

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 55 OF 2022

**MUSA ABDUL MOMIN
VERSUS
SAIFAN RASHID PATHAN AND ANOTHER**

...
Mr. Anand P. Bhandari, Advocate for Petitioner
Mr. N. E. Deshmukh, Advocate for Respondent No.6
...

CORAM : MANGESH S. PATIL, J.

DATED : 25 APRIL 2022

PER COURT :

1. Heard learned advocate Mr. Bhandari for the revision petitioner and learned advocate Mr. Deshmukh for the respondent No.6 – C.E.O of Wakfs Board.
2. In a change report filed by the present petitioner, the Wakf Tribunal by the judgment and order dated 3 March 2021 quashed and set aside the order passed by the Chief Executive Office (C.E.O.), Wakf Board dated 26 August 2019 and remanded the matter back to the Chief Executive Officer for taking a decision on the change report afresh on its own merits.
3. Pursuant to such directions, the Chief Executive Officer, Wakf

Board by the order dated 7 February 2022, ex facie, without taking any decision on the change report, directed a fresh election to be held within three months.

4. The petitioner, being aggrieved and dissatisfied by such a direction preferred Wakf Application No. 14 of 2022 and challenged the order dated 7 February 2022.

5. By moving application (Exh.13) the petitioner prayed for stay to the implementation of the direction dated 7 February 2022. By the order under challenge, the tribunal has rejected that application, *inter alia*, observing that all the issues that were being raised in the main proceeding could be the subject matter of the challenge to be gone into it in the change report under section 42 of the Wakf Act that would be filed pursuant to the election that were underway.

6. Only apprehension expressed by Mr. Bhandari for the petitioner is that the observations in the impugned order insinuate that the main proceedings in the form of Application No. 14 of 2022 may not be heard and decided on its own merits by the tribunal in view of the reasoning given in the impugned order.

7. Needless to state that by the main proceeding pending before the Waqf Tribunal, the order passed by the Chief Executive Officer dated 7

February 2022 has been challenged. The tribunal will have to decide the challenge on its merits and cannot legally brush aside it by observing that pursuant to the elections, the main proceeding would become infructuous. When the very source of holding the election is the order which is a subject matter of challenge before the tribunal, it would be imperative for the tribunal to decide that challenge on its own merits. I cannot comprehend as to how the tribunal would be oblivious of its jurisdiction and power.

8. The learned advocate Mr.Deshmukh for the respondent - Chief Executive Officer, Wakf Board also submits that he does not have objection even if the tribunal is now called upon to decide the main application on its own merits.

9. Civil revision is dismissed. However, the tribunal shall decide the main application No. 14 of 2022 on its own merits expeditiously.

(MANGESH S. PATIL, J.)

Tandale/-