

(1990) 02 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 9022 of 1989

Anjunian-e-islam, Hubli

APPELLANT

Vs

Karnataka State Board of Wakfs, Bangalore and Others

RESPONDENT

Date of Decision : 06-02-1990

Acts Referred:

Waqf Act, 1954 — Section 44

Citation : (1992) 4 KarLJ 81

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

Judgement

1. The petitioner is Anjuman-e-Islam, Hubli, and is represented by its in-charge president Sri Ismail Sab. The petitioner is aggrieved by the interim order dated 21st May, 1989 passed by the 1st respondent-Karnataka State Board of Wakfs (hereinafter referred to as the "Board") as at Annexure-N to the petition.

2. From a reading of the impugned order, it is clear, that order was passed on an application made by the petitioners before the Board. That application was for staying an election proposed to be held by the respondents therein to elect the committee of management to be in-charge of the affairs of the petitioner. After hearing the parties, the Board has, by a considered order, giving reasons, allowed the application and stayed the election relating to the various offices of the Anjuman-e-Islam of Hubli pending disposal of the subject-matter of the petition before it. From a reading of the order, it is further clear that the election is opposed on the ground that the electoral rolls prepared by the respondents was not proper and exhaustive and therefore the election to the various offices of the Anjuman-e-Islam should be prevented from being held. Aggrieved by the interim order, the petitioner-institution has preferred this writ petition inter alia contending:

(1) That the election processes having commenced should not have been interfered with by the Board having regard to the well-settled principles enunciated in cases arising under the Representation of the People Act and other Acts providing for election to municipal councils and corporations, etc.;

(2) That the respondent-Board lacked jurisdiction even to entertain a complaint of the petitioners before it and therefore it could not be presumed to have jurisdiction to grant the interim relief prayed for by them;

(3) That the matter agitated before the Board was already the subject-matter of the civil suit by others wherein they had failed to obtain a stay order and therefore the Board could not have and ought not to have granted the interim stay.

I do not see how any one of the above grounds urged for and on behalf of the petitioner may be countenanced by this court.

3. The law applicable to settlement of election disputes under the Representation of the People Act governing election to the Lok Sabha, Rajya Sabha, the State Assemblies and the Legislative Council of States and to other civil bodies to which the principles underlying the said enactment are extended may not be extended to elections held for private bodies like Anjuman-e-Islam which is a religious institution in charge of the wakf in question and its administration. If those principles are extended, it necessarily follows as the logical corollary such disputed elections should be resolved in a manner expeditiously by a judicial body as provided in the Representation of the People Act. If such elections are disputed, elections to various offices in the Anjuman-e-Islam are to be questioned in a civil court like any other civil dispute then the needless litigation itself acts as a deterrent on account of law's delay and therefore this court exercising jurisdiction under Article 226 of the Constitution should not readily and willingly accede to the contention of the learned counsel Sri K.S. Savanur, that the said principles underlying the Representation of the People Act and the decisions rendered by the courts in that behalf should be made applicable and the impugned order set aside permitting the elections scheduled to take place on defective electoral roll assuming that to be defective.

4. Next contention is the lack of jurisdiction. Reliance was placed on the language of Sections 44 and 45 of the Wakf Act, 1954 (hereinafter referred to as the "Act") which empowers the Board to hold enquiry in circumstances stated in those provisions. Sections 44 and 45 of the Act read as follows:

"44. Application for inquiry.-Any person interested in a wakf may make an application to the board supported by an affidavit to institute an inquiry relating to the administration of the wakf and if the board is satisfied that there are reasonable grounds for believing that the affairs of the wakf are being mismanaged, it shall take, such action thereon as it thinks fit.

45. Inquiry by the board.-(1) The board may, either on an application received under Section 44 or on its own motion- (a) hold an inquiry in such manner as may be prescribed; or (b) authorise any person in this behalf to hold an inquiry, into any matter relating to a wakf and take such action as it thinks fit.

(2) For the purposes of any inquiry under this Act, the board or any person

authorised by it in this behalf shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), for enforcing the attendance of witnesses and production of documents."

From a reading of the two sections one may easily perceive that the Board is empowered to hold an enquiry relating to the administration of the wakf and has reasonable grounds for believing that the affairs of the wakf are being mismanaged, it may take such action as it thinks fit. The expression used take within its ambit a large variety of events which may relate to the administration and cannot be enumerated exhaustively by any definition or restrictive reading of the term "administration". Similarly, mismanagement of the wakf may relate to numerous things and for the same reasons cannot be exhaustively enumerated or defined so as to include each alleged act of mismanagement. It has to be looked at independently of any particular definition and a decision has to be taken by the Board to set right matters by taking appropriate action. Therefore, to read down Section 44 of the Act limiting the powers of the Board will render the Board impotent to look into the complaints made by any person who is interested in a wakf or in the management or mismanagement of a wakf.

5. Section 45 of the Act is no more than the procedure prescribed for holding an enquiry on its own or on the application made under Section 44 of the Act. Therefore, nothing therein supports the case of the petitioner. On the other hand, sub-section (2) of Section 45 of the Act clearly enables the Board which is vested with the powers of the civil court under the Code of Civil Procedure to enforce the attendance of witnesses and production of documents, favours a construction in favour of giving wide powers to the Board to resolve dispute which may arise on account of an application made by any person interested in the wakf under Section 44 of the Act and resolution of any dispute and the need to take appropriate action which is the content of power conferred on the Board. By necessary implication that power to do all things necessary to exercise that power which is conferred on it includes incidental power to pass interim orders. If it is shorn of that incidental power, then the power to resolve disputes are otherwise take appropriate action in case of mismanagement itself is rendered useless or illusory.

6. Any construction as suggested by the learned counsel for the petitioner which will render the power illusory should be avoided by the courts. Therefore, the second contention is also rejected.

7. The third contention also should not detain me long that the civil court involving the same question failed to grant stay of the elections to the various offices of the Anjuman-e-Islam is not a ground for this court to interfere with the order impugned. If the Board is acting as a civil court or an enquiring authority, then in exercise of its incidental power, it has the right to use its own discretion to grant or not to grant stay. That discretion cannot be subordinate or subjected to the failure of the discretion or the manner of discretion exercised by another court or another authority. All discretionary powers must be exercised by the

concerned independently of all others and therefore there is nothing wrong in the Board exercising discretion in favour of the applicants before it and granting the interim stay of the elections.

8. It is only when the final order is passed, all these mailers may be once again be agitated by the petitioners. On that ground, this court need not interfere at this stage and protract the proceedings before the Board.

9. The petition is ill-conceived and it is rejected.