



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2095 OF 2024

Syed Ekteja Ahmed Hashmi
S/o. S.Gulam Mustafa Hashmi,
Age 61 years, Occ. Retired,
Permanent resident of Darbar Galli,
P.O. Ter, Tq. & Dist. Dharashiv (Osmanabad) .. Petitioner

Versus

- 1] The State of Maharashtra,
Through Chief Secretary,
Mantralaya, Mumbai – 32.
- 1-A] The State of Maharashtra,
Through Principal Secretary,
Minorities Development Department,
Mantralaya, Mumbai
- 2] The Deputy Secretary,
Minorities Development Department,
Mantralaya, Mumbai
- 3] Mr. Anees Ismail Shaikh,
Age 61 years, Occu. Member Maharashtra State,
Wakf Tribunal, Aurangabad
C/o Office : Maharashtra State Wakf Tribunal,
Haij House, Aurangabad .. Respondents

WITH
WRIT PETITION NO. 2084 OF 2024

Mustafa Khan Dilawar Pathan,
Age 70 years, Occu. Pensioner,
R/o. House No. 169, Satara,
Tq. & Dist. Aurangabad .. Petitioner

Versus

- 1] The State of Maharashtra,
Through its Principal Secretary,
Minority Development Department,
Mantralaya, Mumbai

2] Anis Iqbal Ismail Shaikh,
 Age : 61 years, Occu. Retired,
 R/o 504, B-wing, Building No. 1,
 Sarvaday Residency, Patri Pull,
 Kalyan Dist. Thane 421 301

.. Respondents

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Advocate for petitioner : Mr. Sachin S. Deshmukh (WP/2095/2024)
 Advocate for petitioner : Mr. Sushant Dixit h/f. Mr. Khan Abdul Hamdeem and
 Mr. A.B. Karim (WP/2084/2024)
 Mr. A.B. Girase, GP for the respondent no. 1, 1/A and 2 (WP/2095/2024)
 and for respondent no. 1 (WP/2084/2024)
 Mr. V.D. Sapkal, Senior Advocate i/by Mr. Sk. Tarek Mobin for
 respondent no. 3 (WP/2095/2024) and for respondent no. 2 (WP/2084/2024)

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**CORAM : MANGESH S. PATIL &
 PRAFULLA S. KHUBALKAR, JJ.**

**RESERVED ON : 11 NOVEMBER 2024
 PRONOUNCED ON : 25 NOVEMBER 2024**

JUDGMENT (MANGESH S. PATIL, J.) :

Heard. Rule in both the matters. Learned Government Pleader, learned Senior advocate Mr. Sapkal for the respondent no. 2 in writ petition no. 2084 of 2024, who is respondent no. 3 in writ petition no. 2095 of 2024, instructed by advocate Mr. Sk. Tarek Mobin waives service. At their joint request, the matters are heard finally at the stage of admission.

2. Though these are two separate writ petitions, the petitioners are seeking identical relief whereby they are seeking a writ of *quo warranto* against the respondent no. 2/3 and putting up a challenge to his appointment as a Member of the Maharashtra State Wakf Tribunal, Aurangabad, by the notification dated 09-02-2024,

issued by the State Government in the Minorities Development Department, purportedly appointing him under section 83(4)(B) of the Wakf Act, 1995 (**Wakf Act**) read with rule 45(B)(2)(ii) of the Maharashtra State Wakf Rules, 2022 (**Wakf Rules**).

3. At the outset, it is necessary to note that though a preliminary objection regarding maintainability of the writ by the petitioner in writ petition no. 2084 of 2024 was raised, in the light of the stand being taken by respondent no.2/3, that petition was amended and the prayer for issuance of writ of *quo warranto* has been solicited.

4. So far as maintainability of writ of *quo warranto* at the instance of the stranger to the recruitment process / appointment process is concerned, though both the sides have made several submissions, it is trite and succinctly laid down in the matter of ***B.R. Kapur V. State of T.N.; (2001) 7 SCC 231*** and catena of other judgments considered by the Supreme Court in the recent decision in the matter of ***Dr. Premchandran Keezhoth and another Vs. Chancellor Kannur University and others; 2023 SCC OnLine SC 1592***, *inter alia* holding that any person may challenge the validity of an appointment of a public office provided such challenge is *bona fide* and the petitioner is not a proxy. Nothing of that sort having been demonstrated against the petitioner in writ petition no. 2084 of 2024,

that petition would be maintainable, *albeit*, we have to bear in mind, the contours within which such a writ can be issued.

5. So far as the petitioner in writ petition no. 2095 of 2024, no such issue regarding *locus standi* has been raised, inasmuch as he himself was one of the candidates seeking appointment to the post which was filled in by the impugned notification by which respondent no. 2/3 was appointed.

6. Learned advocates for the petitioners in both these petitions would take us through the papers and would submit that the respondent no. 2/3 was appointed as a chief executive officer of the Maharashtra State Wakf Board. There were several complaints regarding the irregularities and even the illegalities in discharge of his duties. When a decision was taken to undertake an enquiry, he consciously tendered the resignation on 26-06-2022. It was not accepted and he was removed from the post on 27-06-2022.

7. The learned advocates Mr. Deshmukh and Mr. Khan would submit that in order to fill in the post of Member under section 83(4)(b) of the Wakf Act, an advertisement was issued on 13-09-2021. Only the petitioner in writ petition no. 2095 of 2024 and the respondent no.2/3 submitted their applications. Having considered the fact that there were several complaints against respondent no.2/3 and even it was a

matter of conflict of interest, which would creep in once he was appointed as a member of the Wakf Tribunal, as he would be dealing with the decisions, in exercise of the judicial powers of the Wakf Tribunal, wherever there was a challenge to the decision of the Wakf Board of which he was the chief executive officer for a considerable time, with an express office note, a fresh advertisement was published.

8. They would further submit that since only the petitioner from writ petition no. 2095 of 2024 was left in the fray, a fresh advertisement was directed to be issued calling for the applications from the aspiring candidates. Two individuals submitted the applications. Cases of these two candidates and that of the petitioner - Syed Hashmi were scrutinized objectively. Considering the above two grounds disqualifying respondent no. 2/3, petitioner - Syed Hashmi's name was recommended for being appointed as a member of the Wakf Tribunal. It was endorsed by the Chief Secretary. The Minister of Minorities Development Department, ignoring all the afore mentioned facts and circumstances, recommended appointment of respondent no. 2/3. In fact, petitioner - Syed Hashmi and other candidate Abdul were actually called for interaction and verification on 27-12-2022. The other candidate did not participate and only the petitioner - Syed Hashmi remained present. However, to the utter surprise, the

impugned notification was issued on 09-02-2024, appointing respondent no.2/3 as a member of the Wakf Tribunal.

9. Learned advocates Mr. Deshmukh and Mr. Dixit would submit that the circumstances clearly indicate that selection of respondent no.2/3 was contrary to the provisions of law. Considering the fact that it is a post of a member of the Wakf Tribunal, which is a judicial body, having jurisdiction to examine the decisions taken by the Wakf Board, of which respondent no. 2/3 was the chief executive officer for a considerable time, after his appointment, he would be a judge in his own cause. It is contrary to the principles of natural justice. Precisely for this reason, even the Hon'ble the Chief Minister while approving the office note, had declared that appointment may be made excluding the matters in which he was having interest as a chief executive officer. Still, the appointment order does not contain any such qualification. He has been functioning as a member and taking up the matters in which he was member of the decision making process as a chief executive officer of the Wakf Board. He cannot be allowed to be a judge in his own cause.

10. Learned advocates also quoted certain facts and circumstances, wherein respondent no.2/3 *in spite* of having conflict of interest, decided the matter as a member of the Wakf Tribunal . Even he was facing a contempt proceeding therefor. Since it is a matter of

appointment to a public office, the afore mentioned circumstances are writ large demonstrating arbitrariness in the selection process and prayed for cancellation of his appointment order. They would rely upon the following decisions :

(i) *A.P. Public Service Commission, Hyderabad and another Vs. B. Sarat Chandra and others; 1990(2) SCC 669*

(ii) *Tarak Singh and another Vs. Jyoti Basu and others; 2005 (1) SCC 201*

(iii) *Gambhirdan K. Gadhvi V. State of Gujarat and others; (2022) 5 SCC 179*

11. The learned Government Pleader Mr. Girase would submit that it is a matter of selection. The state government has a prerogative in selecting a suitable candidate. Suitability cannot be a subject matter of judicial review. High Court can exercise writ jurisdiction having inherent limitations and can only enquire into the decision making process. There was no illegality in the selection and appointment of respondent no. 2/3.

12. Mr. Sapkal, learned Senior advocate for the respondent no.2/3 would also oppose the petitions. He would reiterate that selection of respondent no. 2/3, by the state government can only be challenged if, either he was not eligible for being appointed under the provisions under which the appointment has been made or that his appointment is not in accordance with the statutory provisions. The

question, as to whether it would have been suitable if the petitioner - Syed Hashmi was selected and appointed, cannot be a ground for this Court to set aside the appointment of respondent no. 2/3.

13. Mr. Sapkal would submit that so far as eligibility of respondent no. 2/3 is concerned, the petitioners have not raised any dispute. Their only grievance seems to be that he was involved in some alleged misdeeds and had acquired disqualification on account of conflict of interest. He would submit that the petitioners have not been able to demonstrate objectively, as to how the disqualification can be attached when there is none available either under the Wakf Act or the Wakf Rules. He would submit that though it is being made to believe that due to such misconduct alleged against respondent no. 2/3, he was made to resign, his resignation was never accepted and he was simply relieved from the post. At no point of time any show cause notice was issued to him much less any enquiry was conducted leading to inflicting some punishment. He has had an unblemished career. In fact, he had taken initiative while working as the chief executive officer of the Wakf Board, to protect the interest of the Wakf. Several FIRs were lodged against the individuals usurping properties of the Wakf and some disgruntled souls were behind him. The decision to remove him from the post of the chief executive officer was politically motivated.

14. Mr. Sapkal would further submit that even if the petitioners are trying to demonstrate that respondent no. 2/3 was deliberately kept out of the selection process, at no point of time, he was ever informed about his exclusion from the selection process. He had applied pursuant to the first advertisement and while issuing the subsequent advertisement, it was expressly notified that the persons who had already applied under the earlier process, need not apply again. Meaning thereby that his candidature was alive and he has been selected to the post having noticed that he was having more than 7 year experience of working with the Wakf Board. He would, therefore, submit that without there being any proved misconduct and without there being any enquiry ever initiated against him, it cannot be presumed that he stood disqualified from being appointed as a member of the Wakf Tribunal. Mr. Sapkal would rely upon the decisions in ***Hari Bansh Lal V. Sahodar Prasad Mahto and others; (2010) 9 SCC 655*** and

15. We have considered the rival submissions and perused the papers.

16. Taking up the issue regarding *locus standi*, the petitioner Syed Hashmi from writ petition no. 2095 of 2024, being a participant in the same selection process in which process by the impugned

notification, respondent no. 2/3 was appointed, he certainly has the *locus standi*.

17. So far as the petitioner in writ petition no. 2084 of 2024 is concerned, though initially he was not claiming any writ of *quo warranto*, by way of amendment, even that has been solicited against respondent no. 2/3 and the post of member of Wakf Tribunal constituted under the Wakf Act, being a public office, writ of *quo warranto* would lie even at his instance *albeit* he is a stranger, though the contours of the challenge would be circumscribed by **B.R. Kapur** (*supra*). There being no evidence to demonstrate that he either is not acting *bona fide* nor is there any circumstance to demonstrate that he has been acting at the behest of someone disgruntled with the appointment of respondent no.2/3, in the conspicuous absence of any substantial and precise pleading in the affidavit in reply filed by respondent no. 2/3, even writ of *quo warranto* would lie at his instance. We do not intend to burden this judgment by elaborately quoting the principles laid down in plethora of judgments cited at the bar and referred to hereinabove.

18. This takes us to the actual challenge to the appointment of respondent no.2/3 on merits. Admittedly, he has been appointed in exercise of the powers under section 83(4)(b) of the Wakf Act read with rule 45(B)(2)(ii) of the Wakf Rules. Those read as under :-

Section 83. Constitution of Tribunals, etc.-

(1) *The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals;*

(2) ...

(3) ...

(4) *Every tribunal shall consist of -*

(a)

(b) *one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;*

....

Rule 45. Terms and conditions of appointment of Chairman and members of Tribunal-

(A) Appointment of Chairman of Tribunal- ...

(1) ...

(2) ...

(3) ...

(B) Appointment of Members of Tribunal-

(1)

(2) *Appointment as a Member of the Tribunal, under clause (b) of sub-section (4) of Section 83 of the Act shall be made-*

(i) ...

(ii) *by appointment or re-appointment as the case may be of a suitable Government servant who has held a post not below the rank as provided in sub-clause (i) and proviso thereof at the time of his retirement.*

....

19. As can be understood, there is nothing in the provisions of either the Wakf Act or the Wakf Rules, so far as disqualification of a candidate is concerned. Though several allegations have been attributed to respondent no. 2/3, as to the manner in which he allegedly misused the powers while working as chief executive officer of the Wakf Board and even if it seems to be a matter of fact that the then learned Minister of Department of Minorities Development had attributed him with some allegations about the transactions wherein the wakf properties were allegedly sold illegally during his tenure as a chief executive officer, at no point of time either any show cause notice was issued to him or was there any enquiry initiated against him. Though the office notings read in the wake of such allegations that ultimately, the decision for his removal was taken on 27-06-2022, he had tendered the resignation on 26-06-2022 about which there is a reference in the government decision dated 27-06-2022. The decision in itself does not give any particular either regarding acceptance of the resignation or the circumstances leading to the government taking such decision, though there is a communication dated 15-06-2022, whereby the learned Minister holding the portfolio of Minister of Minorities Development and Wakf had informed the Additional Chief Secretary to initiate enquiry against respondent no. 2/3 for the alleged misdeeds, as observed earlier; and also there is a reference to such circumstances /

allegations in the office notes preceding the decision to relieve him from the post of chief executive officer.

20. Pertinently, the original office notes, made available to us, copies of which are already on the record, reveal that the concerned section officer in his basic noting in respect of the process being undertaken pursuant to the first advertisement, had referred to and given instances of the complaints against respondent no. 2/3, the only objection that was expressly noted by the section officer was in respect of the impropriety in appointing him in the wake of the fact that the issue regarding conflict of interest would arise as he was working as the chief executive officer till 27-06-2022. Taking note of this fact and considering that if he was excluded from the selection process, there would remain only one candidate in the form of Syed Hashmi, the Chief Minister had directed one more advertisement to be issued. This being the internal / business of the office, there is nothing on the record to demonstrate that the substantial decision regarding disqualification of the respondent no.2/3 was ever taken by the state government much less was communicated to him.

21. As the sequence demonstrates, the second advertisement was issued on 11-07-2022, inviting applications from suitable / desirable candidates expressly stipulating that the persons who had already applied pursuant to the first advertisement would not be

required to apply again. Though it is a matter of record that subsequently, the process culminated in selecting and appointing respondent no. 2/3, at no point on time, there was any decision to exclude him from the process which otherwise would have allowed him to challenge such disqualification. Though contrary notings were regarding allegations against the respondent no.2/3 and the possible issue of conflict of interest, it cannot be said that he was ever put out of the race by making any communication with him.

22. It is necessary to bear in mind at this stage the circumscribing limits on the powers of this Court either in issuing writ of *mandamus* or that of *quo warranto*. This Court can only enter into the arena of decision making process and cannot examine suitability of the decision. Unless the person appointed is not fulfilling the eligibility criteria or is attached with certain disqualification, it would be a prerogative of the state to select a candidate. The issue regarding suitability or desirability cannot play any role and cannot be gone into so as to substitute the decision taken by the administration.

23. Afore mentioned circumstances would clearly indicate that the basic thrust of the petitioners is on the issue regarding propriety or suitability of respondent no. 2/3 to occupy and hold the post of member of a body which is a judicial forum. To repeat, admittedly, there is no proof of misconduct or even any enquiry resulting in demonstrating any

misconduct on the part of respondent no.2/3, irrespective of the noting of the subordinates, it was ultimately the prerogative of the State in selecting him in preference to the petitioner - Syed Hashmi from writ petition no. 2095 of 2024.

24. Precisely for this reason, even though emphasis has been laid by the petitioners to demonstrate as to how the appointment of respondent no.2/3, as a member of the Wakf Tribunal has led to catastrophic consequences, and initiation of contempt proceeding against him, the scope of the present enquiry would be limited in examining the decision making process in his appointment. He was neither disqualified nor had he faced any proved misconduct. He had applied pursuant to the advertisement and was considered and given appointment by the impugned notification and the appointment order.

25. We, therefore, are of the considered view that there are not enough circumstances to demonstrate illegality in the appointment of respondent no.2/3. There is no merit in both the petitions.

26. The writ petitions are dismissed.

27. Rule is discharged.

[PRAFULLA S. KHUBALKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/