

All India Shia Conference Through Syed ... vs Taqi Hadi And Ors. on 26 August, 1953

Equivalent citations: AIR1954ALL124, AIR 1954 ALLAHABAD 124

JUDGMENT

Agarwala, J.

1. This is an application under Section 226 of the Constitution. The applicant All India Shia Conference is a registered Society under the Societies Registration Act 21 of 1860. It is a representative body of the Shias of India. It has been given representation on the Shia Central Waqf Board, formed under the U. P. Muslim Waqfs Act 13 of 1936. That Act created two bodies, the Shia Central Waqf Board and the Sunni Central Waqf Board to look after and manage Shia and Sunni Waqfs respectively.

Section 8 provided for the constitution of the Shia Central Board which shall consist of

- (i) five members to be elected in the manner prescribed by the Shia members of the local legislature;
- (ii) one member to be elected in the manner prescribed by the Executive Committee of the All India Shia Conference;
- (iii) one member to be elected in the manner prescribed by the Board of Trustees of the Shia College, Lucknow;
- (iv) three members to be co-opted by the above seven members from persons whom they regard as ulemas; and
- (v) the President, if he is not one of the above ten members.

2. Section 9 then provided: "(1) If at any election of members of a Central Board the full number of five members is not elected by the local legislature, the deficiency shall be made up by election of the requisite number of members by the Provincial Muslim Educational Conference in the case of Sunni Central Board, and by the Executive Committee of the All India Shia Conference in the case of Shia Central Board. In case of the failure of the Provincial Muslim Educational Conference or the All-India Shia Conference to make up the deficiency, the same shall be made up by nomination by the State Government." Section 12 then went on to say "After the formation of legislative bodies under the Government of India Act, 1935, the five members of the local legislature referred to in Sections 7 and 8 shall be elected as follows:

(i) four members by the Sunni or Shia members as the case may be, of the Provincial Legislative Assembly.

(ii) one member by the Sunni or Shia members, as the case may be, of the Provincial Legislative Council."

3. It will be observed that Section 8(1)(i) directed five members to be elected by the Shia members of the local Legislature not necessarily from amongst themselves, but in Section 12 the five members referred to in Section 8 were described as members of the local Legislature. There was, therefore, an ambiguity and a certain amount of conflict between Section 8(1)(i) and Section 12. After the formation of the first Shia Central Waqf Board the practice in the past is alleged to have been that whenever there were less than five Shia members of the local Legislature the deficiency was made up by calling upon the All India Shia Conference to elect the requisite number of members under Section 9.

But in the middle of July 1952, in a fresh election to the Shia Central Waqf Board when the Shia members of the State Legislature were only three, namely Syed Taqi Hadi, Syed Mohammad Wasi and Syed Aii Zaheer, opposite parties Nos. 1 to 3, they elected besides themselves two more members, namely Raja Syed Ahmad Mehdi and Nawab Hamid Hussain, opposite parties Nos. 4 and 5, who were not members of the Legislature. The applicant's grievance is that this could not be done under the law by the opposite parties Nos. 1 to 3, that since the members of the local Legislature were only three, the applicant had the right to elect the remaining two members and that this right could not be taken away by the opposite parties Nos. 1 to 3.

The applicant, therefore, moved this Court by means of the present writ petition on 1-8-1952, to direct the opposite parties Nos. 4 and 5 not to participate in the proceedings of the Shia Central Waqf Board as its members and further to direct opposite parties Nos. 1 to 3 to cause the deficiency in the membership of the Shia Central Waqf Board to be made up by the applicant as contemplated by Section 9 of the Act.

4. While this petition was pending, the U. P. Legislature passed the U. P. Muslim Waqfs (Amendment) Act 9 of 1953. The Act received the assent of the President on 26-2-1953. By this Act, the anomaly which existed between Sections 8 and 12, as mentioned above, was removed. Section 12 was deleted altogether from the principal Act and after Section 8, the following section was added: "8-A. Nothing in Sections 7 or 8, or in Section 12 omitted by Section 5 of the U. P. Muslim Waqfs (Amendment) Act, 1952, shall be deemed ever to have required that the members to be elected by the members of the State Legislature shall be from amongst the members for the time being of any House of the said Legislature." This amendment made the position absolutely clear. It is not necessary now that the five members who were to be elected by the members of the Legislature under Section 8 should themselves be members of the Legislature. They could be outsiders. The right of election was vested in the members of the Legislature, but the persons to be elected need not necessarily be members of that body.

5. The applicant's contention, lastly is that this amending Act does not apply to the present case which was pending on the date on which it came into force, and, secondly that the legislature has no power to affect the rights of parties in a pending case for two reasons:

(a) it cannot take away vested rights, and

(b) it cannot decide a pending case which is the function of the judiciary and not the function of the Legislature.

The contentions raised by the counsel for the applicant have no force. The general principle no doubt is that an enactment is presumed to be prospective only and should not be interpreted as affecting vested rights, vide -- 'Colonial Sugar Refining Co., Ltd. v. Irving', (1905) AC 369 (A), and the presumption is still stronger in the case of a pending action. But this is only a rule of presumption. That rule itself implies that if the Legislature so desires, it may affect vested rights, whether in past transactions or in pending cases, provided its language is clear beyond doubt. The contention of the learned counsel, therefore, that the Legislature has no power to affect vested rights is without substance.

6. The further contention that the Legislature has no power to pass an Act which would in effect be decisive of a pending action is also unsound. The line of demarcation between the functions of the Legislature, the Executive and the Judiciary is not always well defined. But it is well settled that the Legislature lays down the law, the Judiciary interprets that law and applies it to disputes between parties. The law laid down by the Legislature may, as already stated, affect vested rights even in pending cases. The Judiciary is not competent to question the law unless it be unconstitutional and must apply it to the facts of the case brought before it for decision. The rights of the parties in a pending action may be altered by the law, with the result that while a party was entitled to succeed if the law that was applicable at the commencement of the action were to be applied, he may be defeated by the change of the law during the pendency of the action. The courts in such a case will have to apply the law as amended by the Legislature. What the Legislature cannot do is to decide cases itself, for instance it cannot say that a particular case or class of cases 'is hereby dismissed' vide -- 'Basanta Chandra v. Emperor', AIR 1944 FC 86 at p. 91 (B), but there is nothing in law to prevent the Legislature from so altering the rights of the parties as to make it incumbent upon the judiciary to decide a case in a particular way as intended by the Legislature or the Legislature may even lay down that certain particular suit or classes of suit shall be dismissed, leaving thereby to the Judiciary to pass the order of dismissal. Although in this way the Legislature in substance decides a pending action, it is really not usurping the judicial function, because it is acting within its power to declare the law which is applicable to a particular case.

That the Legislature in the present case has affected vested rights in a pending case can admit of no doubt. The election was held in July 1952, and the present petition was filed in August 1952 in which the formation of the Shia Central. Waqf Board was challenged. The language of the Amending Act is clearly retrospective. The word 'ever' in the amending section clearly refers to the past and therefore acts retrospectively so as to affect vested rights even in pending actions. Whatever meaning we might have attached to Section 8(1)(i) as it stood before the amendment, there is no scope for any

doubt or ambiguity after its amendment. It must be held that the members of the Legislature could elect five members of the Shia Central Waqf Board not only from amongst themselves but also from outsiders and that this view of the law must be taken to have 'ever' been the meaning of Section 8(1)(i) of the principal Act.

7. In this view of the matter, the contention raised by the applicant has no force. The application is therefore dismissed. But as the application fails because of an Act which came into force during the pendency of the present case, we make no order as to costs.