

(1989) 11 KAR CK 0016
In the Karnataka High Court
Case No : W.A. No. 1830 of 1984

Anjuman-e-Islam

APPELLANT

Vs

Karnataka Board of Wakfs

RESPONDENT

Date of Decision : 17-11-1989

Acts Referred:

Waqf Act, 1954 — Section 42, 43, 43 (1), 43 A

Citation : (1990) ILR (Kar) 214 : (1990) 1 KarLJ 1

Hon'ble Judges : Mohan, C.J.;Hakeem, J

Bench : Division Bench

Advocate : K.S. Savanur, for the Appellant; D.L.N. Rao, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Mohan, C.J.—The short facts leading to this Writ Appeal are as follows:-

The first respondent Karnataka Board of Wakfs by an order dated 6-1-1986 constituted a Managing Committee consisting of 8 members for the management of Anjuman-e-Islam, Masur, Hirekerus Taluk, Dharwad District. The term of Office of the Members of the Committee was at the pleasure of the Board. The Sub-Committee recommended to the Chairman of the District Wakfs Committee, Hubli, to reconstitute the Committee to maintain peace and harmony among the Muslim Community. The Wakf Board taking into consideration the views of the Sub-Committee and the fact that the term of Members was at the pleasure of the Board, dissolved the Managing Committee constituted on 6-1-1986 and took over the management of Anjuman-e-Islam, Masur, and appointed an Administrator to manage its affairs, by its order dated 29-4-1989. Attacking the said order dated 29-4-1989, Writ Petition No. 8857/89 came to be filed. The contention was two fold: (i) resort ought to have had for the removal of the Mutavalli as contemplated u/s 43 of the Karnataka Wakf Act, 1954, (for short "the Act"), and in order to overcome the same, Section 43A of the Act has been resorted to and that cannot be done; (ii) even assuming that Section 43A can be resorted to,

that would arise only where no suitable person was available for appointment of Mutavalli, but in this case the order of appointment categorically states that the term of the Members of the Committee would be at the pleasure of the Board and therefore they are entitled to continue unless and until they are removed in the manner contemplated u/s 43 of the Act; Doctrine of Pleasure is not an uncontrolled and unbridled one, on the contrary it is a restricted one. The learned Single Judge did not accept these contentions and dismissed the Writ Petition. Hence, the appeal.

2. Before us, the same points are reiterated. In support of the contention that the Doctrine of Pleasure is not an unbridled one, *M. Ramanatha Pillai Vs. The State of Kerala and Another*, is cited. The fallacy underlying the argument of the learned Counsel for the appellant is that Section 43 of the Act contemplates removal of Mutawallis where they are sought to be proceeded against for certain acts of misdemeanour or delinquencies or disqualifications as contemplated in Clauses (a) to (e) of that Section. That is not the case here. On the contrary, the Committee which was constituted on 6-1-1986 is dissolved. The Committee itself was appointed by virtue of the power conferred u/s 42 of the Act. It is well settled in law that the power to appoint carries with it the power to re-appoint and the exercise of that power is as often as is necessary. It is equally settled by reason of the General Clauses Act that the power to appoint carries with it the power to dismiss as well. In this case, the order dated 6-1-1986 in no unmistakable terms shows that the term of the Committee was at the pleasure of the Board. This Doctrine of Pleasure is an uncontrolled one unless subject to some other statutory provision. The learned Counsel for the appellant is not right in relying upon the decision in *M. Ramanatha Pillai Vs. The State of Kerala and Another*, because that is a case which related to a civil servant and the scope of the Doctrine of Pleasure came to be examined in the light of Article 311 of the Constitution. In this case, there is no such statutory protection. As a matter of fact, even in the case of civil servants, as seen from the pre-Constitutional law namely Section 96-B of the Government of India Act, 1919, or Section 240 of the Government of India Act, 1935, they hold the office at the pleasure of the Crown. This Doctrine of Pleasure had come to be put on a statutory footing in the Constitution by providing safeguards under Article 311. This is no doubt a feudal doctrine as in England all public Officers and servants of the Crown hold their appointments at the pleasure of the Crown and their services can be terminated at will without assigning any cause. By the expression "the Pleasure Doctrine" is conveyed this right of the Crown. Therefore, in the absence of any statutory restrictions this Doctrine will have its full impact. We may only refer to Lord Herschell's observations in *DUNN v. THE QUEEN* (1896) 1 QB 116 wherein it was said as follows:

"It seems to me that it is the public interest which has led to the terra which I have mentioned being imported into contracts for employment in the service of the Crown. The cases cited show that such employment being for the good of the public it is essential for the public good that it should be capable of being

determined at the pleasure of the Crown..."

Therefore, that pleasure of the Crown which came to be incorporated with reference to civil servants is controlled only by Article 311 or Rules made under Article 309. In the absence of those Rules which certainly are absent here that power is an unrestricted one.

3. What has happened in this case is by the impugned order dated 29-4-1989 that pleasure is with- drawn as a result of which the entire Committee is dissolved. Once the Committee is dissolved the Wakf Board is free to act u/s 43A of the Act. That is what is done. Consequently we are unable to see as to why Section 43A of the Act cannot be resorted to. Section 43 will have no application to a case of this character where as we pointed just now it does not relate to any action by way of disciplinary proceedings taken consequent to disqualification contemplated under Clauses (a) to (e) of Section 43(1) of the Act.

4. Accordingly, the appeal is dismissed.