

(2016) 03 KAR CK 0161

In the Karnataka High Court

Case No : Writ Petition Nos. 200760 and 201027-29/2016 (GM-WAKF)

Anjuman-E-Islam and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 21-03-2016

Acts Referred:

Citation : (2016) 03 KAR CK 0161

Hon'ble Judges : Ashok B. Hinchigeri, J.

Bench : Single Bench

Advocate : D.P. Ambekar, Advocate, for the Appellant; A. Syed Habeeb, AGA, for the Respondent

Final Decision : Disposed off

Judgement

Ashok B. Hinchigeri, J.—1. W.P. No. 200760/2016 is filed by Anjuman-E-Islam, a Wakf institution challenging the third respondent's communication, dated 25.02.2016 (Annexure-G) turning down the petitioner's request for the postponement of the election process on account of the non-inclusion of a large number of its members in the voters' list.

2. W.P. Nos. 201027-201029/2016 are filed by the three persons, who claim to be the members of the said Wakf institution.

3. Sri Shivakumar Kalloor, the learned counsel for the petitioners in W.P. Nos. 201027-201029/2016 submits that the term of the earlier elected Managing Committee expired in January 2015. He submits that thereafter the Karnataka State Board of Wakfs has appointed the members of the Managing Committee on 1.1.2016. He submits that the list of about 1,800 voters was finalised by the Assistant Commissioner and approved by the Karnataka State Board of Wakfs on 20.6.2011. He submits that earlier election took place based on said list of 1,800 voters. He submits that the said list is now being ignored and only 317 voters' list is prepared. He submits that only 12 days are given for updating the voters' list.

4. Sri D.P. Ambekar, the learned counsel for the petitioner in W.P. No. 200760/2016 submits that the election to the Management Committee is being held by leaving out 5/6th of the voters and including 1/6th of them for the said election purpose. He submits that the Returning Officer was appointed on 29.11.2014. He ought to have carried forward the work of finalization of the electoral rolls within two months from the date of appointment. He submits that the petitioner has already sought the postponement of the election anticipating the inclusion of many more members in the voters" list.

5. Sri Syed Habib, the learned Additional Government Advocate appearing for the respondent No. 1 submits that the petitioner Committee has not been extending any co-operation to the Assistant Commissioner in the preparation of the voters" list. It is because of the non-cooperation of the Management Committee that the Assistant Commissioner was constrained to finalise the list of 357 voters on his own.

6. Sri Liyaqat Fareed Ustad, the learned counsel for the second respondent Karnataka State Board of Wakf submits that the Management Committee has not even deposited a sum of Rs. 2,50,000/- towards the election expenses. The demands in that regard being made by the Karnataka State Board of Wakf and the Assistant Commissioner-cum-Returning Officer have not been complied with.

7. The submissions of the learned counsel have received my thoughtful consideration. Ideally the voters list (Annexure-F in W.P. No. 201027/2016) of the Wakf institution in question must constitute the basis for the upgradation of the voter"s list for the ensuing election. The same has to be finalized taking into account the factors like:

"(a) Whether the members in Annexure-F have acquired any disqualification or ineligibility to remain or continue as the members?

(b) Whether the persons whose names figure in Annexure-F have discharged their obligations as the members?

(c) Whether some of them are dead or have resigned?

(d) Whether some persons have sought the membership of the Wakf institution subsequent to the publication of the list at Annexure-F?"

8. None of these exercises appear to have been done by the third respondent Assistant Commissioner. For not doing any of the aforesaid acts the third respondent Returning Officer may be having plausible explanation. Admittedly he has not been getting any co-operation or assistance. The same is evident from the third respondent"s letter, dated 12.02.2016 to the Secretary of the Wakf institution. Further the Managing Committee of the Wakf institution has also not deposited Rs. 2,50,000/- towards the election expenses, as demanded and reminded by the respondents. The letter, dated 22.02.2016 of the Karnataka State Board of Wakf has also remained unheeded by the Management Committee of the Wakf institution. It is the anxiety of the Court that for the lapse on the

part of the Management Committee, the interest of the majority of the members (approximately 4/6th) cannot go unprotected. It is also not known why the Karnataka State Board of Wakfs and the Government have not made any attempt to recover the amounts towards the election expenses from the Management Committee.

9. At this juncture, Sri Ambekar, the learned counsel for the petitioning Wakf institution submits that the petitioner is ready to deposit Rs. 2,50,000/-. As the matter was sub-judice, the amount has not been deposited earlier, so submits the learned counsel. I am not impressed of this submission. There is no stay for the operation of the demand for depositing Rs. 2,50,000/- with the third respondent. That apart in the fitness of the things, the petitioning Management Committee of the Wakf institution ought to have paid the amounts subject to the outcome of the legal proceedings, if any pending consideration.

10. The Returning Officer, the Karnataka State Board of Wakf and the State Government should not and cannot plead their helplessness, if the appointed Management Committee is not complying with their lawful directions. Some of the members of the presently appointed Management Committee may be trying to avoid the election and perpetuate their regime. If that is what they are upto, the Karnataka State Board of Wakf and/or any other competent authority has to take a remedial and curative measures in accordance with law.

11. In the result, I dispose of these petitions with the following directions:

"(i) The Returning Officer is directed to complete the process of preparation of the electoral rolls in accordance with the bye-laws and also the observations made in para 7 supra and by taking into account all other relevant factors, as expeditiously as possible and in any case within three weeks from the date of the issuance of certified copy of today's order.

(ii) The appointed Management Committee of the petitioning Wakf institution shall co-operate with the Returning Officer. It shall deposit Rs. 2,50,000/- with his office forthwith. If the appointed Management Committee shows defiance, the competent authorities under the Wakf Act shall take the necessary steps in accordance with law.

(iii) The impugned notification containing the calendar of events is quashed. The fresh calendar of events shall be issued within one week from the date of the finalisation of the electoral rolls, i.e. within an outer limit of four weeks from the date of the issuance of the certified copy of today's order."