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W.P.No.49241 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2026

CORAM

THE HONOURABLE MR. MANINDRA MOHAN SHRIVASTAVA,
CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.49241 of 2025

&

W.M.P.No.55011 of 2025

Y. Shoukath Ali Mohamed
S/o.N.Mohmed Yusuf
Muslim Aged About 53 Years
Old No.16 New No.44, 2nd Floor
Papanasam Sivan Road, Santhome
Chennai 600004.

Petitioner(s)

Vs

The State Of Tamil Nadu
Represented By Its Principal Secretary,
Backward Classes, Most Backward Classes
And Minority Welfare Department
Fort St. George, Chennai 600009
and 3 others

Respondent(s)

For Petitioner(s): Mr.S.Ravi
Senior Counsel
For Mr.Purushothamman.M



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For Respondent(s): Mr.P.S.Raman
Advocate General
Assisted By
Mr.E.Vijay Anand
Additional Government Pleader for R1
Mr.P.Wilson
Senior Counsel
(through Video Conferencing)
For Mr.Richardson Wilson for R2
Mr.V.T.Balaji
Senior Panel Counsel for R3 & R4

ORDER

(Order of the Court was made by
the Hon'ble Chief Justice)

Challenge to the constitution of Waqf Board is on the grounds that one out of two persons as mandated in Clause (d) of Section 14 of the Unified Waqf Management, empowerment, Efficiency and Development Act, 1995 (in short 'the Act') has not been nominated; one Member of the Bar Council as mandated in Clause (f) of Section 14 has not been nominated and that the mandate of second proviso that two of the total members of the Bar appointed under Sub-section (1) of Section 14, excluding ex-officio Members, shall be non-Muslim has not been complied with.



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2. The core contention is that the constitution of the Board is neither complete nor in accordance with mandate of law as contained in Section 14.

3. Learned counsel for petitioner also drew the attention of this Court to the observations made by the Hon'ble Supreme Court in paragraphs 183 to 185 of the interim order in the case of ***In Re. The Wakf Amendment Act, 2025 (1) [W.P. (Civil) No.276 of 2025 dated 15.09.2025]***.

4. On the other hand, learned Advocate General would submit that the constitution of the Wakf Board is almost complete as majority of the Members have already been nominated or appointed and as far as other Members are concerned, steps are being taken to complete the same.

5. Learned Advocate General and learned counsel appearing for second respondent, on advance copy, would submit that since two Members, who were appointed under the earlier regime of law, are



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continuing under the enabling provisions of the new Act, for the purpose of working out two non-Muslim members, they cannot be included.

6. In this regard, it would be appropriate to refer Section 14 of the Act, which provides as below:

“ 14. Composition of Board. –

(1) The Board for a State and the National Capital Territory of Delhi shall consist of, not more than eleven members, to be nominated by the State Government, -

- (a) a Chairperson;*
- (b) (i) one Member of Parliament from the State or, as the case may be, the National Capital Territory of Delhi;*
 - (ii) one Member of the State Legislature;*
- (c) the following members belonging to Muslim community, namely:-*
 - (i) one mutawalli of the waqf having an annual income of one lakh rupees and above;*
 - (ii) one eminent scholar of Islamic theology;*
 - (ii) two or more elected members from the Municipalities or Panchayats;*

Provided that in case there is no Muslim member available



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from any of the categories in sub-clauses (i) to (iii), additional members from category in sub-clause (iii) may be nominated;

- (d) two persons who have professional experience in business management, social work, finance or revenue, agriculture and development activities;*
- (e) Joint Secretary to the State Government dealing with the waqf matters, ex officio;*
- (f) one Member of the Bar Council of the concerned State or Union territory:*

Provided that two members of the Board appointed under clause (c) shall be women:

Provided further that two of the total members of the Board appointed under this sub-section, excluding ex officio members, shall be non-Muslim:

Provided also that the Board shall have at least one member each from Shia, Sunni and other backward classes among Muslim Communities:

Provided also that one member each from Bohra and Aghakhani communities shall be nominated in the Board in case they have functional auqaf in the State or Union territory:

Provided also that the elected members of Board holding office on the commencement of the Waqf (Amendment) Act,



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2025 shall continue to hold office as such until the expiry of their term of office.

(2) No Minister of the Central Government or, as the case may be, a State Government, shall be nominated as a member of the Board.

(3) In case of a Union Territory, the Board shall consist of not less than five and not more than seven members to be nominated by the Central Government under Sub-section (1).

...

(6) In determining the number of members belonging to Shia, Sunni, Aghakhani or other backward classes among Muslim communities, the State Government or, as the case may be, the Central Government in case of a Union territory shall have regard to the number and value of Shia, Sunni, Bohra, Aghakhani and other backward classes among Muslim auqaf to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination.

...

(9) The members of the Board shall be appointed by the State Government by notification in the Official Gazette.”



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7. The Hon'ble Supreme Court, in the interim order in the case of

In Re. The Wakf Amendment Act, 2025 (1), has observed as under:

“183. Similarly, insofar as the Board under Section 14 of the Amended Waqf Act is concerned, prima facie, it appears that 7 out of 11 members can be non-Muslims. It can be seen that insofar as categories covered under clauses (a), (b), (d), (e) and (f) of sub-section (1) of Section 14 of the Amended Waqf Act are concerned, there is no requirement that the members have to be from amongst the Muslim community. It is only the category covered under clause (c) of sub-section (1) of Section 14 of the Amended Waqf Act, where it is required that a member has to be from the Muslim community.

184. We, however, do not wish to go into the question qua inclusion of non-Muslim members amounting to interference in religious practices, at this stage, inasmuch as the learned Solicitor General has made a categorical statement that the number of non-Muslim members in the Council as provided under Section 9 of the Amended Waqf Act would not exceed 4 and they will not exceed 3 in the Board as provided under Section 14 of the Amended Waqf Act.

185. However, in order to avoid any ambiguity, we



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propose to issue a direction that the Central Waqf Council should not have non-Muslim members exceeding 4 in number and 3 non-Muslim members insofar as Board is concerned.”

8. From a bare reading of the provisions, it is crystal clear that in order to complete the constitution of the Board under Section 14 of Act, there has to be at least two persons nominated under Clause (d) and one person nominated under Clause (f). It appears that under Clause (d), only one person has been nominated, whereas there is no nomination of any Member of the Bar Council of the State under Clause (f).

8.1. Furthermore, the mandate of second proviso that two of the total members of the Board appointed under Sub-section (1), excluding ex-officio Member, shall be non-muslim has also been not fulfilled. May be, in future, while appointing one out of two Members under Clause (d) and one under Clause (f), respondents may proceed to appoint two non-Muslims. The constitution of the Board as exists today, *prima facie* is not in accordance with the provisions of law.

9. In view of the above, the Board cannot be allowed to exercise



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any powers and functions under the Act. The Board is hereby restrained from exercising any powers and functions.

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10. Learned Advocate General prays for short time to file reply.

Reply may be filed before the next hearing.

11. List the matter on 19.01.2026. It will be open for the respondents to apply for vacating stay.

(MANINDRA MOHAN SHRIVASTAVA, CJ) (G.ARUL MURUGAN,J)
08.01.2026

kpl