

Court No. - 2

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Case :- MISC. BENCH No. - 6591 of 2021

Petitioner :- Asad Ali Khan

Respondent :- State Of U.P.Thru.Prin.Secy.Minority Welfare/Waqf,Lko.& Anr.

Counsel for Petitioner :- Abhinav Singh

Counsel for Respondent :- C.S.C.,Anurag Srivastava

Hon'ble Devendra Kumar Upadhyaya,J.

Hon'ble Manish Kumar,J.

Pursuant to our order dated 12.03.2021, learned Standing Counsel has been able to seek certain instructions from the State Government in the Department of Minority Welfare and Waqf, which are contained in the letter of the Special Secretary of the said department. The said instructions are taken on record.

As per the aforesaid instructions, Shia Waqf Board was last constituted by notification dated 19.05.2015 as per the provisions contained in the Waqf Act, 1995. The term of Waqf Board as described in Section 15 of the Act is five years. The instructions contained in the letter dated 16.03.2021 further state that election to constitute Shia Waqf Board could not take place on account of extraordinary situation caused by the present pandemic and accordingly the administrator has been appointed on 16.03.2021.

Section 15 of the Act clearly provides that term of office of the members of Waqf Board shall be five years from the date notification constituting the same is issued under sub-section (9) of Section 15.

Admittedly the term of members of the Waqf Board had come to an end on 19.05.2020. We can understand that at the time when the term of outgoing members of the Waqf Board came to an end on account of situation created because of the pandemic caused by COVID-19, the elections could not have been possible. However, what we find disturbing is that under the scheme of Waqf Act 1995, there is no authority vested in the State Government to appoint administrator. It is noticeable that the administrator has been appointed only on 16.03.2021 i.e yesterday.

The affairs of the Waqf in the State of U.P. are to be governed by the statutory provisions contained in the Waqf Act, 1995 enacted by the Parliament. Any legislation passed or enacted by

the Central or State Legislature is, in effect, an expression of the people of the country or the State as the case may be. As noticed above, the scheme of Waqf Act 1995 does not provide for appointment of administrator. The term of outgoing members of the Waqf Board had come to an end on 19.05.2020 and the administrator has been appointed yesterday i.e. on 16.03.2021. From the date the expiry of the term of members of the Waqf Board till yesterday there was a complete vacuum and such inaction on the part of State Government or its authorities in getting the election of Waqf Board conducted is in complete derogation and contravention of the provision of the aforementioned legislation.

For conducting elections of the Waqf Board, the State Government has framed statutory Rules known as "Uttar Pradesh Shia Central Waqf Board and Uttar Pradesh Sunni Central Waqf Board Conduct of Election Rules, 1997." In Rule 2 (e) of the Rules, 1997, the Election Authority has been defined to mean the Secretary of Government in the Department of Minority Welfare and Waqf. Rule 3 provides a complete administrative machinery for conduct of elections which *inter alia* provides that the superintendence, direction, control and conduct of election of members of Waqf Board shall be the responsibility of the Election Authority. The Election Authority as described in Rule 2 (e) is the Secretary of the State Government in the Department of Minority Welfare.

Since the term of members of the Waqf Board had come to an end, a period of about 10 months has elapsed, but there does not appear to be in sight any efforts or endeavour made by the Election Authority to conduct the election for constituting the Board, though he is under legislative mandate to get the election conducted. Such an inaction on the part of the State Government and the Election Authority can not be appreciated as the same goes, as observed above, against the mandate of the legislature. Even in the instructions contained in the letter dated 16.03.2021, it has only been stated that the matter relating to conduct of election is under consideration at a higher level.

In view of the clear mandate as contained in the Waqf Act 1995 and the Rules, 1997, a legislative endeavour has been made to make the functioning of the Waqf Board democratic and that is how the provision for constitution of Waqf Board through nomination as also by election of members has been made. In case Waqf Board is not constituted and elections are not held for a long period and in the meantime, an administrator is appointed (though such appointment is not supported by any provision of Waqf Act, 1995), the very spirit of legislature in making functioning of Board democratic gets withered away. It

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is the responsibility of all concerned including the executive not only to ensure statutory compliances as mandated by the legislature but also to strengthen the democratic functioning of all institutions including Waqf Board.

In the aforesaid circumstances, we direct that by the next date of listing, the State Government shall explain as to under which authority of law administrator has been appointed vide its order dated 16.03.2021. The State Government shall also apprise the Court as to when the election process for constituting the Shia Waqf Board will be initiated.

We expect and hope that in tune with the legislative mandate contained in Waqf Act 1995 and the 1997 Rules, the election process to constitute Shia Waqf Board shall be initiated at the earliest.

We further direct that the Additional Chief Secretary/Principal Secretary of the State Government in the Department of Minority Welfare and Waqf shall depute an officer not below the rank of Special Secretary to be present before this Court for its assistance.

List this case on 25.03.2021 as fresh.

Order Date :- 17.3.2021

Renu/-

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