In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No. 18735 of 2022

Professor Syed Haider Hassan Kazimi and others
Vs.
The State of West Bengal and another

For the petitioners	:	Mr. Rauf Rahim, Mr. Sayantan Bose, Mr. Ali Asghar Rahim, Mr. Sattik Rout
For the State	:	Mr. T.M. Siddiqui, Mr. Suddhadev Adak
For the respondent no. 2	:	Mr. Arif Ali, Ms. Ujjaini Chatterjee, Mr. Yusuf Ali Mirza
Hearing concluded on	:	05.01.2024
Judgment on	:	17.01.2024

Sabyasachi Bhattacharyya, J:-

1. The writ petitioners are all Shia Mohammedans professing Islam. All of them claim to be actively associated with the welfare and upkeep of several Shia Immambaras/grave-yards in West Bengal.

2. They claim to be "persons interested in a Waqf" under Section 3(k) of the Wakf Act, 1995 (hereinafter referred to as, "the 1995 Act"). Their grievance is against the appointment of respondent no. 2 as a member of the Board of Waqf established under Section 13 of the 1995 Act. Such appointment was done under Section 14(1)(d), on the premise

that the respondent no. 2 is a recognized scholar in Shia Islamic Theology.

3. The said provision contemplates that out of the several Board-members, one person each is nominated by the State Government from amongst Muslims, from recognized scholars in Shia and Sunni Islamic Theology. The respondent no. 2 comes in under the Shia head.

4. It is contended by learned counsel for the petitioners that the private respondent no. 2 is totally unqualified for being appointed under the said provision, not being a scholar in Shia Islamic Theology.

5. There was a previous round of litigation, since the petitioners' representation against such appointment was not looked into. By a previous order of a Co-ordinate Bench dated June 29, 2022, The Secretary, Ministry of Minority Affairs and Madrasah Education Department was directed to consider the representations made by the petitioners and dispose of the same by passing a reasoned order within a period of three weeks from the date of communication of the order, after hearing all necessary parties including the petitioners.

6. Thereafter, *vide* order dated July 27, 2022, the Secretary reiterated the nomination of respondent no. 2, which had originally taken place *vide* Notification dated January 28, 2022.

7. It is argued by the petitioners that, even as per the said order, the respondent no. 2 is a Nazir of Basravi Waqf Estate appointed by this Court to look after the biggest Shia Community Mosque in Kolkata and is a member of the West Bengal State Haj Committee under the

Haj Committee Act, 2002, apart from being a member/mutawalli of several other Committees/trusts/waqf estates. Working experience in administration of waqf matters has been highlighted as an important aspect while considering such nomination.

8. It is argued that none of the said tests are pertinent to being a scholar in Islamic Theology. Learned counsel appearing for the petitioners contends that Theology is a specific science and branch of academics taught in certain Universities. Learned counsel for the petitioners also refers to a particular University, the Alia University, where the degree course offered on Islamic Theology has certain specific stages. It is submitted that the respondent no. 2 neither has an academic degree in Theology, nor is he a recognized Islamic scholar at all. Thus, the basic criteria of Section 14(1)(d) are not satisfied.

9. While controverting the objection as to the writ not being maintainable, learned counsel for the petitioners places reliance on an Order dated June 14, 2023 passed by a Co-ordinate Bench of this Court while allowing an amendment to the writ petition at the behest of the petitioners whereby, apart from Certiorari, a prayer for Quo Warranto was incorporated in the writ. It was observed in the said judgment that the amendment was formal in nature where the petitioners have sought to mend the constitutional loopholes even though the Court was of the view that the fabric of the original writ petition was resilient enough to hold the prayers of both Certiorari and Quo Warranto in its weave. The learned Single Judge also held that the decisions referred to therein not only make technicalities irrelevant

but also focus on the broader objective of Article 226(1) of the Constitution which is to correct injustice. The reliefs of Certiorari and Quo Warranto were held not to be mutually destructive. Hence, it is contended that the said question cannot be reopened by the respondents now.

10. In support of the contention that the concept of *locus standi* is relaxed in writs of Quo Warranto, learned counsel for the petitioners cites *University of Mysore Vs. C.D. Govinda Rao & Anr.*, reported at *(1964) 4 SCR 575, Rajesh Awasthi Vs. Nand Lal Jaiswal & Ors.*, reported at *(2013) 1 SCC 501*, *Gambhirdan K. Gadhvi V. State of Gujarat & Ors.*, reported at *(2022) 5 SCC 179* and *The State of Haryana Vs. The Haryana Cooperative Transport Ltd. & Ors.*, reported at *(1977) 1 SCC 271*.

11. It is next argued that the nature of office of a member of the Board of Waqf is a public office, since duties of a public nature are dispensed with in such office. Thus, the appointments to such office come within the purview of a writ of Quo Warranto. To highlight the contention regarding public nature of the office, learned counsel for the petitioner cites *G.A. Natesan Vs. K.B. Ramanathan*, reported at *AIR 1918 Madras 763* and *Binny Ltd. & Anr. Vs. V. Sadasivan & Ors.*, reported at *(2005) 6 SCC 657*.

12. It is argued that the free will of the State to appoint a person to a public post is not an unfettered right, for which proposition he cites *A. Mohambaram Vs. M.A. Jayavelu and others*, reported at *AIR 1970 Mad*

63 and *S.G. Jaisinghani Vs. Union of India and others*, reported at *AIR 1967 SC 1427*.

13. Learned counsel next argues that the eligibility criteria for the post as the present are not met by the respondent no. 2. In support of such contention, learned counsel cites *Sri Mir Saifulla and another Vs. State of Karnataka and others* in *WP No. 34004-3/98* and *Karnataka Wakfs Protection and another Vs. The State of Karnataka and others* in *WP Nos. 43392-43393/2011,* as well as *Sayyed Abubakra Naqvi Vs. State of Rajasthan and others*, a Division Bench judgment of the Rajasthan High Court in *D.B. Special Appeal Writ No. 2011/2017*.

14. While controverting the submissions, learned counsel for the State argues that the petitioner does not have *locus standi* to present the writ petition. By citing a co-ordinate Bench judgment in *Shri K. Abdul Rehman Vs. The Lieutenant Governor & Ors.*, reported at *2011 SCC OnLine Cal 603*, it is argued that the learned Single judge held in a similar challenge that it was not sufficient for the petitioner to state in the writ petition that he represented an eminent Muslim organization. Unless the petitioner establishes that he was an aspirant for such appointment and was not considered, though eligible, his right to challenge the legality of appointment of the members of the Wakf Board cannot be held to have matured, particularly since it was not in the nature of a Public Interest Litigation.

15. Learned counsel next cites *Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra and others*, reported at *(2013) 4 SCC 465*. The Supreme Court held in the said judgment that under ordinary circumstances, a

third person having no concern with the case cannot claim to have any *locus standi* to raise any grievance whatsoever. In exceptional circumstances, however, if the actual persons aggrieved, because of ignorance, illiteracy, etc., are unable to approach the court, and a person having no personal agenda in relation to which he can grind his own axe approaches the court, the court may examine the issue and in exceptional circumstances even if his *bona fides* are doubted, but the issue raised by him in the opinion of the court, requires consideration, the court may proceed *suo motu* in such respect.

16. Next, the State cites *State of Maharashtra Vs. Laljit Rajshi Shah and others*, reported at *(2000) 2 SCC 699,* for the purpose of arguing that the legal fiction created by the word 'deemed' in Section 101 of the 1995 Act cannot be extended beyond its purpose or beyond the language of the Section. Section 101 provides that the Survey Commissioner, members and officers of the Board, are deemed to be public servants. The said use has a different connotation than the present. The deeming provision is intended to render the persons liable under the Prevention of Corruption Act and facilitate speedier investigation and penal action and has nothing to do with the maintainability of the writ petition against their appointment.

17. Learned counsel also places reliance on *Mohammad Sayeed Vs. State of Uttarakhand and others*, reported at *AIR 2022 Utt 30*, to argue that even in the said case, the learned Single Judge compared the provisions of the Wakf Act, 1954 and the 1995 Act. Whereas the Government had to form an opinion regarding a recognized scholar in

Islamic Theology in the 1954 Act, the opinion has been done away with under the 1995 Act and the State Government can nominate any recognized scholar in Islamic Theology.

18. Learned counsel then cites *Maulana Jamil Ahmed Ilyasi Vs. Govt. of NCT and Ors.*, reported at *2006 SCC OnLine Del 1405,* where it was held that there is no requirement for a person to have a formal degree from a school or college in Islamic Theology to be considered as a recognized scholar in Islamic Theology.

19. Learned counsel for the State, lastly, cites a Division Bench judgment of this Court in *Dr. Kunal Saha Vs. Principal Secretary, Department of Health and Family Welfare, Government of West Bengal and Another*, reported at *AIR 2018 Cal 148*, where it was held, *inter alia*, that as a matter of policy, courts are slow to entertain a challenge in a matter of choice of personnel for appointment to a public body. A constitutional court will not easily interfere with the choice. If the legislature does not deem it necessary to fix parameters for the selection, it would imply that an element of discretion is left to the executive.

20. Lastly, it is argued that the composition of the Board vis-à-vis the purpose of the 1995 Act is for better administration of Waqf Estates and not to give any sermon or preach Islam. The members of the Board are not supposed to perform any ecclesiastical work. The petitioners have laid emphasis on the expressions "scholar' and 'Islamic theology'. The meaning of the word 'scholar' cannot be constricted to include only those who hold high educational qualification. Degrees cannot be yardsticks for judging the scholastic

aptitude of a person. No such specific qualification has been explicitly spelt out in the relevant provision.

21. It is argued that the respondent no. 2 has sufficient experience in matters concerning the administration which is required to be done by the Waqf Board and as such was rightly nominated for such post.

22. Learned counsel appearing for the respondent no. 2 submits that a Writ of Mandamus and Certiorari are only available to a petitioner who is personally aggrieved and that the petitioners are not entitled to a writ of Quo Warranto. For the first proposition, the private respondent cites *(2006) 11 SCC 731 [Retd. Armed Forces Medical Association and others Vs. Union of India and others]*, *(1973) 1 SCC 485 [Dr. Umakant Saran Vs. State of Bihar and others]* and *Ayaaubkhan Noorkhan Pathan (supra).* For the second, learned counsel cites a Madras High Court judgment reported at *AIR 2005 Mad 111 [P.A.G. Hussain Moulana v. Union of India]* where the subjective satisfaction of the State for making an appointment under Section 14 of the 1995 Act was not interfered with.

23. *AIR 1996 AP 187 [Sri Yusuf Qureshi and others Vs. Moulana Mahammed Jamaluddin Deccani and others]* is next cited for the proposition that the Government should be aware of the statutory requirements and that is all which could be required if the Government feels that the requirements are fulfilled, it is enough for the writ court in Quo Warranto not to delve further. Subjective satisfaction of the State was also relied on in *P.L. Lakhanpal Vs. A.N. Ray and others*, reported at *AIR 1975 Del 66*.

24. The Supreme Court hesitated to express opinion on matters of Islamic Academicia in *AIR 1965 SC 491 [University of Mysore and Another Vs. C.D. Govinda Rao and Another]*. The integrity, caliber and qualification ought not to be judged by the Court, it was held in *Ashok Kumar Yadav and others Vs. State of Haryana and others*, reported at *(1985) 4 SCC 417*. Suitability cannot be looked into to see whether the appointment is valid, as held in *Rajesh Awasthi Vs. Nand Lal Jaiswal and others*, reported at *(2003) 1 SCC 501*.

25. Upon citing the above judgments, it is argued by learned counsel for the respondent no. 2 that there is no written quote in Shia Islamic Theology and no specific parameter laid down. The petitioners have only produced the example of Alia University. However, it is not required that every appointee should study in the said University. There are very few universities offering academic courses on Islamic Theology, it is submitted.

26. More importantly, it is argued that Shia Islamic Theology is discussed, professed and practised in Mosques and Immambaras and religious gatherings, most of which are controlled by Waqf Estates.

27. The respondent no. 2 is admittedly involved with important Shia Waqf Estates and participates in their activities. Where the appointment parameters are nebulous and subjective, this Court may not go deep in a Quo Warranto matter.

28. In paragraph 3(j) of the affidavit-in-opposition of respondent no. 2, it has been highlighted that two Hon'ble Judges of this Court had issued certificates in favour of respondent no. 2 stating that he has vast

experience and good knowledge of running waqf estates and is a person of integrity. Similarly, SWH Rizvi, at that point of time the Joint Secretary, Department of Panchayat and RD, West Bengal had issued a similar certificate. Several important Shia Waqf estates have issued congratulatory letters to the respondent no. 2. Those Estates comprise the majority of the important Estates in Kolkata in West Bengal.

29. Lastly, it is argued that the petitioners are intermeddlers and have personal axes to grind against the respondent no. 2. The distinction in the two jurisdictions that is Mandamus and Certiorari is apparent and in Quo Warranto jurisdiction, the petitioners cannot expect to have such kind of scrutiny.

30. Before going into the merits of the case, the maintainability of the writ petition is required to be decided. The petitioners cite the order dated June 14, 2023 in this writ petition passed by a co-ordinate Bench to argue that the said chapter is closed. The said order, however, was confined to the amendment petition incorporating the relief of Quo Warranto being allowed. The observations made therein are incidental insofar as the final hearing of the writ petition is concerned. Thus, the chapter cannot be said to have been closed by the said order as such. However, the principle of Comity of Courts demands that, in the absence of any changed circumstances, the ratio raid down in the said order, although at an interlocutory stage but passed in the same matter, ought to be abided by.

31. Two important observations in the said order, after a detailed discussion, have been highlighted by the petitioners. First, the learned Single Judge observed that the amendment is only formal in nature to mend constitutional loopholes, even though in the view of the court, the fabric of the original petition was resilient enough to hold the prayers of both Certiorari and Quo Warranto in its weave. It was also observed that the issue of *locus standi* is diluted in a writ of Quo Warranto.

32. We find support behind the said observations in *The State of Haryana (supra)* where the Supreme Court referred to "Certiorari or a suitable writ". Therefore, the field was kept open for Quo Warranto to be issued as well in circumstances where a Certiorari has been sought, depending on the circumstances of the case.

33. In *University of Mysore Vs. C.D. Govinda Rao & Anr. (supra)* the Supreme Court made it explicitly clear that a judicial scrutiny can be undertaken into appointments to public offices and to protect citizens from being deprived of being appointed to public offices to which they have a right. The same principle was echoed in *Gambhirdan K. Gadhvi (supra)* where it was also found that judicial enquiry into executive action making appointments to public offices against the law was permissible to protect the public from usurpers and to protect citizens from being deprived of public offices.

34. Again in *Rajesh Awasthi*'s case, the Supreme Court held that the citizen can claim Quo Warranto even from the position of a relater and need not have any special or personal interest.

35. Read in such context, the observation of the learned Single Judge in *Shri K. Abdul Rehman (supra)* has to be read down. In the said case, without specifying as to what was the exact ground of challenge, the learned Single Judge observed that the persons who were appointed as members of the Waqf Board were not selected in accordance with the provisions of the 1995 Act. A general challenge in that regard was met with by the Court on the premise that the petitioner failed to establish that he was an aspirant for such appointment and was not considered, though eligible.

36. However, the borders of *locus standi* have been expanded in recent times enabling citizens to bring to the notice of court the dereliction of duties by public authorities as well as to bring into the focus of judicial scrutiny contraventions of law in public appointments. The said principle having been reiterated in *Rajesh Awasthi*'s case and *Gambhirdan K. Gadhvi (supra)*, the court cannot shut its eyes to a palpable contravention of law in appointment to a public office, if established by the petitioners.

37. In any event, the writ of Quo Warranto is wide enough to permit a mere relater to point out discrepancies in public appointment even without having any special or personal interest, as held in *Rajesh Awasthi (supra)*.

38. Thus, the instant writ petition is very much maintainable, unfettered by any restriction as to *locus standi* of the petitioners.

39. That apart, the petitioners are members of the Shia community of Mohammedans in India and practise and profess the said branch of Islam.

40. They also claim to have a role to play in welfare and upkeep of several Shia Immambaras and graveyards in the State of West Bengal and are definitely persons interested in the proper functioning of the Board of Waqfs and not rank trespassers or busybodies having no interest or stake in the issue involved.

41. Another facet of the objection as to maintainability of a writ of Quo Warranto is whether the appointment in the present case has been made to a "public office" to justify issuance of a writ of Quo Warranto.

42. In this context, a reference to the case of *G.A. Natesan (supra)* is relevant. The Supreme Court observed in the said case that where a statute appoints a body of persons to carry out purposes of public benefit the persons constituting such a body *ipso facto* become holders of a 'public office'. The same sentiment was echoed by the Supreme Court in *Binny Ltd. (supra).* While deciding a writ of Mandamus, it was observed there that a writ of Mandamus or the remedy under Article 226 of the Constitution is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public and to compel public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice where there is wrongful exercise of power or a refusal to perform duties.

43. To delve into the question at hand, we are to look into the functions discharged by the Board of Waqf within the contemplation of the 1995 Act. On a scrutiny of the scheme of the said statute, it strikes at the outset that the Board is the single-most important authority under the said Act and is sufficiently capable under the 1995 Act to generate torque for effective implementation of the purposes of the statute.

44. The Board, through its Chief Executive Officer, has several important functions, including investigating the nature and extent of Auqaf and Waqf properties and whenever necessary to call for an inventory of Waqf properties and for accounts, returns and information from Mutawallis, inspecting or causing inspection of Waqf properties and accounts, records, deeds or documents relating thereto and doing generally such acts as may be necessary for the control, maintenance and superintendence of Auqaf.

45. The powers and functions of the Board under Section 32 extend to general superintendence of all auqaf in the State. It is the duty of the Board to exercise its powers under the Act so as to ensure that the auqaf under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and purposes for which such auqaf are created or intended.

46. Without taking away from the generality of the said powers, the Board shall also maintain records containing information relating to origin, income, object and beneficiaries of every waqf in the State to ensure that the income and other property of waqf are applied to the objects and performances for which those were intended or created, give

directions for the administration of auqaf and settle schemes of management for a waqf. Huge financial and administrative powers are, thus, vested in the Board.

47. Under Section 36, every waqf, whether created before or after the commencement of the Act, shall be registered at the office of the Board. Such registration is vital, since the Board shall maintain register of auqaf which contains the relevant details as mentioned in Section 37 and creates a presumption of the property being a waqf estate. Under Section 39, the Board shall, if satisfied that objects or any part thereof of a waqf have ceased to exist, cause an enquiry to ascertain the properties and funds relating to it and may make an application to the Tribunal for an order directing the recovery of possession of the building or place.

48. The fulcrum of strength for the functioning of a Waqf Board is Section 40 of the 1995 Act, under which the Board may itself collect information regarding any property which it has reason to believe to be a waqf property and decide any question which arises whether a particular property is waqf property or not or whether a waqf is a Sunni or Shia waqf. Under sub-section (2) of Section 40, the decision of the Board on a question under sub-section (1) shall, unless revoked or modified by the Tribunal, be final.

49. Thus, not only are the entire administration and finances of the waqf properties in the State under the direct supervision of the Board of Waqf, it is the Board which decides, subject to scrutiny by the

Tribunal under certain circumstances, whether a property is a secular property or a waqf property and whether it is a Sunni or a Shia Waqf.

50. Thus, the huge charter is vested in the Board of Waqf, which can easily be misused if vested in the wrong hands.

51. Such immense power exercised by the Waqf Board is the primary reason why the appointment of each and every member to such Board has to be scrutinized with extreme caution, necessitating judicial inquiry when the provisions of the law and natural justice are violated in such appointments.

52. Hence, the nature of functions exercised by the Waqf Board and its members is not only a public duty but touches the rights of the public in general and not only members of the Mohammedan community, since the Board can even declare properties which might be perceived to be secular to be Waqf properties, which decision has an aura of finality. It may even declare properties to be either Sunni or Shia where there are disputes between the two branches of the Mohammedans in the State. Seen from such perspective, there cannot be any doubt that each member of the Board holds a public office and as such their appointments are definitely justiciable and amenable to judicial scrutiny.

53. Another question which arises is whether the State has free will to appoint, when empowered to do so under a statute, in an unfettered manner. In this context, the reference of the petitioners to *A. Mohambaram (supra)* is relevant. There, an argument was raised that the extant Rule was only for the guidance of the Executive and the

exercise was not justiciable. The said argument, however, was negated by the Division Bench of the Madras High Court and it was held that the power to appoint must conform to and subserve the rule of law in its letter and spirit. With respect, this court fully agrees with the said view.

54. Again, the Supreme Court in *S.G. Jaisinghani (supra)* observed that the absence of arbitrary power is the first essential of the Rule of Law. The decisions are to be made by application of known principles and rules and, in general, should be predictable.

55. Hence, read in conjunction with each other, the ratios of the above decisions unerringly indicate that the appointment to a public post is open to judicial scrutiny. The exercise of discretion by the Executive is definitely subject to the tests of predictability and adherence to the extant law. Arbitrary nomination in the concerned post of a member of the Waqf Board is definitely required to be struck down.

56. Let us now consider the decision-making process of the State in appointing respondent no. 2 in the present case. After the initial remand of the matter *vide* order dated June 29, 2022 by this Court, the respondent-authorities passed an order reiterating the nomination of respondent no. 2 and gave certain justifications for such nomination. The said justification is in the line of respondent no. 2 being a Nazir of one Basravi Waqf Estate and a member of the West Bengal State Haj Committee as well as a member/mutawalli of several other committees/trusts/waqf estates, although no particulars of the said committees/trusts/waqf estates has been given. Working

experience in administration of waqf matters has been observed by the State to be an important aspect while considering nomination of a person as a member of the Board of Waqf, in which field the respondent no. 2 allegedly has huge experience.

57. Thus, administration of waqf matters and being, in the administrative capacity, involved in a Haj Committee appointed by the State and as member/mutawalli of different waqf estates etc., has been highlighted as the predominant yardsticks of appointing a person in the present context.

58. In fact, the State has given a go-bye to the necessity of having a degree of Islamic Theology from a recognized educational institution.

59. We find from the judgments cited by the State and the private respondent that the Delhi High Court in *Maulana Jamil Ahmed Ilyasi (supra)* has observed that there is no requirement under Section 14(1)(d) of the 1995 Act for a person, to be a recognized scholar, to have a formal degree from a school or college in Islamic Theology.

60. Before moving forward, the yardsticks which have been cited by the State in appointing respondent no. 2 are to be examined on the anvil of Section 14(1)(d). The said provision specifically stipulates that the State has to nominate one person each from amongst Muslims, "from recognized scholars in Shia and Sunni Islamic Theology".

61. Although the State appears unwilling to agree with the stress laid by the petitioners on the expressions "recognized scholars" and "Islamic Theology", the said two criteria are the only tests stipulated in Clause (d) of sub-section (1) of Section 14 of the 1995 Act and as such, going

by the principles laid down by the Supreme Court in the reports discussed above, the Rule of Law demands that the State, in its nomination, has to adhere to (in letter as well as in spirit) to the said provision. Where a specific yardstick has been provided in the statute itself for a particular nomination, the State cannot have an unfettered right to whimsically appoint any person on different yardsticks for such post. The tests to be applied have to be strictly in terms of the legal provision which is the very source which empowers the State to make the nomination and not otherwise.

62. Surprisingly, the State gives a go-bye entirely to the yardsticks of recognition of respondent no. 2 as a scholar in Shia Islamic Theology. In the explanation given for appointment of the respondent no. 2 in the Order dated July 27, 2022 by the State, not a single sentence discloses how the respondent no. 2 qualifies as a recognized scholar from any perspective, let alone adverting to such scholasticism in Islamic Theology. The State repeatedly reiterates that the respondent no. 2 has working experience in administration of waqf matters and is a mutawalli or member of different Waqf Estates, committees and trusts. However, the very same ground is a perfectly valid reason for disqualifying respondent no. 2 from being nominated as a member of the Waqf Board, since as discussed above, the Waqf Board primarily functions not only to give recognition to waqf estates and waqf properties but to administer the functioning and finance of such estates and related bodies and to monitor the sourcing of funds of the said estates. The Board is the deciding body as to whether a property

is a waqf estate and, if so, whether it belongs to the Shia and the Sunni community. The Board can undertake enquiries and investigations into allegations against the functioning of particular waqfs and also take steps if there is mismanagement of waqf estates or misappropriation of funds or other illegalities committed with regard to such estates and can even initiate proceedings for taking possession of buildings of waqfs which have ceased to function.

63. Thus, obviously, the Mutawalli of certain waqf estates which function under the general administration and control of the Waqf Board and/or the member of trusts/committees administering such estates or a Nazir of a particular waqf estate, appointed by this Court or otherwise, is the worst possible person to be nominated as a recognized scholar in Shia Islamic Theology, since he has an obvious vested interest in the matter.

64. The conflict of interest between a member of the Waqf Board who is a party to the decision-making process on the administration and functioning of waqf estates and allied bodies and a person who is actually a mutawalli of several estates, the Nazir of one and member of different trusts and committees relating to such estates, is obvious. Such conflict of interest *ex facie* disqualifies the respondent no. 2 from being appointed as a member.

65. The State has raised a hue and cry regarding the respondent no. 2 being apparently deft in administration of waqf estates. However, Section 14(1)(d) is not the appropriate head for nomination of such an administrator. We find from the rest of the clauses in Section 14(1)

that those already cover the requirement of administrators sufficiently. For example, the appointment of a person from amongst Muslims who has professional experience in town planning, business management, social work, finance or revenue, agriculture and development activities is already envisaged under Clause (c).

66. Clause (d) of Section 14, sub-section (1) provides for election of members who are members of the Parliament from the State or members of the State Legislature, the State Bar Council or Mutawallis of a particular waqf having an annual income of Rs. 1 lakh and above. Hence, Section 14(1)(b)(iv) already factors in mutawallis of auqaf having annual income of Rs. 1 lakh and above. Superfluity is abhorred by the legislature. Thus, it is inconceivable as to whether even after provision being made for appointment of such mutawallis as Board members, Clause (d), which seeks to lend expertise to the Board in the field of the theoretical aspect of Islamic Theology, should be confused with Clause (b).

67. An addition of another mutawalli or administrator to the pool of administrators/mutawallis who are already nominated under the other provisions of Section 14(1) is entirely uncalled for and unwarranted. The nomination under Section 14(1)(d) is strictly compartmentalized to a person who is a scholar in Islamic Theology and a recognized scholar at that. Thus, the reliance placed by the State on the alleged acumen of the respondent no. 2 in administration of waqf estates is entirely misplaced for the purpose of Section 14(1)(d). It is all the more inconceivable as to what a member of the

Haj Committee of the State has to do, by dint of such membership, with scholarship in Shia Islamic Theology.

68. The argument of respondent no. 2 that recognition of scholasticism in Islamic Theology might not be from an approved or recognized university is acceptable. There may be scholars in different branches of academics who do not have a degree in that field from a university. In fact, there are theologists of such eminence to assess whom even universities are incapable, due to the magnitude of their erudition, spirituality, sensitivity and experience in the field. There are examples galore when experts in a particular field are examined by persons who are utterly ineligible to assess the proficiency of the examinee in the field.

69. However, such is not the case here. The scholasticism or recognition of the respondent no. 2 as a scholar has been untouched even in the reasons for his nomination given in the order dated July 27, 2022. There is nothing on record to show that the respondent no. 2 is a 'scholar' in Shia Islamic theology. The very expression 'scholar' indicates, even as per the dictionary meaning, that the person has to have an expertise in a specific branch in an academic discipline. Theology is a specific branch of the study of religion. Shia Islamic theology is an extremely focused topic and deals with the origin, evolution and various facets of the theoretical and empirical practices of the Shia Community of Islam.

70. Merely being the member of a Haj Committee appointed by the State or the nazir or mutawalli of a waqf estate does not, in any manner

whatsoever, confer any proficiency on a person within the contemplation of scholasticism or scholarship in Shia Islamic theology, although it may indicate that the person is favoured by or is close to the State administration. Thus, the appointment of respondent no. 2 as a member of the Board of Auqaf in West Bengal under Section 14(1)(d) is palpably perverse and arbitrary on the part of the State.

71. To sum up, the appointment is bad for several reasons:

i. The tests and yardsticks applied for such appointment are *de hors* the provision of law which confers the power on the State to so nominate, that is, Section 14(1)(d) of the 1995 Act which specifically contemplates recognized scholars in Shia Islamic Theology to be nominated;

ii. There is nothing to show that the State took into consideration a pool of scholars in the field before making the choice;

iii. No recognition of the respondent no. 2 as a scholar from any quarter having the capability and eligibility to assess the respondent no. 2 on the anvil of Theology has been furnished.

iv. The respondent no. 2 is actively involved in administration of several waqf estates in the State of West Bengal and as such, has to be disqualified on such count to be a member of the Waqf Board, which decides on the fate of such estates.

v. Since the other Clauses of Section 14(1) of the 1995 Act, apart from Clause (d), already provide for experts in the fields of administrations and mutawallis of waqf estates having a

particular annual income as a lower limit, the nomination of the respondent no. 2 as an administrator or mutawalli would be a superfluity and would defeat the very purpose of incorporating Clause (d) as an independent provision for nomination as a member of the Waqf Board.

72. In view of the above discussions, the nomination of the respondent no. 2 as a recognized scholar of Shia Islamic Theology under Section 14(1)(d) of the 1995 Act is palpably *de hors* the law and arbitrary and is required to be set aside.

73. Accordingly, WPA No. 18735 of 2022 is allowed on contest, thereby setting aside the Notification No. 141-MD-/O-4W(V)-39/11 dated January 28, 2022 and quashing the Order dated January 27, 2022 passed by the Secretary, Government of West Bengal, Minority Affairs and Madrasah Education Department. The nomination of respondent no. 2 as a member of the Waqf Board, State of West Bengal is, thus, set aside and quashed. The respondent no. 1 is directed to undertake fresh steps immediately for a fresh nomination under Section 14(1)(d) of the 1995 Act in the post left vacant by the removal of respondent no. 2 by virtue of this order.

74. It is expected that the respondent no. 1 shall take into account the observations made hereinabove while making such fresh appointment, adhering to the rule of law, principles of transparency and to Section 14(1)(d) of the 1995 Act in its letter and spirit while doing so. Such exercise shall be concluded at the earliest, positively within two months from date.

75. There will be no order as to costs.

76. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

Later

Since there are arguable questions involved, on the prayer of learned counsel for the State, the operation of the above order is stayed for three weeks from date.

(Sabyasachi Bhattacharyya, J.)