

Serial No. 17
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 26 of 2023

Date of Order: 06.03.2023

Md. Shahbaz Qureshi & Anr. Vs. State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K. Paul, Sr. Adv. with
Mr. S. Chanda, Adv.

For the Respondent(s) : Mr. K.P. Bhattacharjee, GA(For R 1 & 2)
Mr. S. Jindal, Adv. with
Mr. V. Kumar, Adv. (For R 5-8, 11 & 12).

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

Oral:

1. By way of this instant writ petition, the writ petitioners have assailed the impugned notifications dated 05.01.2023 and 13.01.2023, issued by the respondent No. 1, reconstituting the Meghalaya Board of

Waqf, on the ground that, the same is in violation of Section 14 of The Waqf Act, 1995.

2. However, at the outset, Mr. S. Jindal, learned counsel for the respondents No. 5-8, 11 and 12 has raised questions about the maintainability of the writ petition on the ground of the locus of the writ petitioners. As such, this matter has been taken up first, to decide on the question of maintainability.

3. Mr. S. Jindal, learned counsel submits that, the petitioners in question are neither aspirants, or are in contention to be members of the Meghalaya Board of Waqf, and as such, have no locus to maintain their claim as made out in the writ petition in their challenge, to the reconstitution of the Meghalaya Board of Waqf. Learned counsel has submitted that, the writ petitioners can in no manner be described as aggrieved persons, inasmuch as, no legal injury has been inflicted upon them. It is further submitted that, there has been no violation of their legal rights, and they have not shown in which manner their interest has been affected. In support of his arguments, learned counsel has relied upon Para – 14 of the case of *S.P. Gupta vs. Union of India & Anr.* reported in *1981 Supp SCC 87*.

4. In reply, Mr. K. Paul, learned Senior counsel assisted by Mr. S. Chanda, learned counsel for the petitioners has submitted that, the Waqf

Act, 1995 is a special act and that, Section 3(k)(i) and (ii) have clothed the writ petitioners with the locus to assail such actions of the State respondents. Learned Senior counsel has read out the said provisions and submits that, any person who has a right to offer prayers or to perform any religious rite in a mosque, idgah, etc., has been defined as a person interested in a waqf by the Act itself. He therefore submits, that all waqfs in the State coming under the general superintendence of the Waqf Board, the constitution of such a board is of vital interest to the writ petitioners. He further submits that, if the constitution of the Board is defective, the interested persons such as the writ petitioners will have no recourse or a competent forum to complain about the mis-management of any waqf of estate, as provided in Section 70 of the Act.

5. In reply to these submissions, Mr. S. Jindal, learned counsel for the respondents submits that, persons interested in a waqf cannot be regarded as persons who would be interested in the constitution of the Waqf Board, as their complaints would be confined only to the affairs of a particular waqf and would not extend to the constitution of the Waqf Board itself. Reference has been made to Section 22 of the Act, that if a complaint is made under Section 70, it cannot be said that, the Waqf Board will be incompetent to decide, as the same is saved by Section 22, which provides that, no Act or proceedings of the Waqf Board shall be

invalid by reason of vacancy amongst its members, or any defect in the constitution thereof.

6. I have heard learned counsels for the parties.

7. The writ petitioners it is noted, have made a challenge to the constitution of the Board, but have not demonstrated, or brought on record any materials to establish their locus, but by oral submissions the learned Senior counsel has placed reliance upon the provisions of the Waqf of Act, 1995 to maintain their prayer made in the writ petition. In this context therefore, it is necessary that this Court, examine the provisions to ascertain, as to whether the writ petitioners possess locus, which would then make the writ petition maintainable.

8. The grievance of the writ petitioners as observed earlier is that, the newly constituted Meghalaya Waqf Board is violative of the provisions contained in Section 14 of the Act, which has stipulated the composition of members of the Board, which would include Muslim members of Parliament, Muslim members of State Legislature and Mutawallis and so on and so forth. Section 3(k)(i) and (ii) has defined ‘persons interested in a waqf’ and reads as follows;

“3. Definitions.— In this Act, unless the context otherwise requires,—

(k) “person interested in a [waqf] means any person who is entitled to receive any pecuniary or other benefits from the [waqf] and includes—

(i) any person who has a right to [offer prayer] or to perform any religious rite in a mosque, idgah, imambara, dargah, [khanqah, peerkhana and karbala], maqbara, graveyard or any other religious institution connected with the [waqf] or to participate in any religious or charitable institution under the [waqf];

(ii) the [waqif] and any descendant of the [waqif] and the mutawalli.”

A perusal of the provisions quoted above, it can be seen has defined a person interested as one who has a right to offer prayers or perform religious rites in a mosque, idgah, etc., or is a descendant of the Waqif or the Mutawalli. It is however, also noted that, the definition specifically limits a person interested to be **“person interested in a waqf”** which would mean to a specific waqf estate and its connected institutions.

9. Section 70 of the Act provides that, any person interested in a waqf may make an application to the Board for institution of an inquiry relating to the administration of the waqf. The same is quoted hereinbelow;

“70. Inquiry relating to administration of [waqf]—Any person interested in a [waqf] may make an application

to the Board supported by an affidavit to institute an inquiry relating to the administration of the [waqf] and if the Board is satisfied that there are reasonable grounds for believing that the affairs of the [waqf] are being mismanaged, it shall take such action thereon as it thinks fit.”

The above Section in the considered view of this Court, allows a person who comes within the definition of Section 3(k)(i) and (ii) that is, **‘person interested in a waqf’** to approach the Waqf Board for inquiries against mis-management or administration of any waqf estate, and the Act itself thereafter provides for a manner of holding inquiry.

10. All waqf estates come under the general superintendence of the Waqf Board established in every state, as provided in Section 32 of the Act, which deals with the powers and functions of the Board. The constitution of such a board is regulated by Section 14. Section 22 which is relevant for this case, provides for the saving of any acts or proceedings to be not invalid for reasons of vacancy or defects in the constitution of the Board, is quoted hereinunder;

“22. Vacancies, etc., not to invalidate proceedings of the Board.—No act or proceeding of the Board shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.”

11. An examination of all the aforementioned provisions clearly point to the fact that, the definition of a person interested in a waqf, cannot be stretched and accepted to mean a person interested in the constitution of the Waqf Board. This in the view of this Court, is because of the explicit definition in clause 3(k) which limits the person to a certain waqf estate and whose remedy would be contained only in Section 70. The argument that has been advanced that, a complaint under Section 70, would therefore, not be available if the constitution of the Board is defective, also cannot be accepted in view of Section 22 of the Act, which has provided a safeguard for such situations.

12. Apart from the fact that, no materials have been brought on record to substantiate the locus of the writ petitioners, it is also seen that, no legal injury has been caused or legal right affected by the impugned notifications. The judgment as cited by the learned counsel for the respondents that is *S.P. Gupta vs. Union of India & Anr. (supra)*, at Para – 14 which has dwelt on upon the question of locus and definition of ‘person aggrieved’ which has great relevance in the instant case is quoted hereinbelow;

“14. The traditional rule in regard to locus standi is that judicial redress is available only to a person who has

*suffered a legal injury by reason of violation of his legal right or legally protected interest by the impugned action of the State or a public authority or any other person or who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by any such action. The basis of entitlement to judicial redress is personal injury to property, body, mind or reputation arising from violation, actual or threatened, of the legal right or legally protected interest of the person seeking such redress. This is a rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born. The leading case in which this rule was enunciated and which marks the starting point of almost every discussion on locus standi is *Re Sidebotham, Ex parte Sidebotham*. There the Court was concerned with the question whether the appellant could be said to be a “person aggrieved” so as to be entitled to maintain the appeal. The Court in a unanimous view held that the appellant was not entitled to maintain the appeal because he was not a “person aggrieved” by the decision of the lower court. James, L. J. gave a definition of “person aggrieved” which, though given in the context of the right to appeal against a decision of a lower court, has been applied widely in determining the standing of a person to seek judicial redress, with the result that it has stultified the growth*

of the law in regard to judicial remedies. The learned Lord Justice said that a "person aggrieved" must be a man "who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something." Thus definition was approved by Lord Esher M. R. In re Reed, Bowen & Co., Ex parte Official Receiver and the learned Master of the Rolls made it clear that when James L. J. said that a person aggrieved must be a man against whom a decision has been pronounced which has wrongfully refused him of something, he obviously meant that the person aggrieved must be a man who has been refused something which he had a right to demand. There have been numerous subsequent decisions of the English Courts where this definition has been applied for the purpose of determining whether the person seeking judicial redress had locus standi to maintain the action. It will be seen that, according to this rule, it is only a person who has suffered a specific legal injury by reason of actual or threatened violation of his legal right or legally protected interest who can bring an action for judicial redress. Now obviously where an applicant has a legal right or a legally protected interest, the violation of which would result in legal injury to him, there must be a corresponding duty owed by the other party to the

applicant. This rule in regard to locus standi thus postulates a right-duty pattern which is commonly to be found in private law litigation. But, narrow and rigid though this rule may be, there are a few exceptions to it which have been evolved by the courts over the years.”

13. For the foregoing reasons, this Court finds that the writ petitioners have no locus standi to put a challenge to the impugned notifications, and on the question of maintainability itself, the writ petition fails.

14. As discussed above, the writ petition accordingly stands dismissed.

15. No order as to costs.



Judge

Meghalaya
06.03.2023
“D.Thabah-PS”