

Chief Justice's Court

Case :- WRIT – C No.11189 of 2020

Petitioner :- Wasim Uddin And Another

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Vinayak Mithal

Counsel for Respondent :- C.S.C., Punit Kumar Gupta

With

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 921 of 2020

Petitioner :- Allamah Zameer Naqvi And Another

Respondent :- State of U.P. And 8 Others

Counsel for Petitioner :- Syed Ahmed Faizan, Sr. Advocate Sri S.F.A. Naqvi, Azheer Asghar

Counsel for Respondent :- C.S.C., A.S.G.I., Arun Kumar Pal, Sanjay Kumar Yadav

Hon'ble Govind Mathur, Chief Justice
Hon'ble Saurabh Shyam Shamsbery, J.

These two petitions are before us to examine validity of orders dated 1st July, 2020 and 30th September, 2020 passed by Principal Secretary to the Government of U.P., Department of Minority Welfare and Waqf. Under the orders aforesaid, the State Government extended term of U.P. Sunni Central Waqf Board.

On being failed to elect members of the U.P. Sunni Central Waqf Board due to lockdown to combat pandemic COVID-19, the State of Uttar Pradesh extended term of the existing Board for a period of six months w.e.f. 1st April, 2020 vide Office Memorandum dated 1st July, 2020. Suffice to State that the Board was appointed in accordance with Waqf Act, 1995 on 1st April, 2015 for a period of 5 years. The term of the Board was further extended for next six months under Office Memorandum dated 30th September, 2020. In light of the Office Memorandum dated 30th September, 2020 the existing Board is to

continue in office upto intervening midnight of 31st March, 2021 and 1st March, 2021.

It would be also appropriate to state that in the Office Memorandum dated 30th September, 2020 the State Government has also expressed its decision to hold elections of the Board expeditiously in accordance with U.P. Sunni Central Waqf Board Conduct of Election Rules, 1997.

The grievance of the petitioners in both the petitions is that the Act of 1995 does not empower State of Uttar Pradesh to extend the term of an elected Board. In absence of any such authority the extension of the term of the Board vide office memorandum impugned is bad. It is asserted that the State extended the term of the Board beyond its authority for certain extraneous considerations.

It is submitted that the term of the Board came to be expired on 1st April, 2020 at 00 hours. After expiry of the term on the day and time aforesaid, no occasion was there to extend term of the Board on 1st July, 2020.

According to learned counsels appearing on behalf of the petitioners, by the Office Memorandum dated 1st July, 2020, the State as a matter of fact restored a body in office that was not in existence since 1st April, 2020.

While questioning correctness of the order dated 30th September, 2020, in addition to the grounds aforesaid, it is also submitted that the lockdown imposed to combat pandemic came to be withdrawn on 31st May, 2020 and, therefore, no reason was existing for further extension of the term of the Waqf Board.

According to learned counsels, total number of voters to elect Sunni Central Waqf Board is less than 600 and such number of voters could have participated in elections adhering the protocol applicable to combat pandemic COVID-19.

Per contra, learned Additional Advocate General Sri Manish Goyal

assisted by Sri A.K. Goyal, learned Additional Chief Standing Counsel states that in the month of April, 2020 the pandemic was at peak and the entire country was facing a lockdown. In this period, the provisions of the Disaster Management Act, 2005 were also in application. Hence, it was not possible to hold elections of the Board and, therefore, term of that was extended. The pandemic was in its full swing even in the month of September and subsequent thereto. Hence, the term of the Board was further extended for six months.

Candidly, it is also stated that the State Government has already decided to have elections of the Board expeditiously and the same shall take place quite soon.

Heard learned counsels and examined strength of the arguments advanced.

It is not in dispute that under the Act of 1995, no power is available to the State Government to extend term of an elected Waqf Board. The term of an elected Waqf Board is of 5 years and as per provisions of the Act of 1995 an election is required to be conducted before expiry of the term of 5 years enabling new Board to occupy the office. However, in the case in hand, stand of the State Government is that looking to the pandemic powers were invoked under the Disaster Management Act, 2005 and the term was extended. The stand taken by the State in our considered opinion is not well founded. No decision of the State Disaster Management Authority is available on record to substantiate the submission made by learned Additional Advocate General.

Under the Act of 2005, either National Authority or State Authority are required to have a complete plan for Disaster Management and we are having no doubt that the same must have been prepared by the State but no decision is made available to this Court for deferring elections of small bodies like Waqf Boards. In spite of this fact, we are of the opinion that the first extension of the Waqf Board was necessary looking to the

circumstances.

True it is, the term of the Board came to be expired at 00 hours on 1st April, 2020 but for all practical purposes it was working and the government on 1st July, 2020 looking to the necessity extended the term. No one can deny that upto 31st May, 2020 entire nation was facing stringent checks pertaining to lockdown. In that period, no election could have taken place and even prior to 1st April, 2020 at least subsequent to 24th March, 2020 the elections could have not been taken place. In such circumstances, the necessity demanded extension of the term of U.P. Sunni Central Waqf Board. It is an issue different that in usual course the State Government should be vigilant enough to initiate the process of election well in advance as per provisions of the Act of 1995 and the Rules of 1997. In the case in hand the State should have initiated the process in the month of February, 2020 itself. Be that as it may, looking to the necessity of the time, we do not consider it appropriate to interfere with the first extension order dated 1st July, 2020.

So far as the second extension of the term of Waqf Board vide Office Memorandum dated 30th September, 2020 is concerned we are of the view that the necessity as available to the State during the lockdown and first phase of unlocking was not available on 30th September, 2020. The State Government, if would have been vigilant enough could have hold the elections in the months of August and September, 2020. It would also be appropriate to state that the number of voters for electing Wqaf Board is too less and voting of such number of voters could have been controlled with application of COVID-19 protocol including social distancing. In the month of September, 2020 elections of several other bodies including legislative assembly were notified in the country. We failed to understand as to why the respondents did not chose to hold timely elections. Elections for a democratically elected body are *sine qua non* for application of democratic values and working of the institution accordingly. Such functioning should have not been compromised at any

cost. Election of such body could be deferred only in most emergent and extraordinary circumstances. As already stated, the respondents should have conducted the elections of the Waqf Board in accordance with the Act of 1995 and the Rules framed thereunder well in advance to 1st April, 2020 but for the reasons best known to the State authorities the same were not conducted. Leaving the period aforesaid, the respondents at least after completion of the term of first extension should have hold the elections to have a new elected body on 1st October, 2020. No reason was available to the respondents for not holding the elections and for further extension of the term of Waqf Board subsequent to 00 hours on 1st October, 2020. The Office Memorandum dated 30th September, 2020 as such not only beyond authority but is also not founded on any emergent necessity. In view of it, that certainly deserves to be set aside.

Accordingly, the writ petitions are disposed of by setting aside the order dated 30th September, 2020 passed by Additional Principal Secretary, Government of U.P., Department of Minority Welfare and Waqf. The Principal Secretary, Government of U.P., Department of Minority Welfare and Waqf is appointed as an Administrator of the Sunni Central Waqf Board to manage day today affairs of the Board, He would, however, not be eligible to take any policy decision relating to Sunni Central Waqf Board. The Administrator shall also ensure holding of the elections and to give charge to an elected Board on or before 28th February, 2021.

It is made clear that the administrative decisions taken by the U.P. Sunni Central Waqf Board during its extended term shall not be invalidated on the count of setting aside of the order dated 30th September, 2020. No order to cost.

Order Date :- 25.1.2021
Bhaskar

(Saurabh Shyam Shamshery, J.)

(Govind Mathur, C.J.)