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W.P. Nos. 16712 of 2020 and 29451 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. Nos. 16712 of 2020 and 29451 of 2023

and

W.M.P. Nos. 20722 of 2020 and 29066 of 2023

W.P. No. 16712 of 2020:-

S.A.K.Ibrahim

... Petitioner

-VS-

1. The Chief Executive Officer,
Tamil Nadu Waqf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 1.

2. The Waqf Inspector,
Chennai (North),
No.139, Dr.Besant Road,
Triplicane,
Chennai – 600005.

3. Mohammed Rafi Sait @ Rafi Gulzar Sair

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records of the First Respondent ending with proceedings dated 17.09.2020 in Proceedings No. 7977/2020/B9/Chen and quash the same.



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For Petitioner : Mr. N.A.Nissar Ahmed
Senior Counsel
for Mr. I.Koswer Nissar

For Respondents : Ms. V.Srimathi (for R1 & R2)
Mr. R.Murugabharathi (for R3)

W.P. No. 29451 of 2023:-

A.Mohamed Jabarullah

... Petitioner

-VS-

1. The Chairman,
Tamil Nadu Waqf Board,
No.1, Jaffer Syrang Street,
V.O.C. Nagar,
Chennai,
Tamil Nadu – 600001.
2. The Chief Executive Officer,
Tamil Nadu Waqf Board,
No.1, Jaffer Syrang Street,
V.O.C. Nagar,
Chennai,
Tamil Nadu – 600001.
3. Royapuram Jamia Masjid,
Represented by its President,
No.50/67, West Maadha Street,
Royapuram,
Chennai,
Tamil Nadu – 600013.
4. Muslim Welfare Association,
Represented by its President,
No.50/67, West Maadha Street,
Royapuram,
Chennai,
Tamil Nadu – 600013.

... Respondents



W.P. Nos. 16712 of 2020 and 29451 of 2023

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, direct the First and Second Respondents to conduct fair and just election process for the Third Respondent waqf viz., Royapuram Jamia Masjid within the time frame as stipulated by this Hon'ble Court.

For Petitioner : Mr. A.J.Taslim Arif

For Respondents : Mr. Haja Mohiden Gisthi (for R1 & R2)

Mr. Awinash Wadhawani (for R3)

COMMON ORDER

Since the present cases relate to conduct of election of the members of the Executive Committee of the Waqf of Royapuram Jamia Masjid (hereinafter referred to as 'the Waqf' for short) and are inter-connected, they have been heard together and are disposed by this common order.

2. Heard Mr. N.A.Nissar Ahmed, Learned Senior Counsel appearing for the Petitioner in W.P. No. 16712 of 2020, Mr. A.J.Taslim Arif, Learned Counsel for the Petitioner in W.P. No. 29451 of 2023, Ms. V.Srimathi, Learned Counsel for the First and Second Respondents in W.P. No. 16712 of 2020 and Mr. R.Murugabharathi, Learned Counsel for the Third Respondent in W.P.



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No. 16712 of 2020, Mr. Haja Mohiden Gisthi, Learned Counsel for the First and Second Respondent in W.P. No. 29451 of 2023 and Mr. Awinash Wadhawani, Learned Counsel for the Third Respondent in W.P. No. 29451 of 2023 and perused the materials placed on record, apart from the pleadings of the parties.

3. The Petitioner in W.P. No. 16712 of 2020 has challenged the Order in Proc. No. 7977/2020/B9/Chen dated 17.09.2020 passed by the Tamil Nadu Waqf Board directing its Waqf Inspector, Chennai (North) to conduct a meeting of the General Body of the Jamathars for selecting members of the Executive Committee by observing usual formalities. This Court at the time of admission on 23.02.2021 had granted interim stay of that order, which continues to be in force upto now.

4. In W.P. No. 29451 of 2023, the Petitioner has sought for a direction to the Tamil Nadu Waqf Board and its Chief Executive Officer to conduct fair and just election to the to the Waqf within the time limit that may be fixed by the Court.



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5. It is borne out from the materials placed on record that in Column No. 6 of the proforma of the Waqf in terms of Section 37 of the Waqf Act, 1995 (hereinafter referred to as 'the Act' for short), it has been stated as follows:-

6	<i>Rule of succession to the office of the Muthavalli under the wakf deed or by custom or usage.</i>	<i>The Executive Committee Members of Royapuram Muslim Welfare Association are the lifetime Members of the Mosque Committee consisting fifteen members. Any vacancy is filled up by co-option as per Resolution No. 7 of the General Body Meeting held on 09.08.1992 under which the Mosque in Manage.</i>
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6. It is the contention of the Petitioner in W.P. No. 16712 of 2020 that inasmuch as the members of the Executive Committee of the Waqf are life-time members of the Mosque Committee consisting of 15 members and any vacancy has to be filled up by co-option as per Resolution No. 7 passed at the General Body Meeting held on 09.08.1992 of the Waqf, the impugned Order in Proc. No. 7977/2020/B9/Chen dated 17.09.2020 passed by the Tamil Nadu Waqf Board directing to conduct a meeting of the General Body of Jamathars for selecting the members of the Executive Committee is invalid. That apart, strong



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reliance is placed on the decision of the Court in ***Mohammed Yusuf -vs- Tamil***

Nadu Wakf Board (Order dated 19.04.2023 in in W.P. (MD) No. 13695 of 2020 etc., batch) in which it has been held that neither the Tamil Nadu Waqf Board nor its Chief Executive Officer could direct conduct of election to any Waqf in the absence of a Scheme framed by the Tamil Nadu Waqf Board under Section 69 of the Act in that regard and the mode of appointment has to be in accordance with the proforma of the waqf deed and the intentions of the wakif as per custom or usage. Though Learned Counsel appearing for the Tamil Nadu Waqf Board contends that an appeal against the said decision of the Court has been preferred before the Division Bench of the Court, which is pending, the indisputable position remains that the said order continues to bind all other pending cases unless it is modified in appeal. In such circumstances, it would not be possible to sustain the Order in Proc. No. 7977/2020/B9/Chen dated 17.09.2020 passed by the Tamil Nadu Waqf Board and it is set aside.

7. At the same time, it is hastened to clarify that the Tamil Nadu Waqf Board is not precluded from exercising its powers under Section 69 of the Act in framing a Scheme for the administration of the Waqf including the mode of election of members of Executive Committee of the Waqf.



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In the result, the Writ Petition in W.P. No. 16712 of 2020 is ordered on the aforesaid terms and W.P. No. 29451 of 2023 is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

15.11.2023

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 01.12.2023.

pal/vjt

To

1. The Chief Executive Officer,
Tamil Nadu Waqf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 1.
2. The Waqf Inspector,
Chennai (North),
No.139, Dr.Besant Road,
Triplicane,
Chennai – 600005.
3. The Chairman,
Tamil Nadu Waqf Board,
No.1, Jaffer Syrang Street,
V.O.C. Nagar,
Chennai,
Tamil Nadu – 600001.
4. The Chief Executive Officer,
Tamil Nadu Waqf Board,
No.1, Jaffer Syrang Street,
V.O.C. Nagar,
Chennai,
Tamil Nadu – 600001.



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5. The President,
Royapuram Jamia Masjid,
No.50/67, West Maadha Street,
Royapuram,
Chennai,
Tamil Nadu – 600013.

6. The President,
Muslim Wlfare Association,
No.50/67, West Maadha Street,
Royapuram,
Chennai,
Tamil Nadu – 600013.



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P.D. AUDIKESAVALU, J.

pal

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