

(1987) 07 KAR CK 0036
In the Karnataka High Court
Case No : W.P. No. 11403/1987

Abdul Khaleel Saheb and Others

APPELLANT

Vs

Karnataka Board of Wakfs and Another

RESPONDENT

Date of Decision : 31-07-1987

Acts Referred:

Waqf Act, 1954 — Section 42

Citation : (1987) 3 KarLJ 169

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

Chandrakantharaj Urs, J.-Petitioners claim to have been elected unanimously by the Muslim Jamath of Chikkaballapur on 27.2 1987 for the purpose of the Management of Jamath Ahle Islam (Jamia Masjid) and Masjid-e-Khurd in Chikkaballapur Town. The thirteen petitioners are aggrieved by the order passed by the first respondent Karnataka Board of Wakfs which is at Annexure "B" to the petition. By the said order made in exercise of the power conferred on the Board by Section 43-A of the Wakf Act, the management of the afore mentioned Institution is taken over by the Board itself. As a result of which, the Chairman of the Committee appointed earlier by the Board has been directed to hand-over all papers and books connected with the management of the Institution concerned, to the Administrator appointed by the Board.

2. What is contended in this petition is that the Committee of Management appointed by order of the Board of Wakfs bearing the date 6th March, 1987, was a duly constituted Muthavali within the meaning of that expression as defined in the Wakf Act and that order dated 6th March, 1987 is in purported exercise of the power under Section 42 and therefore, the Wakf Board cannot, in law, assume power of direct management under Section 43-A of the Act unless and until the committee appointed by the order of 6th March, 1987 is removed in terms provided under Section 43 of the Act for any proven misconduct after enquiry.

3. It is difficult to accept the argument advanced for the petitioners. Annexure

"A", which is the source of the authority, specifies that there was a series of earlier committees appointed by the Board of Wakfs in Karnataka to manage the affairs of the Institution in question. All those committees held office during the pleasure of the Board of Wakfs in Karnataka. The operative portion of Annexure "A" reads as follows:

ORDER NO. KTW/CMC/49/KLR/86-87 DATED 6TH MARCH, 1987.

In view of the circumstances explained in the Preamble, the adhoc Committee constituted by the Board vide Order dated 24.1.1987 is hereby withdrawn. A new Adhoc Managing Committee consisting of following 19 members is constituted for the management of the said institution and its properties who shall function during the pleasure of the Board on the following terms and conditions.

The Adhoc Managing Committee shall themselves elect the office-bearers.

4. Therefore, the petitioners and six others, who were appointed to function" as the Committee of Management were holding those offices as Members and Chairman etc. only during the pleasure of the Board. As explained in the Preamble to the order made under Section 43-A, the purpose of appointing various Committees did not serve the purpose to resolve the disputes and therefore, the Management was being taken over directly by the Board of Wakfs.

5. Power to appoint Committees is specifically conferred on the Board of Wakfs under Section 16 which reads as follows:

"16. Committee of the Board.-(1) The Board may, whenever it considers necessary, establish either generally or for a particular purpose or for any specified area or areas" Committees for the supervision of Wakfs.

(2) The Constitution, functions and duties of such committees shall be determined from time to time by the Board: Provided that it shall not be necessary for the members of such committees to be members of the Board."

When a Committee for doing something is to be appointed by the Wakf Board and that power has been so exercised, it cannot be contended that every appointment is an appointment to manage the affairs of the Wakf property as a Mutawalli under Section 42. Section 42 of the Wakf Act reads as follows:

"Power to appoint Mutawallis in certain cases.-when there is a vacancy in the office of the Mutawalli of a Wakf and there is no one to be appointed under the terms of the deed of the wakf, or where the right of any person to act as Mutawalli is disputed, the Board may appoint any person to act as Mutawalli is disputed, the Board may appoint any person to act as Mutawalli for such period and on such conditions as it may think fit."

6. From the unambiguous language, it is apparent that unless conditions that are enumerated in Section 42 exist, no Mutawalli can be appointed even if it be a committee. The conditions are-(1) there must be vacancy in the office of Mutawalli, (2) there must be a dispute to hold the office between two or more

claimants for that office and (3) it was not possible to appoint Mutawalli in terms of the instrument which created the wakf providing the manner for appointment of Mutawalli. It is only if those conditions exist, the power of appointment can be exercised.

7. Power under Section 16 may be generally exercised by the Wakf Board to see that the Wakf properties and the management is not neglected for any reason. However, Mr. Joshi, learned Counsel for the petitioners, strenuously contended that the power under Section 16 is limited to appoint a committee to supervise only in respect of an area and not in regard to management of the affairs of a Wakf institution. He should to derive support from the decision of the Andhra Pradesh High Court to which reference will be made shortly. Such a narrow consideration of the scope of the power to be exercised by the Board of Wakfs under Section 16, may not be accepted by this Court. The employment of "or" is disjunctive and not conjunctive under sub-section (1) of Section 16. If it is read as disjunctive, the effect is that the power may be exercised either generally or for a particular purpose or in respect of any specified area or area committees for the supervision of the Wakfs. If all the things may be done, it cannot be said that any one of the committees so appointed excludes the appointment of the other committee. That becomes very clear by looking at sub-section (2) which provides the duties of such committees shall be determined from time to time by the Board. In other words, sub-section (2) makes it abundantly clear that the Wakf Board may appoint more than one type of committee and more than one committee. Therefore, the observations made by the learned Judges of the Andhra Pradesh High Court in the case of MOHD. DILAWAR ALI v ANDHRA PRADESH MUSLIM WAKF BOARD & OTHERS (AIR 1967 Andhra Pradesh 291) are not of much assistance. In para 5 of the judgment as reported in the All India Reporter. Their Lordships have said:

"It was at one time sought to be contended before our learned brother that the delegation is under Section 16 but it will be observed that the power conferred under Section 16 is to constitute committees merely for the supervision of wakfs and for no other purpose."

That observation was made in the context of the contention as to whether an appointment can be made by a committee under Section 21 or 22 of the Act. Therefore, it must be understood only to mean that Section 16 Committee had no power of appointment and no more.

Scope of power to be exercised and the purpose for which the Committee may be appointed under Section 16 did not fall for consideration before Their Lordships. Therefore, that is not of much assistance to the petitioners. Similarly, the view expressed by the same High Court in the case of Andhra Pradesh Wakf Board v Mohamed Hidayathulla, does not carry the case of the petitioners further. It lays down the correct proposition of law that is incompetent for the Board to appoint a committee for management of a Wakf institution when a Mutawalli is in-charge of it. Therefore, it does no more than stales the law contained in Section 42 of

the Wakf Act.

8. In this context, this court cannot lose sight of the fact that the petitioners themselves derive authority not from the election that is said to have taken place unanimously, but by virtue of the order passed as at Annexure "A". Elections may have been something done outside the scope of the Act whether unanimously or otherwise and that should not make any difference. Authority derived by the committee of which the thirteen petitioners are Members, was clearly by the order dated 6th March, 1987. They cannot be permitted to go behind it and claim authority by virtue of election. Whether elected or not, their tenure to function as a Committee depended on the pleasure of the Wakf Board. That has ceased by virtue of the order made under Section 43-A. They cannot make a grievance and say they are removed. Therefore, Section 43 coming into operation to terminate the Mutawalli from being incharge, does not arise.

For the above reasons, petition is mis-conceived and it is rejected.