



W.P.(MD).No.5280 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.5280 of 2023

and

W.M.P.(MD).No.4956 of 2023

Syed Ibrahim

... Petitioner

Vs.

1.The Tamil Nadu Waqf Board,
Represented by its Chief Executive Officer,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai.

2.The Superintendent of Waqf,
Tamil Nadu Waqf Board,
Ramanathapuram Regional Office,
No.159/3, Therpasayanam Road,
Vellipattinam,
Ramanathapuram – 623 504.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned election notification issued by the second respondent in ந.க.எண்.ஜி.எஸ்.198 & 200 / இராம/தேஅ/வக/ இராம/ 2023 dated 23.02.2023 and



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quash the same as illegal.

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For Petitioner : Mr.M.Mahaboob Athiff

For Respondents : Mr.K.K.Senthil,
Standing Counsel.

ORDER

This Writ Petition is filed challenging the election notification dated 23.02.2023.

2. The contention of the petitioner is that the Waqf Board is not empowered to conduct election and the said issue is already settled in W.P. (MD) No.13695 of 2020 dated 19.04.2023. However, the respondents submitted that the election process was started based on the order of this Court passed in W.P.(MD)No.5312 of 2022. The said writ petition was filed for Mandamus, directing the respondents to include and restore 80 family members and removed 20 death persons from the voters list. The Learned Single Judge vide order dated 25.03.2022 has held that considering the fact that no prejudice would be caused to the respondent Board, if the petitioner's representation is



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considered. Thereafter proceeded to direct the respondents to consider the petitioner's representation while preparing the voter list. Based on this order, the Wakf Board has proceeded to conduct the election.

3. The respondents relied on Notification No.1 dated 09.11.2022 and submitted that the election process was stated by issuing the said notification. The respondents further issued Notifications 2, 3 and 4 dated 10.01.2023, 17.02.2023, 21.02.2023 respectively. The learned counsel appearing for the respondents further relied on judgment rendered by the Hon'ble Supreme Court in the case of *Supreme Court Bar Association Vs. B.D.Kaushik* reported in 2011 13 SCC 774. The relevant paragraphs are extracted hereunder:

“43. It hardly needs to be emphasized that in any body governed by democratic principles, no member has a right to claim an injunction so as to stall the formation of the governing body of the Association. No such right exists in election matters since exercise of a right conferred by a rule is always subject to the qualifications prescribed and limitations imposed thereunder. The contention of the respondents that the amendment to the Rule whereunder the right to be eligible to contest for any post for the Association or the eligibility to cast the vote at the election, takes away the right completely, is misconceived since by the amendment the right is not taken away but is preserved subject to certain restrictions on its exercise and this could always be done.

60. Further, the appellants had rightly pointed out to the learned Judge that election process had already started and, therefore, injunction, as claimed, should not be granted. Since 1952 this Court has authoritatively laid down that once election process has started the courts should not ordinarily interfere with the said process by way of granting injunction. The argument advanced by the appellants that election process having started, the injunction should not be granted is dealt with by the learned Judge by holding that in the present case the plaintiffs have not prayed for injunction against the election process.



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61. This Court has no doubt at all that the injunction granted by the learned Judge has propensity to intervene and interfere with election process which had already started. Apart from the prayers claimed in the applications filed under Order 39 Rules 1 and 2 read with Section 151 CPC the Court could not have ignored the effect of granting an injunction. If the injunction granted by the learned Judge had not been stayed by this Court, the office bearers of the SCBA would have been required to prepare a new voters list as if unamended Rule 18 was in operation and the exercise undertaken by them for preparing voters list in the light of the amended Rule 18 would have been of no consequence. Thus the injunction claimed by the plaintiffs/respondents which had very wide repercussions on the elections, which were to be held in the year 2003, should not have been granted by the learned Judge.”

4. However, this contention of the respondents is refuted by the petitioner by stating that the election process would start only from the date of issuance of election notification and not from the notification issued for verification of voters list. The petitioner further submitted that Notification No.1 is only for preparation of voters list and the same cannot be stated that the election process has started. All other notifications stated supra are only for verification of voters list and for deletion and inclusion of voters.

5. On perusal of the Notification No.1, it is seen the said notification is a notice to the eligible members above 18 to enroll their names, if are not found in the voter list within the prescribed time, the Notification No.2 is issued for



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extension of prescribed time. Notification No.3 is issued to include 17 persons in the voter list and 183 persons applications was rejected and a list is annexed with the same. Notification No.4 was issued to include 14 persons in the voter list. Notification No.5 dated 23.02.2023 is issued stating the time schedule for election, which indicates that on 23.02.2023 the final voter list would be issued, nomination form would be issued etc. Notification No.7 dated 01.03.2023 was issued listing the name of persons against the post they are contesting. Notification No.8 issued indicating the persons who were elected unopposed. Notification No.9 issued stating due to interim order in W.P.(MD)No.5053 of 2023, as per the Notification No.5 and Notification No.8 the scheduled election to be conducted on 12.03.2023, would not be conducted.

6. From the above narration, it clearly indicates that the Notification 1 to 4 is issued only for addition, deletion of names and inclusion of new names in the voter list. Therefore, this Court is of the considered opinion by issuing the said notifications it cannot be stated that election process was started and the election process would start only from the date of issuance of election notification and not from the date of preliminary process of finalizing the voter list.



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7. The election time schedule is stated by issuing the Notification No.5 dated 23.02.2023. It also indicates that the model nomination form would be issued on 23.02.2023 and other related instructions would be issued. The notification also indicates that the voting is on 12.03.2023. This Notification No.5 was challenged in W.P.(MD)No. 5053 of 2023 and this Court by taking note of date of voting, has granted an interim order dated 09.03.2023. Then W.P.(MD)No.5280 of 2023 was filed, wherein the stay is granted on 13.03.2023 and both the writ petitions were tagged.

8. In the meanwhile, the petitioner has challenged the election notification and this Court has granted an interim order dated 09.03.2023. However, the respondents submitted that the election process was started. Therefore, the interim order is not binding on the respondents, for which the respondents relied on the Election Notification No.7 dated 01.03.2023. In this notification, the respondents stated the list containing names of the contesting candidates. The respondents have further issued another notification No.8 dated 04.03.2023. It states that some of the posts are elected unopposed. Therefore, the respondents submitted that the election process is going on and impugned



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election notification cannot be quashed.

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9. This Court is not accepting the said contention for the reasons that when the Wakf Board is not empowered to conduct election, the notification dated 01.03.2023 and 04.03.2023 are issued without jurisdiction and without power. Moreover, this Court in W.P.(MD)No.5312 of 2022 has directed the respondents to consider the petitioner's representation and prepare the voter list, but has not considered the root of the issue of jurisdiction. Hence, the said order cannot be relied on, since any order or any consent cannot confer jurisdiction. Therefore, this Court is inclined to quash the election notification dated 23.02.2023 on the question of jurisdiction. Hence, the impugned order is quashed.

10. Both the learned counsel appearing for the petitioner and 5th respondent (in W.P.(MD)No.5053 of 2023) suggested that a retired Judge of this Court may be appointed to conduct and monitor the election process. Considering the nature of issues involved, this Court deems it fit to nominate Hon'ble Mr. Justice D.Hariparanthaman (Retired), to conduct and to monitor the election process. Remuneration is fixed at Rs.1,00,000/- per month (Rupees



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one lakh only). Both the petitioner and 5th respondent (in W.P.(MD)No.5053 of 2023) shall share the remuneration amount and also bear the travelling and other expenses of the Judge Commissioner.

11. In addition to the above, necessary arrangements shall be made to conduct election as per bye-law. As far as the voter list is concerned, the voter list which was finalized by the Wakf Board shall be the “Final Voter List”. The 5th respondent (in W.P.(MD)No.5053 of 2023) shall bear the expenses for conducting the election. The election process shall be completed within a period of three (3) months from the date of receipt of a copy of this order as per the law.

12. In view of the above, this Writ Petition is allowed in above terms. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No



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Index : Yes / No
Internet : Yes/ No
Nsr

Note: Registry is directed to mark a copy to Hon'ble Justice.Mr.D.Hariparanthaman (Retired).

To

- 1.The Chief Executive Officer,
The Tamil Nadu Waqf Board,
No.1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai.
- 2.The Superintendent of Waqf,
Tamil Nadu Waqf Board,
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S.SRIMATHY, J.

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