

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Original Side)

WPO (P) No. 8 of 2021

(Through Video Conference)

Reserved on: 04.02.2022

Pronounced on: 17.02.2022

Jalaluddin Mollah and Anr.

...Petitioner

-Vs-

The Board of Auqaf, West Bengal and Ors.

...Respondent

Present:-

Mr. S.S. Arefin,
Mr. M.A. Samad,
Mr. Nayabb Mulla, Advocates
... for the petitioner

Mr. Y.J. Dastoor, ASG
Mr. Zubair Alam, Advocate
... for the Union of India

Mr. S.N. Mookherjee, AG
Mr. T.M. Siddiqui,
Mr. Nilotpal Chatterjee, Advocates
...for the State of WB

Sk. Md. Galib,
Mr. Abu Siddique Mallik, Advocates
... for the Board of Auqaf, WB

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, C.J.:

1. By this public interest petition, the petitioner has prayed for a direction to the State Authorities to accept model Wakf Rules, 2016 as they have failed to frame rules complying with the provisions of

Wakf (Amendment) Act, 2013. A further prayer has been made to supercede the existing Board of Wakf, West Bengal and to take over the administration of the board by appointing administrator till the rules are reframed in terms of the amended act and a direction has been sought to reframe rules.

2. Petitioners, practicing advocates of this Court, have raised the plea that the Wakf (Amendment) Act, 2013 came into force with effect from 01st November, 2013 making substantial changes in respect of the constitution of the board but the present board of Wakf was reconstituted on 10th February, 2017 without complying with the original or amended Wakf Act. A further plea has been raised that West Bengal Wakf Rules, 2001 were framed under the unamended act which are still continuing and have not been amended keeping parity with the provisions of Section 14(c) and 14(e) of the amended Act. In this background, the prayers for framing fresh rules, superceding the Wakf board and appointing the administrator have been made.

3. Submission of learned Counsel for the petitioner is that Section 109(iv) of the Act requires the State to frame rules in respect of manner of election of members of Board by means of single transferable vote but no fresh rules after the amendment have been framed. He has referred to amended Section 14 of the Act and submitted that Rules of 2001 run contrary to the composition reflected in amended Section 14 of the Act. He has further submitted that the model Wakf Rule, 2016 have been framed by the Central Government which are applicable till the State Government frames the rules, therefore, either the election should be held following the model rules

or the present Board should be superceded and administrator should be appointed.

4. Learned Advocate General appearing for the State has referred to the amended provision and has submitted that the State will ensure that the two members appointed on the Board are women and if the same does not take place through election, then the State will nominate the woman member. He has further submitted that the Rules of 2001 relating to election through single transferable vote can still apply because there is no amendment in Section 14(2) of the Act. He has also submitted that draft rules have not been adopted by the State, therefore, direction to hold election in terms of the draft rules cannot be issued and that State is already in the process of framing fresh rules.

5. Learned Counsel for the Board has relied upon the judgment of the Hon'ble Supreme Court in the matters of **Board of Wakf, West Bengal and Another vs. Anis Fatma Begum and Another, (2010) 14 SCC 588** and **Rashid Wali Beg Vs. Farid Pindari and Others, 2021 SCC OnLine SC 1003** and has submitted that if any dispute arises in respect of election, then the aggrieved party can approach the Wakf Tribunal.

6. Learned Additional Solicitor General appearing for the Union of India has also concurred with the argument advanced by the learned Advocate General.

7. Having heard the learned Counsel for the parties and on perusal of the record, it is noticed that the Wakf Board in the State is to be constituted in terms of Section 14 of the Act which provides for the composition of the Board. By virtue of Act 27 of 2013 with effect

from 01.11.2013, Section 14 of the Act has been amended and composition of the Board has changed. Amended Section 14 of the Act reads as under:

“14. Composition of Board. – (1) The Board for a State and the National Capital Territory 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) Muslim members of the Bar Council of the concerned State or Union territory:

Provided that in case there is no Muslim member of the Bar Council of a State or a Union territory, the State Government or the Union territory administration, as the case may be, may nominate any senior Muslim advocate from that State or the Union territory, and

- (iv) Mutawallis of the auqaf having an annual income of rupees one lakh and above;

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) or 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) One person from amongst Muslims, who has professional experience in town planning or business management, social work, finance or revenue, agriculture and development activities, to be nominated by the State Government;
- (d) one person each from amongst Muslims, to be nominated by the State Government from recognized scholars in Shia and Sunni Islamic Theology;
- (e) one person from amongst Muslims, to be nominated by the State Government from amongst the Officers of the State Government not below the rank of Joint Secretary to the State Government;

(1A) No Minister of the Central Government or, as the case may be, a State Government shall be elected or nominated as a member of the Board:

Provided that in case of a Union territory, the Board shall consist of not less than five and not more than seven members to be appointed by the Central Government from categories specified under sub-clauses (i) to (iv) of clause (b) or clauses (c) to (e) in sub-section (1):

Provided further that at least two Members appointed on the Board shall be women:

Provided also that in every case where the system of mutawalli exists, there shall be one mutawalli as the member of the Board.

(2) Election of the members specified in clause (b) of sub-section (2) 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.”

8. Undisputedly, after the Amendment of 2013, no fresh Rules under Section 109 of the Act have been framed by the State. The plea of the petitioner that the fresh elections of the Board should be held following the draft rules (annexure - P1) framed by the Central Government, cannot be accepted as these draft rules have not been adopted by the State Government. An issue has been raised by the petitioner in respect of compliance of Section 14(c) and 14 (e) of the amended Act but these provisions relate to nomination.

9. The State Government prior to the amendment of 2013 had framed the West Bengal Wakf Rule, 2001. Rule 5 thereof provides for manner of election of the members of the board. It also contains the provision concerning the election in accordance with the system of proportional representation by means of single transferable vote. Section 14(2) of the Act relating to the manner of holding the election has not been amended. As per the plea raised by the petitioner, the present Board was reconstituted on 10th February, 2017. In terms of Section 15 of the Act, the term of office of the members of the Board

is five years. Hence, the term of the members of the Board expired, therefore, State should make endeavour to notify the new Rules without any unnecessary delay, however, if due to some bonafide reason there is delay in framing the Rules, then the fresh election of the members of the Board can be held by following Rule 5 of the Rules of 2001 to the extent they are not inconsistent with the provisions of Section 14 of the Act. We make it clear that in case of any inconsistency between Rule 5 of the Rules of 2001 and the provisions of the Act, the latter will prevail and will be given effect to by the competent authority.

10. The petition is accordingly, disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
17.02.2022

PA(RB)