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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6332/2022

ASHWINI KUMAR UPADHYAY

..... Petitioner

Through: Mr. Ashwini Kumar Upadhyay, Mr. Ashwani Kumar Dubey, Mr. Chandra Shekhar and Mr. Devender Nath Tripathi, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondent

Through: Mr. Chetan Sharma, ASG with Mr. Kirtiman Singh, Mr. Amit Mahajan, Mr. Keshav Sehgal and Ms. Srirupa Nag, Advocates for respondent No.1 to 3/UOI.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

20.04.2022

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1. At the outset, the petitioner states that he wishes to implead the Waqf Board as a party respondent. The prayer is allowed. The petitioner shall file amended memo of parties within one week.
2. The petitioner has read out his short written submissions rendered in Court which read as follows:

“1. The Act is made to administer the properties of Muslims but there are no similar laws for followers of Hinduism, Buddhism, Jainism, Sikhism, Judaism, Bahaism, Zoroastrianism and

Christianity. Hence, it is totally against the secularism, unity and integrity of the nation.

2. The Act has no Statement of Objects and Reasons. Nevertheless, if it has been made under Entry-10 and Entry-28 of the List-3 of the Schedule-7, then it must be gender-neutral and religion-neutral.

3. Waqf is not mentioned anywhere in the Constitution. However, if the Act is enacted to secure fundamental rights guaranteed under Articles 25-26, then it must be in consonance with Articles 14-15.

4. If the impugned Act has been made to protect the fundamental rights guaranteed under Articles 29-30 then it has to cover all minorities i.e., followers of Jainism, Buddhism, Sikhism, Judaism, Bahaism, Zoroastrianism, Christianity and not only Muslims.

5. Ordinarily, Centre cannot make Tribunals arbitrarily beyond the scope of Articles 323A-323B, but if the Act is enacted by using the plenary powers under Article 245 & Entry-97 of List-1, Schedule-7; then Tribunal has to perform in consonance with Articles 14-15.

6. The Constitution establishes three types of Courts: (i) Union Judiciary under Articles 124-146, (ii) High Courts under Articles 214-231, and (iii) Subordinate Courts under Article 233-237. The intention of the Framers was that all the matters relating to Civil dispute shall be decided by the Courts of Original Civil Jurisdiction constituted under Chapter-VI of the Constitution and Section 9 CPC.

7. The Board which has Muslim MLA, Muslim MP, Muslim IAS Officer, Muslim Planner, Muslim Advocate, Muslim Scholar & Mutawalli; is paid from public exchequer, though Centre doesn't collect even one rupee from any Mosque Mazar & Dargah. On the other hand, States collect around One Lac Crore from Four Lac Temples but there are no similar provisions for Hindus & Jains. Hence, Offends Article 27.

8. Religious Endowment Act 1863, Indian Trustees Act 1866, Indian Trust Act 1882, Charitable Endowment Act 1890, Official Trustees Act 1913 and Charitable & Religious Act 1990 are made to manage trusts & religious endowment of all

communities. But rather than unifying them and making a "Uniform Code for Trust-Trustees, Charities-Charitable Institutions, Charitable-Religious Endowments and Religious Institutions", Centre has arbitrarily enacted the impugned Religion-Biased Act, against Articles 14-15. ”

3. The submission that there is no Statement of Objects and Reasons in the Waqf Board Act, 1995, does not appear to be correct.
4. Issue notice. Notice is accepted on behalf of respondent No.1 to 3 by Mr. Kirtiman Singh. Let notice be issued to respondent No.4 and newly impleaded respondent/ Waqf Board returnable on 28.07.2022.
5. In the meantime, the served respondents may file their counter-affidavits within four weeks.

VIPIN SANGHI, ACJ

NAVIN CHAWLA, J

APRIL 20, 2022

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