 15 contested candidates and their agents. Thereafter, the Returning Officer declared the candidates elected from the electoral college of Muthawallis in the Form-IV under rule 20 of the Rules. Accordingly, Muthawallis viz., Dr.Haja K.Majeed and Syed Ali Akbar were declared elected. Aggrieved by the defeat in the above election, the appellant filed this vexatious appeal with false allegation.

9. The learned Additional Government Pleader would further submits that they followed election rules and after perusal of the objections, the final electoral roll was published. At the time of election, though the appellant was very much familiar with regulations of the elections, not submitted any objection before the authorities and even if the allegations



are true, he should have raised the same at the earlier point of time. Even some of the persons were included in the electoral roll of Muthawallis, after hearing the objections as well as the order passed by the Court.

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10. As regards 4th respondent/Chief Executive Officer, Tamil Nadu Wakf Board furnished the following information:

" The request of the petitioner Janab Syed Ali Akbar dated 24.07.2017 and the report of the Superintendent of Wakf, Chennai, dated 28.07.2017 may be considered. This wakf is registered with the Tamil Nadu Wakf Board having income of more one lakh. Hence, as suggested by the Superintendent of Wakf, Chennai, the name of the Janab Syed Ali Akbar, No.18/43, Jani Jan Khan Road, Royapettah Chennai - 14, may be considered and his name may be included in the electoral roll afresh."

11. So, as per the above information, he is having an income of Rs.1,00,000/-, which is eligible to contest Muthawallis. Thus the inclusion of the 4th respondent in the final electoral roll is made in accordance with law laid down in the said Act and the said Rules.

12. The respondents 1 to 3 submits that the appellant participated in the election also knew that the 4th respondent also one of the contesting candidates, but he has not raised any objection before conducting the election, even, at the time of conducting the poll or counting process but only after the announcement of the 4th respondent as the successful candidate, the appellant is aggrieved and filed this petition. So he prayed to dismiss the appeal as it has no merits.

13. The learned Government Pleader appearing for the 5th respondent/CEO submits that the list of 956 voters has been given to the election authority with that their role ends.

14. The facts and circumstances of the case reveals that the appellant herein is one of the contested candidates for the post of Muthawallis. But the 4th respondent was added in final electoral roll and declared as successful candidate by the election authority. Before, conducting the election, as per the rules, the election authorities obtained voters list from Tamil Nadu Wakf Board and also from the member of the parliament and other dignitaries and prepared a draft list and the same was published with notification seeking objections, inclusion or non inclusion from the first respondent entitled to claim and after considering objection, the final electoral roll was published. Thereafter, the date was fixed to conduct the election by the authorities.



15. Admittedly, this appellant is one of the contesting candidates for the post of Muthawallis and he also knew that the 4th respondent was also one of the contesting candidates. The main objection of the appellant is that the 4th respondent is not having income of Rs.1,00,000/- and above in order to contest the post for Muthawallis. But as per the information furnished by Tamil Nadu Wakf Board, the 4th respondent is having income more than Rs.1,00,000/- and his name was suggested by the CEO was Tamil Nadu Wakf Board. So the election authorities, prima facie acted upon the information furnished by the Tamil Nadu Wakf Board. The appellant, who contends that the 4th respondent is not having income of Rs.1,00,000/- is bound to prove that fact with substantial material evidence. But except this oral allegation, he has not furnished any particular to disprove the contention of the statement given by the Wakf Board about the income status of the 4th respondent. The allegation is not sufficient, therefore, the objection raised by the appellant with regard to the income of the 4th respondent has not been proved.

16. The another objection raised by the appellant is that this 4th respondent has committed misappropriation of wakf properties, thereby, the enquiry is pending against him. Despite this fact, he was included in the electoral list, which is contrary to Rule 23(2) of Tamil Nadu Election Conduct Rules, 1997, by election results dated 10.10.2017, G.O(2D).NO.24 of the 1st respondent as null and void.

17. By way of reply, the respondent counsel submits that the 4th respondent was successive hereditary Muthawallis and he is a eligible candidate to contest the election. Accordingly, his name was impleaded by the authorities. The misappropriation allegation against the 4th respondent in W.P.No.5 of 2014 was dismissed on 21.07.2018 as the allegations are false.

18. But the learned counsel for the appellant submits that at the time of preparing the electoral roll, the said petition was pending against the 4th respondent and the same was suppressed to the authorities. But the appellant knowing about the pendency of the petition before the Wakf Board, has not raised any objection at the time of preparing the final electoral roll. Hence his objection is unsustainable one in its entirety and before conducting the election, the respondent followed the rules and prepared the electoral roll finally and conducted the election according to the provisions of law. There is no violation of the rules. The appellant has failed to establish his case before this forum.



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19. Accordingly, this Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No Costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

1.The Secretary to Government of Tamil Nadu/Election Authority,
Backward Classes, Most Backward Classes and Minorities
Welfare Department,
Fort Saint George,
Chennai - 600 009.

2.The Deputy Secretary to Government of Tamil Nadu/Returning
Officer,
Backward Classes, Most Backward Classes and Minorities
Welfare Department,
Fort Saint George,
Chennai - 600 009.

3.The Under Secretary to Government of Tamil Nadu
Assistant Returning Officer,
Backward Classes, Most Backward Classes and Minorities
Welfare Department,
Fort Saint George,
Chennai - 600 009.

4.The Chief Executive Officer,
Tamil Nadu Waqf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar, Chennai - 1.

+1cc to Mr.P.Hari Babu, Advocate, S.R.No.21505

+1cc to the Special Government Pleader (CS), S.R.No.21775

C.M.A.No.3162 of 2017

GSM(CO)
RVM(26/07/2021)