

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

Saturday, the 17th day of October 2026 / 25th Aswina, 1948

WP(C) NO. 36037 OF 2026(D)

PETITIONER:

K.S.HAMZA AGED 59 YEARS S/O. SAIDALAVI, KARUPPAM VEETIL
THOZHUPADAMPO, CHELAKKARA, THRISSUR DISTRICT, PIN - 680856

RESPONDENTS:

1. STATE OF KERALAM REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY DEPARTMENT OF REVENUE, GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANATHAPURAM,, PIN - 695001
2. THE KERALA STATE WAQF BOARD THE KERALA STATE WAQF BOARD, VIP ROAD, KALOOR, KOCHI, REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER, PIN - 682017
3. M.C. MAYIN HAJI, M.C. MAYIN HAJI, MUNDOLI PO, NALLALAM, KOZHIKODE, , PIN - 673027
4. KURUKKOLI MOIDEEN KURUKKOLI HUSE, CHERUVANNUR, VALAVANNUR PO, MALALPURAM, PIN - 676551
5. SIRAZ D KAPASI (BORAH) DAWOODI BUNGALOW, BEACH BAY RESIDENCY, CALICUT, PIN - 673001
6. THODIYOOR MUHAMMED KUNJU MOULAVI GENERAL SECRETARY, DAKSHINA KERALA JAMMIYATHUL ULAMA, PALOIKKARA PO, KUNAGAPALLY, KOLLAM., PIN - 690518
7. SAJNA FIROZ, MEMBER, BLOCK PANCHAYAT, PERUMPADAPPU, ANAKKAPARAMBIL (H), PERUMUKKU PO, CHANGARAMKULAM, PIN - 679585
8. JASEEMN SABAH.C MEMBER, MELATTOOR PANCHAYATH, MALAPPURAM, PIN - 679326
9. M.P. MUSTHAFAL FAISI MELE PEEDIYEKKAL HOUSE, KOTT', TIRUR, MALAPPURAM , PIN - 676101
10. DR.ABDUL MAJEED SWALAH ANSAR ARABIC COLLEGE, VALAVANNUR PO, MALAPPURAM, PIN - 676551
11. SMT.MADEENA BEEGAM.A JOINT SECRETARY, REVENUE(F)DEPARTMENT, GOVERNMENT, THIRUVANANTHAPURAM., PIN - 695001

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay the operation of and all further proceedings pursuant to Exhibit P9, pending disposal of the writ petition(civil).

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of P.CHANDRASEKHAR, MANU V., ANAND SANKAR, FARHANA KABEER Advocates for the petitioners and of ADDITIONAL ADVOCATE GENERAL and GOVERNMENT PLEADER for respondent 1 and of STANDING COUNSEL for respondent 2, the court passed the following:



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S.MANU, J.

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Dated this the 17th day of October, 2026

ORDER

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Admit.

2. Learned Additional Advocate General appeared for the State of Kerala and the learned Government Pleader accepted notice. Learned Standing Counsel appeared and accepted notice for respondent No.2.

3. Issue notice by speed post to respondents 3 to 11 returnable within two weeks.

W.P(C)No.36041 of 2026

Admit.

2. Notice for the Union of India is accepted by the learned CGC on behalf of the Additional Solicitor General for India. Learned Additional Advocate General appeared for the State of

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Kerala and the learned Government Pleader accepted notice. Learned Standing Counsel appeared and accepted notice for respondent No.3.

3. Issue notice by speed post to respondents 4 to 12 returnable within two weeks.

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These writ petitions have been brought up at the special sitting, seeking immediate intervention by this Court. Interim relief sought in both writ petitions is for an order of stay of operation of Ext.P9, G.O.(P)No.318/2026/RD (SRO No.874/ 2026) dated 16.10.2026, by which Government of Kerala nominated nine members to the Kerala State Waqf Board in supersession of Exts.P1 and P2 notifications.

2. As the issue arising for consideration is common, the plea for interim relief is being dealt with by a common order. Reference to exhibits are as they are appended to

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W.P(C)No.36041 of 2026.

3. Learned Senior Counsel for the petitioner in W.P(C)No.36041 of 2026 assailed the impugned order and sought stay of operation of it by raising various contentions. He submitted that validity of Ext.P1 notification, nominating nine members to the State Waqf Board is under challenge before a Division Bench of this Court in four Public Interest Litigations (PIL). It was pointed out that the Division Bench has passed some orders in the PILs finding *prima facie* merit in the contention that constitution of the Waqf Board by Ext.P1 was not in tune with Section 14 of the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995 ('Act' for short). He made reference to the interdiction imposed by the Division Bench by order dated 15.07.2026 pertaining to policy decisions and incurring of capital expenditure. He also pointed out that the Division Bench, in the order dated 19.08.2026 had

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mentioned about the submission made on behalf of the State that steps had been initiated to conduct determination contemplated under Sub Section (6) of Section 14 of the Act and expressed hope that the State would be taking steps for filling up the vacancies. He further contended that the Government had submitted before the Division Bench and gave the impression to the Court that its intention was only to fill up the vacancies in conformity with Section 14 of the Act. He hence contended that the Court has been taken for a ride by the Government with issuance of Ext.P9. Further the learned Senior Counsel submitted that Ext.P9 has been issued in utter disregard to the provisions of the Act. He made reference to Sections 14, 15, 16, 20 and 99 of the Act specifically and submitted that no power is vested with the State Government to reconstitute the Board, in the manner it has been done now. He contended that power to supersede the Board available in Section 99 of the Act

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can be exercised only if the specific conditions mentioned in Sub Section (1) thereof are satisfied and that too only after giving reasonable time to the Board to show cause why it shall not be superseded as mandated under the first proviso to Section 99(1). He also submitted that power to remove chairperson and members available under Section 20 can be exercised only in situations specified under Section 20(1)(a) to 20(1)(c). He argued that the Government has issued Ext.P9 in violation of the provisions of the Act and hence Ext.P9 may not be permitted to remain in force. The learned Senior Counsel also pointed out that while issuing Ext.P9, the Government has not followed the mandate of Section 14(1)(b)(i) and 14(1)(f) of the Act and for that reason also Ext.P9 is bad.

4. Learned counsel appearing for the petitioner in W.P(C)No.36037 of 2026 submitted that malafides is writ large on the face of Ext.P9. He submitted that though the PILs

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challenging Ext.P1 are pending before this Court since long, the Government chose to issue Ext.P9 by superseding Ext.P1 and nominating new members only on 16th of October, 2026 knowing well that this Court will not be functioning till 22nd of October 2026. He contended that even the power under Section 99 of the Act cannot be invoked to issue a Government Order in the nature of Ext.P9 as the said provision empowers the Government only to supersede the Board and not to issue a notification in supersession of a previous notification. He also referred to Section 20 of the Act and submitted that removal of Chairperson and member can be resorted to only when the conditions mentioned in Section 20 are satisfied and by issuing Ext.P9, the Government has removed the Chairperson and members nominated by Exts.P1 and P2. He also submitted that the Board is a quasi- judicial as well as administrative body and removal of the members has serious civil consequences and

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therefore the action taken by the Government without complying with the requirement of principles of natural justice is absolutely illegal. He contended that the Board constituted by Ext.P9 is illegal and any action taken by it would be null and void. He therefore submitted that it is essential to keep the impugned Government Order on freeze till the writ petition is disposed of.

5. Learned Additional Advocate General appeared for the State Government and controverted the afore mentioned contentions. He argued that Ext.P1 was issued in violation of Section 14 of the Act. No determination as contemplated under Section 14(6) was undertaken before issuing Ext.P1. He pointed out that the Government had submitted before the Division Bench that it was willing to carryout determination as envisaged under Section 14(6) of the Act in its affidavit filed in W.P(PIL) No.135 of 2026. He argued that the Government also substituted

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the Additional Secretary with Joint Secretary dealing with Waqf matters to satisfy the requirements of the Act. He further submitted that the Government completed the determination and found that a member of Bohra community should be nominated to the Board. He pointed out that by Ext.P1, nine members were nominated and issue pertaining to nomination of two non-Muslim members is under consideration of the Hon'ble Supreme Court. Therefore, to include a member from the Bohra community in the light of the determinations made under Section 14(6) of the Act, there was no vacancy. Further the learned Additional Advocate General referred to the observation in Paragraph No.5 of the order dated 19.08.2026 of the Division Bench that it was for the State Government to take appropriate steps in accordance with law. He submitted that I.A.No.4 of 2026 filed in W.P(PIL)No.135 of 2026 for a direction to the Government not to constitute the Board was considered by the

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Division Bench on 14.10.2026. Nevertheless, no order was passed in the said I.A. and the Division Bench adjourned the matter for two weeks to enable completion of the reconstitution of the Board at the request of the learned Advocate General. He therefore submitted that there is no merit in the contention that the Government reconstituted the Board contrary to the submissions made in the PILs. Learned Additional Advocate General placed reliance on the judgment of the Hon'ble Supreme Court in **The State of Maharashtra v. Shaikh Mahemud & Another** [2022 Supreme (SC) 812]. He pointed out that the Hon'ble Supreme Court rejected the contention that Section 15 of the Act, speaking about the term of office of the members of the Board was inviolable. He also pointed out that though the judgment was rendered before the amendment in 2025, regarding nominated members, the Apex Court held that the power to appoint would include the power of cancellation of

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appointment also. He also submitted that the action taken by the Government is not invoking the powers under Sections 20 or 99 of the Act. He clarified that the Government, having the power to appoint the members, invoked the inherent/implicit power to cancel the appointments, to constitute the Board in tune with the requirements of Section 14 of the Act. Regarding non nomination of a member of Parliament and a member of Bar Council, the learned Additional Advocate General submitted that two more vacancies are available and nomination to those vacancies has been deferred awaiting outcome of the litigation pending before the Apex Court pertaining to the requirement of nominating two non-Muslim members. He submitted that if the Apex Court upholds the impugned provision, the State Government will nominate a non-Muslim member of Parliament as also a non-Muslim member of the Bar Council to the Board so that the requirements under Sections 14(1)(b)(i) and 14(1)(f) as

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also the second proviso to Section 14(1) can be satisfied. He also submitted that a member of Bohra community who is also a Shia, has been nominated while reconstituting the Board by Ext.P9 and the major lacuna pointed out in the PILs challenging Ext.P1 has been thus remedied. He further submitted that the Board has assumed office already and a meeting was also held today morning. He submitted that under such circumstances operation of Ext.P9 may not be suspended.

6. Many of the contentions raised in the writ petitions and urged at the time of hearing, especially regarding the composition of the reconstituted Board would require in-depth analysis. For the purpose of passing interim order at this stage, I find that the pertinent issues are as to whether the Government has acted not in accordance with the submissions made before the Division Bench and orders passed thereon and whether the Government has acted despite lack of any power to cancel the

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appointments made vide Ext P1.

7. Perusal of the orders passed by the Division Bench of this Court in the PILs challenging Ext.P1 does not show that this Court restrained the State Government from taking appropriate actions to ensure that the constitution of the Board is in consonance with the provisions of Section 14 of the Act. It is pertinent to refer to Paragraph Nos.4 and 5 of the order dated 19.08.2026 of the Division Bench. The relevant paragraphs are extracted hereunder.

“4. The learned counsel for the petitioners submit that admittedly, the Board has not been constituted as the vacancies have not been filled up. Moreover, there has been no sufficient representation from the communities and in the absence of such representation, the Board cannot function. In our interim order, we have not prevented the Board from functioning. We are of the view that the State Government should take expeditious steps either to fill up the remaining vacancies or to take such other decision as it may deem fit and proper with regard to the constitution of the Waqf Board.

5. At this stage, we are only seized with the problem of proper functioning of the Waqf Board where admittedly

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there are few vacancies. Since the State has initiated the process and has taken a stand that the State is going to take steps for filling up the vacancies, we adjourn this matter to 30th September 2026 in order to enable the State to take appropriate steps for filling up the vacancies. Whether the Board is required to be reconstituted for violation of sub-section (6) of Section 14 of the Waqf Act is not required to be gone into at this stage. We are not expressing any opinion with regard to the alleged violation. It is for the State Government to take appropriate steps in accordance with law.

[Emphasis added]

8. Further it is relevant to refer to the opening paragraph of the order dated 14.10.2026 of the Division Bench that reads as under.

“On the prayer of the learned Advocate General, the matter stand adjourned for two weeks to enable completion of the reconstitution of the Waqf Board.”

[Emphasis added]

9. It appears that the Division Bench of this Court, apart from not forbidding the State Government from taking steps to ensure that constitution of the Board is in accordance with law,

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took note of willingness expressed by the State to reconstitute the Board. By the order passed on 14.10.2026, the Division Bench accepted the request of the learned Advocate General to adjourn the matter for two weeks to enable completion of the reconstitution of the Board. It is also apposite to note that the Division Bench clarified in the order dated 19.08.2026 that the Bench did not intend to express any opinion with regard to the issue as to whether the Board is required to be reconstituted for violation of Sub Section 6 of Section 14 of the Act at that stage and left it open to the State Government to take appropriate steps in accordance with law. *Prima facie*, I do not find merit in the submissions made on behalf of the petitioners that reconstitution of the Board is not in accordance with the submissions made before the Division Bench and orders passed in the PILs.

10. Much was argued with respect to absence of any

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specific provision conferring any authority on the State Government to reconstitute the Board otherwise than in accordance with Sections 20 or 99 of the Act. However, I find that in **Shaikh Mahemud & Another** (Supra) the Hon'ble Supreme Court categorically held that power to appoint members to the Board would include the power of cancellation of appointment. Though the judgment was rendered referring to the provisions of the unamended Act, the principle laid down specifically regarding nominations by the State Government is undoubtedly relevant in the context of amended Act also. Hence, it cannot be said that the Government has no authority to cancel the appointments made by Exts.P1 and P2. Hence, *prima facie* it appears that the Government has invoked its implied power to revoke the appointments made by Ext.P1 by issuing Ext.P9.

11. In view of the foregoing discussion, I am of the view

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that no case is made out to pass a stringent interim order staying the operation of Ext.P9. Hence the request to stay the operation of Ext P9 is rejected. Nevertheless, as formidable contentions which would require elaborate reflection are raised in these writ petitions, I direct that reconstitution of the Board by Ext.P9 shall be subject to the outcome of these writ petitions.

12. I am also of the view that the issues arising for consideration are intricately related to the issues raised in W.P(PIL)No.117 of 2026 and connected cases pending before the Division Bench. I hence find it appropriate to exercise the power under Section 3 of the Kerala High Court Act to adjourn these writ petitions for hearing and determination by the Division Bench.

**Sd/-
S.MANU
JUDGE**

MC

APPENDIX OF WP(C) 36037/2026

Exhibit P1	A TRUE COPY OF THE GO(P) N054/2026/RD DATED 04.02.2026
Exhibit P2	A TRUE COPY OF THE GO NO.142/2026 DATED 13.03.2026
Exhibit P9	A TRUE COPY OF G.O.(P) NO.318/2026/RD DATED 16-10-2026

