

*Before M. M. Kumar & Rajiv Narain Raina, JJ.*

**SHAMIM AHMED —Petitioners**

*versus*

**STATE OF PUNJAB AND ANOTHER—Respondents**

**CWP No. 16966 OF 2010**

27th February, 2012

*Constitution of India, 1950,- Art. 226 - Wakf Act, 1955 - S. 14(3) - Nomination of members to the Wakf Board made by notification - Subsequently notification modified - Action of State challenged in writ petition - Impugned changes and alterations upheld - Where it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in sub-clause (i to iii) of Clause (b) of Section 14 - Section 14(3) gives sufficient elbow room and free play in the joints to the State to nominate such members of the Board as it deems fit.*

*Held*, that Section 14(3) gives sufficient elbow room and free play in the joints to the State to nominate such persons as members of the Board as it deems fit where it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in sub clauses (i to iii) of Clause (b) of Section 14 of the Act. No prejudice has been caused to the petitioner. The petitioner remains member of the Wakf Board. Mr. J.S. Puri, Addl. A.G., Punjab may be right in contending by referring to Section (v) of Section 14 of the Act that where there are Shia Wakfs but no separate Shia Wakf Board exists, at least one member from the categories listed in Section (i) of sub-Section 14 shall be a Shia Muslim. It is not disputed that respondent Mohd. Afzaal is a Shia Muslim. It may be a comedy of errors but the actions and reactions of the State were bona fide. We do not see any patent illegality or perversity in any of the notifications or the corrigendum justifying interference. A Shia Muslim has been accommodated by re-adjusting the petitioner as a Muttawali failing which he may have been driven out of the Board.

Rahul Sharma, Advocate, *for the petitioner.*

J.S. Puri, Addl. A.G., Punjab for respondent No. 1.

S.K. Pipat, Sr. Advocate with Manoj Kumar Pundir, Advocate for respondent No.2.

**RAJIV NARAIN RAINA, J.**

(1) By this order we propose to dispose of the present and the connected writ petition No. 17703 of 2011 as common questions of law and fact arise. The facts are taken from CWP No. 16966 of 2010. Both the petitions have been filed by the same petitioner-Shamim Ahmad.

(2) The prayer in this petition is for quashing the notification dated 9.9.2010 (P-4) issued by the Punjab Government in exercise of powers conferred by Section 14 of the Wakf Act, 1995 (Central Act No. 43 of 1995) (for short 'the Act'). The notification brings about certain changes in nominations of Members of the Punjab Wakf Board as explained hereafter. Before we come to the change effected by the impugned notification dated 9.9.2010, the sequence of events leading up to the passing of the impugned notification deserves notice.

(3) The Government of Punjab vide initial notification dated 16.11.2009 (P-1) in exercise of powers conferred by Section 14 of the Act constituted the Punjab Wakf Board with immediate effect. It would be appropriate quote the relevant extract of Section 14 of the Act for ease of reference to come to grips with the controversy involved in this petition:-

*"14. COMPOSITION OF BOARD.*

*(1) The Board for a State and the Union territory of Delhi shall consist of -*

*(a) a Chairperson;*

*(b) one and not more than two members, as the State Government may think fit, to be elected from each of the electoral colleges consisting of-*

*(i) Muslim Members of Parliament from the State or, as the case may be, the Union territory of Delhi'*

- (ii) *Muslim Members of the State Legislature,*
- (iii) *Muslim Members of the, Bar Council of the State, and*
- (iv) *mutawallis of the wakfs having an annual income of rupees one lakh and above.*

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xx xx xx xx

- (3) *Notwithstanding anything contained in this Section, where the State Government is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (1), the State Government may nominate such persons as the members of the Board as it deems fit.*

xx xx xx xx

xx xx xx xx”

(4) The notification expressed in the name of the Governor of Punjab recorded satisfaction of the State Government that Muslim Members belonging to the categories mentioned in Clause (i) & (iii) of Section (b) of Section 14 of the said Act are not available and as such it is not practicable to constitute an electoral college for any of these categories. Therefore, the Governor of Punjab invoking Sub Section (3) of Section 14 apart from other nominations as contemplated by Clause (b) of Section 14(1) was further pleased to appoint / nominate M/s Razia Sultan, MLA Malerkotla, Sarvshree Chaudhary Abdul Faggar, Nadeem Anwar, Dilabag Hussain and Mohd. Usman Qureshi as members of the Wakf Board under Section 14(3) read with Section 14(1)(b) (i) (ii) & (iii) of the Act on the one hand, and Bibi Manju Qureshi and Sh. Mohd. Usman Rehmani on the other. In the same notification Sh. Mohd. Izhar Alam, IPS (Retd.) and Sh. Hazi Fazaldin were nominated as members under Section 14(1) (d) of the Act. Lastly, the notification spelt out that against the category falling under Section 14(1)(b)(iv) Shia members would be nominated separately.

(5) That about a month later on 14.12.2009 the State Government issued a notification (P-2) nominating respondent No.2 Sh. Mohd. Afzaal and the petitioner as Members of the Punjab Wakf Board in exercise of powers conferred by Section 14(1) (b)(iv) of the Act.

(6) The State Government thereafter issued a corrigendum dated 23.3.2010 whereby the appointment of the petitioner as a Member of the Wakf Board under category (iv) Section 14(1)(b) was cancelled and the petitioner was appointed as a Member under categories (i) to (iii) of Section 14(1)(b) in exercise of powers conferred by Section 14(3) of the Act. Consequently the petitioner was placed at Sr. No.5-A of the notification dated 16.11.2009 by deletion of his name at Sr. No. 2 of the notification dated 14.12.2009. This Corrigendum contained the same rider as to the satisfaction of the State Government that no Muslim member belonging to the categories mentioned in Clause (i) & (iii) of sub-Section (b) of Section 14 of the Act was available. Not satisfied with this action under the two notifications and a corrigendum the State Govt. has issued the impugned notification dated 9.9.2010, which according to the petitioner is in complete contravention of law and the principles of natural justice, the respondent State has issued the impugned notification, Annexure P-4, whereby changes were made in the nominations of members of the Punjab Wakf Board. Vide the impugned notification, the petitioner is sought to be replaced from his nomination /appointment under Section 14(3) read with Section 14(1)(b)(I, ii & iii) of the Act to nomination/appointment under Section 14(3) read with Section 14(1)(b)(iv).

(7) It is this notification, which has brought the petitioner before this Court with a prayer that it should be quashed by restoration of the status quo ante. The petitioner's case is that the impugned notification was issued in violation of the principles of natural justice; no notice was given to him when change in his nomination status was brought about and altered; such action adversely affects his vested rights from the first nomination. The further argument is that once having issued the notification composing the Board by nomination/appointment, which had attained finality, the State Government was denuded of its powers to make the impugned changes and alterations. It is submitted that once appointed members have a fixed

tenure of 5 years and can be removed from the Board only on the fulfillment of the conditions stipulated in Section 20 of the Act; still further, that the State has no power vested in it to nominate a member in category (iv) enumerated in Section 14(1) (b). It is said that a total of six members of the Board could be nominated. That was done. The State is said to have exhausted its powers thereafter under Section 14(3). It is also pleaded that the State has no power to review its earlier decision taken after conscious reflection.

(8) On notice of motion having been issued the State Government has filed a counter affidavit of the Under Secretary to Government of Punjab, Department of Home Affairs and Justice, in which it is stated that the impugned notification has been passed in continuation of the notifications dated 16.11.2009 and 14.12.2009 and the corrigendum dated 23.3.2010. No cause of action has arisen in favour of the petitioner, nor has any prejudice been caused to him by such alteration of category. The State Government has nominated no additional member beyond six. The petitioner remains a member of the Wakf Board. The actions of the State are sought to be justified on the ground that in view of the statutory requirement to have at least one Shia member, Sh. Mohd. Afzaal a member of the Shia sect of Muslims has been appointed/nominated at Sr. No. 5- A in the original notification dated 16.11.2009 under Section 14(3) of the Act read with Section 14(1)(b)(i, ii, & iii) and the petitioner, a member of the Sunni sect of Muslims has been placed again under Section 14(3) category read with Section 14(1)(b)(iv). Therefore, the impugned notification is in consonance with law and is, thus, legal and valid. The State further pleads, and to our mind rightly so, that the question of nomination of six members under the categories (i) to (iii) of Section 14(1)(b) arises only if there is a possibility of the constitution of an electoral college, whereas, in the circumstances mentioned in the earlier nomination the same was not legally possible and, therefore, the State was well within its right to solve the dilemma.

(9) We would iterate that the events pleaded in the present CWP No. 16966 of 2010 stand quo-terminus with the issuance of the impugned notification dated 9.9.2010 without further material event.

(10) While the present matter was pending adjudication the petitioner filed the connected writ petition being CWP No. 17703 of 2011 to challenge yet another notification issued by the State Government on 19.9.2011 (P-5), which reads as follow :-

**“Notification**

No. 4/31/2011-6Judl(1) 2590 In view of the orders/observations dated 9.8.2011 made by the Hon’ble High Court in Civil Writ Petition No. 3356 of 2011- Mohd. Sharif Versus State of Punjab and Others, Sr. No. 2 of Para 1 of notification issued vide No. 6/32/2003-6Judl(1)/4413, dated 14.2.2009 and Part (B) of notification issued vide No. 6/32/2003-6Judl(1)/3166 dated 9.9.2010, whereby Sh. Shamim Ahmed S/o Sh. Amcer Hassan, r/o Jama Masjid, Jalandhar Road, Hoshiarpur was appointed/nominated as member of the Punjab Wakf Board, is hereby withdrawn with immediate effect.

D.S. Bains

Principal Secretary to the Government of Punjab  
Department of Home Affairs and Justice

No. 4/31/2011-6Judl(1)      Dated, Chandigarh the”

(11) It is this notification that has brought the petitioner to this Court in the second litigation being the connected case. The orders/observations of this Court dated 9.8.2011 referred to in the notification are placed as Annexure P-6 and read as follows:-

*“CWP No. 3356 of 2011*

*Mohd. Sharif Versus State of Punjab and Others*

*Present: Mr G.S. Chahal, Advocate for the petitioner.*

*Mr. V.K. Jindal, Advocate General, Punjab.*

*Mr. Rahul Sharma, Advocate for respondent No.3.*

*Challenge in this petition is to be appointment of respondent No.3 as member of the Wakf Board. Initially vide notification dated 14.12.2009 appointment was made under Section 14(1)(b)(iv) of the Wakf Act, 1955. Thereafter, fresh*

*notification dated 9.9.2010 was issued appointing Shamim Ahmed under Section 14(3) of the Act. It is submitted that Section 14(3) is residue provision which can be invoked only after recording reasons in writing and only when it was not practicable to constitute electoral college for categories mentioned in sub clauses (i) to (iii) of Clause (b) of sub section 1 of Section 14 of the Act. In the present case no reasons have been given which renders action under Section 14(3) to be illegal.*

*In view of the fact that notification does not give any reason, as specifically required, appointment of respondent no.3 may be liable to be quashed. Learned counsel for the State seeks time to study the matter further.*

*Adjourned to 21.9.2011, as prayed.*

*Sd/- (ADARSH KUMAR GOEL)  
ACTING CHIEF JUSTICE*

*Sd/- (AJAY KUMAR MITTAL)  
JUDGE"*

(12) On notice having been issued in CWP No. 17703 of 2011 the State has filed a reply. The changed stand of the State now is that on re-consideration of the matter in its totality and in view of the orders / observations of this Court reproduced above, it was found that the petitioner did not fulfill the qualifications under which he was appointed as a member of the Wakf Board, in the light of which the notification impugned in the second petition was issued. The State has relied on Section 21 of the General Clauses Act to contend that it is within its jurisdiction to reconsider a matter and correct a wrong. Section 21 gives power to the authority that issues a notification to include within that power, the power to add, amend, vary or rescind notifications, orders, rules or bye-laws. It is also stated that in the interregnum yet another writ petition was filed by one Sh. Mohd. Sharif challenging the notification dated 9.9.2010 vide which Mohd. Afzaal was appointed as a member of the Wakf Board under Section 14(1)(b)(iv) qua the appointment of the petitioner. In short the petitioner's nomination was challenged by Mohd. Sharif on the ground that Shamim Ahmad respondent

in that petition is not a Mutawalli. However, since the impugned notification dated 23.3.2010 stood superseded by the notification dated 9.9.2010 the writ petition had been rendered infructuous and was disposed of as such with liberty to the petitioner therein to challenge the notification dated 19.9.2010. In the circumstances, the State submits that in the light of the previous chain of events it had withdrawn incompatible parts of the notifications dated 14.12.2009 and 9.9.2010 by the fresh notification dated 19.9.2010 (P-5) impugned in this petition.

(13) We have heard the learned counsel for the parties at length and with their able assistance have perused the record, read the notifications and the relevant pleadings of both sides.

(14) We are satisfied that Section 14(3) gives sufficient elbow room and free play in the joints to the State to nominate such persons as members of the Board as it deems fit where it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in sub clauses (i to iii) of Clause (b) of Section 14 of the Act. No prejudice has been caused to the petitioner. The petitioner remains member of the Wakf Board. Mr. J.S. Puri, Addl. A.G., Punjab may be right in contending by referring to Section (v) of Section 14 of the Act that where there are Shia Wakfs but no separate Shia Wakf Board exists, at least one member from the categories listed in Section (i) of sub-Section 14 shall be a Shia Muslim. It is not disputed that respondent Mohd. Afzaal is a Shia Muslim.

(15) It may be a comedy of errors but the actions and reactions of the State were *bona fide*. We do not see any patent illegality or perversity in any of the notifications or the corrigendum justifying interference. A Shia Muslim has been accommodated by re-adjusting the petitioner as a Muttawali failing which he may have been driven out of the Board.

(16) The writ petitions, in our considered view, are without merit for the foregoing reasons. A mountain has been made out of a mole hill. The same are consequently liable to be dismissed. It is ordered accordingly but with no order as to costs.