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THE STATE OF MAHARASHTRA

v.

SHAIKH MAHEMUD & ANR.

(Civil Appeal No. 2784 of 2022)

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APRIL 06, 2022

[HEMANT GUPTA AND V. RAMASUBRAMANIAN, JJ.]

- Waqfs – Waqf Act, 1995 – ss. 14 and 15 – Appointment of first respondent as a Member of the Maharashtra State Board of Waqfs, by notification dated 13.09.2019 issued by the Minorities Development Department of the State of Maharashtra, was cancelled by a subsequent notification dated 04.03.2022 – Said cancellation was set aside by the High Court as arbitrary, in a writ petition filed by the first respondent – On appeal, held: For holding that the cancellation of appointment of the first respondent was arbitrary, the High Court did not really have any material – The only reason why the High court held it to be arbitrary is that the order of cancellation of appointment did not contain any reason and that the cancellation went against s.15 –For holding the action of the Executive to be arbitrary, there must be a factual basis – It did not exist in this case.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No.2784 of 2022.

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From the Judgment and Order dated 24.02.2021 of the High Court of Judicature at Bombay Bench at Aurangabad in Writ Petition No.3983 of 2020.

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Sachin Patil, Adv. for the Appellant.

Siddharth Bhatnagar, Sr. Adv., Nishant R. Katneshwarkar, Ravindra Keshavrao Adsure, Gaurav Nair, Ms. Pranati Bhatnagar, Ms. Anne Mathew, Aaditya S., Ms. Pracheta Kar, Nadeem Afroz, Advs. for the Respondents.

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The following Order of the Court was passed:

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ORDER

1. Leave granted.

2. The appointment of the first respondent herein as a Member of the Maharashtra State Board of Waqfs, by a notification dated 13.09.2019, was cancelled by a subsequent notification dated 04.03.2022, but the said cancellation was set aside by the High Court of Judicature at Bombay as arbitrary, in a writ petition filed by the first respondent, forcing the State of Maharashtra to come up with the above appeal.

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3. We have heard Mr. Sachin Patil, learned standing counsel for the State of Maharashtra, Mr. Nishant R. Katneshwarkar, learned counsel appearing for the first respondent and Mr. Siddharth Bhatnagar, learned senior counsel appearing for the second respondent who has been appointed in the place of the first respondent.

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4. The notification dated 13.09.2019 issued by the Minorities Development Department of the State of Maharashtra appointing the first respondent as a Member of the Maharashtra State Board of Waqfs reads as follows:

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“...In exercise of the powers conferred by sub-section (9) and clause (c) sub-section (1) of section 14 of the Waqf Act, 1995 (43 of 1995), and in supersession of all earlier notifications issued in this behalf in so far as they related to the nomination of a person amongst Muslims, who has professional experience in town planning or business management, social work, finance or revenue, agriculture and development activities, the Government of Maharashtra hereby appoints from the category of “who has professional experience in town planning or business management, social work, finance or revenue, agriculture and development activities”, Shri Mahemud Mahebub Shaikh as a Member on the Maharashtra State Boards of Waqfs, having its headquarters at Panchakki, Aurangabad for a period of five years from the date of publication of this notification or until further orders, whichever is earlier...”

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5. The relevant part of the notification dated 4.03.2020 issued by the State, cancelling the appointment of the first respondent reads as follows:

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A "...And whereas, the Government of Maharashtra considers it expedient to cancel the appointment of Shri Mahemud Mahebud Shaikh as a Member of the said Board;

B Now, therefore in exercise of the powers conferred by sub-section (9) read with clause (c) of sub-section (1) of section 14 of the Waqf Act, 1995 (43 of 1995) and of all other powers enabling it in that behalf, the Government of Maharashtra hereby cancels the appointment of Shri Mahemud Mahebud Shaikh of the said Board..."

6. The High Court, by the order impugned in this appeal, set aside C the cancellation of appointment on the ground *inter alia*, (i) that Section 15 of the Waqf Act, 1995 prescribes a fixed tenure of five years, which can be curtailed only if the member is disqualified in terms of Section 16 or removed in terms of Section 20; (ii) that there is no place for the doctrine of pleasure and such appointments cannot be cancelled at the whims and fancies of the Government; (iii) that the reliance placed D upon the State Government upon Rule 15 of the Rules of Business in support of their contention that the appointment of the respondent required the approval of the Chief Minister, but as a matter of fact such approval was not obtained, cannot have any application to the case since the position of the Member of the State Waqf Board cannot be equated to E that of a statutory tribunal; and (iv) that the cancellation of appointment of the first respondent was arbitrary, warranting the interference of the High Court.

7. At the outset we should point out that the High Court was right in holding that the post of Member of the Waqf Board cannot be equated F to that of a Member of the Tribunal and that Item No.23 under Rule 15 of the Rules of Business of the Maharashtra Government issued in terms of Article 166 of the Constitution has no application to the case on hand.

8. But the findings of the High Court (i) that the term of office of G a Member of the Board stipulated under Section 15 of the Waqf Act cannot be curtailed except in the case of disqualification under Section 16 or removal under Section 20; and (ii) that the cancellation of appointment was arbitrary, are incapable of being upheld. The reasons are not difficult to be deciphered. While Section 13 of the Act deals with the establishment of a Board of Waqfs (*now the nomenclature is changed as Board of 'Auqaf' under Amendment Act 27 of 2013*), H

Section 14 deals with the composition of the Board, election of members and the manner of election of the Chairperson of the Board. Broadly, the appointment of the Members of the Board shall be by two different methods namely, *(i)* election from each of the electoral colleges as stipulated in clause (b) of sub-section (1) of Section 14; and *(ii)* nominations by the State Government in terms of clauses (c), (d) and (e) of sub-section (1) of Section 14.

9. It is relevant to point out that the appointment of the first respondent was by the method of nomination by the State Government in terms of clause (c) of sub-section (1) of Section 14. The appointment under both categories (*election or nomination*) should be by a notification issued by the State Government and published in the official Gazette. This is by virtue of sub-section (9) of Section 14. Sub-section (9) of Section 14 reads as follows:-

“14. Composition of Board.—

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(9) The members of the Board shall be appointed by the State Government by notification in the Official Gazette.”

10. It is true that Section 15 prescribes a term of office of five years for the members of the Board, from the date of the notification issued under Section 14(9). This Section 15 reads as follows:-

“15. Term of office. —The members of the Board shall hold office for a term of five years from the date of notification referred to in sub-section 9 of section 14.”

11. Though Section 14(9) is common to the appointment under both categories and though Section 15 speaks about the term of office of members appointed by a notification under Section 14(9), nomination always stands on a slightly different footing than election. Perhaps, as per the scheme of the Act, it may not be possible for the State Government to breach the process of election from each of the electoral colleges under clause (b) of sub-section (1) of Section 14, by curtailing the term of office of such elected members. But the same logic cannot be extended to nominated members. In other words, it may not be possible to hold that there is no elbow space for the State Government in the cases of nomination covered by clauses (c), (d) or (e).

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- A 12. It must be noted that under clause (e) of sub-section (1) of Section 14, an officer of the State Government not below the rank of Joint Secretary to Government may be nominated to the Board. If Section 15 is construed in the manner in which the High Court has construed, such a nominated officer of the State Government may have to be allowed to continue, even if he reaches superannuation before completing five years of tenure. Therefore, it is not possible to accept the view of the High Court that the term of office prescribed under Section 15 cannot be curtailed. This is so at least in respect of a nominated member.
- B 13. For holding that the cancellation of appointment of the first respondent was arbitrary, the High Court did not really have any material.
- C The only reason why the High court held it to be arbitrary is that the order of cancellation of appointment did not contain any reason and that the cancellation went against Section 15. For holding the action of the Executive to be arbitrary, there must be a factual basis. It did not exist in this case.
- D 14. It was contended by the learned counsel for the first respondent that the notification of cancellation of appointment was issued in exercise of the powers conferred by sub-section (9) read with clause (c) of sub-section (1) of Section 14. Since these provisions deals only with appointment and not with removal, it was contended by the learned counsel for the first respondent that the notification of cancellation was not in accordance with law.
- E 15. But the above contention loses sight of the fact that the power to appoint would include the power of cancellation of appointment. Therefore, the said contention is liable to be rejected.
- F 16. It was next contended by the learned counsel for the first respondent that the procedure prescribed under Section 20 of the Act for the removal of the respondent was not followed. But this contention is unsustainable, in view of the fact that the respondent was not removed from the office of membership of the Waqf Board. His appointment was cancelled by the notification impugned in the writ petition. Therefore,
- G Section 20 has no application to the case.
- H 17. In view of the above, we find that the order of the High Court is unsustainable. Therefore, the appeal is allowed and the impugned order of the High Court is set aside. The writ petition filed by the respondent before the High Court shall stand dismissed.