
(2005) 01 MP CK 0100
In the Madhya Pradesh High Court
Case No : C.R. No. 832 of 2003

Alhaj Iftekhhar Ahmad

APPELLANT

Vs

M.P. Wakf Board and Another

RESPONDENT

Date of Decision : 07-01-2005

Acts Referred:

Madhya Pradesh Wakf Rules, 2000 — Rule 16
Waqf Act, 1995 — Section 64, 64(3), 64(4), 83(9)

Citation : (2005) 01 MP CK 0100

Hon'ble Judges : S.K. Pande, J

Bench : Single Bench

Advocate : Riyaz Mohammad, for the Appellant;

Final Decision : Dismissed

Judgement

S.K. Pande, J.—This revision u/s 83(9) of the Wakf Act 1995 (hereinafter referred to "the Act" for short) is directed against the order dated 15-7-03 passed by the State Wakf Tribunal, Bhopal in Case No. 4/03.

2. Applicant was Mutawalli of Wakf Madarsa Diniyat Jinsi Jahangirabad, Bhopal. Non-applicant-Board vide order dated 2-5-03 removed Mm from the office of Mutawalli. Therefore, applicant preferred an appeal u/s 64(4) of the Act before the Tribunal stating inter alia that the non-applicant-Board did not conduct enquiry contemplated u/s 64(3) of the Act. As such the order of removal from the office of Mutawalli is, illegal. The Tribunal below vide impugned order held that non-applicant-Board issued the show cause notice dated 27-8-02 to the applicant. Considering the reply submitted by the applicant the Board directed an enquiry to be conducted by OSD and on the basis of report found the applicant guilty of mismanagement of the Wakf. Therefore, as per the decision of Board, applicant has been removed from the office of Mutawalli. Accordingly the Tribunal vide impugned order dismissed the appeal. Being aggrieved, the applicant has preferred this revision u/s 83(9) of the Act.

3. The grievance of the applicant is that an enquiry contemplated u/s 64(3) of the Act was not conducted, as such the order of Board removing him from the office of the Mutawalli is illegal-null and void. Section 64(3) is to the effect that no action shall be taken by the Board under sub-section (1) unless it has held an enquiry into the matter in a prescribed manner and the decision has been taken by majority of not less than 1 /3rd of the members of the Board. Rule 16 of the M.P. Wakf Rules 2000 lays down that if any action u/s 64 is contemplated against any Mutawalli then the Board shall decide to proceed for enquiry through the Chief Executive Officer who shall call for the written statement of Mutawalli with a documentary proof, if any, by serving him a show cause notice. On receiving the reply, the Chief Executive Officer shall prepare a report on It and it will be placed before the Board. The Board shall pass appropriate order on it.

Before the Tribunal the show cause notice dated 27-8-02 and reply submitted by the applicant were placed for perusal. Since the post of Chief Executive Officer was vacant the duties were directed to be performed by the O.S.D. in charge of the post. The O.S.D. conducted an enquiry contemplated u/s 64(3) and submitted the report before the Board. As per this report the applicant was found guilty of mismanagement. The matter was then placed before the Board. The Board in its meeting dated 12-4-03 considering the report removed the applicant from the office of Mutawalli. Accordingly, the notice dated 2-5-03 directing the applicant to deliver charge" of the office was issued. It is contended that the Chairman of the non-applicant-Board was not competent to order an enquiry as the enquiry ought to have been ordered by the decision of the Board itself. To this non-applicant Board has placed before the Tribunal its resolution empowering the Chairman to initiate the enquiry contemplated under the provisions of the Act.

4. Admittedly, the non-applicant-Board issued the notice dated 22-8-02 to the applicant asking him to submit reply on details stated therein. The applicant submitted his reply. Thereafter as ordered by the Chairman the enquiry contemplated u/s 64(3) of the Act was conducted by the O.S.D. and on the basis of report the Board in its meeting dated 12-4-03 resolved to remove the applicant from the office of Mutawalli. On these counts the Tribunal below declined to accept the contention that the order removing the applicant from the office of Mutawalli is illegal-null and void. Accordingly, the impugned order dismissed the appeal against the order aforesaid.

5. u/s 83(9) against the order of Tribunal the revision lies for purpose of satisfying this Court as to the correctness, legality or propriety of such determination. The Tribunal below correctly appreciating the facts rightly arrived at a conclusion that the order of removal of applicant from the post of Mutawalli is perfectly legal. The order impugned passed by the Tribunal below does not suffer from any material irregularity-illegality.

6. Consequently, affirming the order impugned passed by the Tribunal below-revision fails and is dismissed. Applicant; shall bear his costs and pay the cost of

the non-applicant. Counsel fee as per rules or certificate (whichever is less).