
(1979) 01 PAT CK 0002

In the Patna High Court

Case No : Civil Writ Jur. Case No. 4312 of 1978

Haji Syed Mohammad Hussain

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 04-01-1979

Acts Referred:

Waqf Act, 1954 — Section 43, 43(1), 44, 45, 46

Citation : AIR 1979 Patna 103 : (1979) PLJR 380

Hon'ble Judges : K.B.N. Singh, C.J; Lalit Mohan Sharma, J

Bench : Division Bench

Advocate : S.S. Asghar Hussain and Kuamr Bahadur, for the Appellant; Radha Raman, A.A.G., Maya Nand Singh, Standing Counsel No. 4 and R.C. Sinha, Junior Counsel, for the Respondent

Final Decision : Allowed

Judgement

Lalit Mohan Sharma, J.—The petitioner is the Mutawalli of a Public Religious and Charitable Institution known as "Soghra Wakf Estate." It is stated in the writ application that one Bibi Soghra had dedicated extensive property by a registered document D/-30-9-1896 embodying the terms and conditions of the wakf created thereby and laying down the scheme for its management. According to the document, the administration and management of the property vested in the Mutawalli, who has to be assisted by two Naibs and Committee. Subsequently, a new scheme for the management of the wakf was framed by the District Judge, Patna, by his decision in T. S. 12 of 1919, It is, however, not necessary to give the details of the scheme except mentioning that the Mutawalli's right of administration and management was reaffirmed. The Bihar legislature passed an Act for the purpose of general supervision of the wakf within the State of Bihar, which was known as Bihar State Wakf Act, 1947, whereunder a Board known as Bihar Sunni Majlis-e-Awqaf was formed. The Majlis was vested, by the Act, with the authority, supervise the proper function of the Sunni Wakf and the present Soghra Wakf Estate is one of them and it

continued to do so till 7th April, 1973 when the Bihar Act was replaced by a Central Act. The Wakf Act, 1954. The petitioner who was earlier the first Naib of the Wakf Estate has been its Mutawalli since 26-12-72, On the death of the earlier Mutawalli. Under the provisions of the Wakf Act, 1954 (The Central Act) a new Bihar State Sunni Wakf Board came into existence and started functioning from 12th April, 1974. Soon thereafter the Committee which had been formed for assisting the petitioner Mutawalli was superseded and an Ad Hoc Committee was constituted by an order of the State Government passed in its Law Department. The Ad Hoc Committee suspended the petitioner. The Special Officer of the Bihar State Sunni Wakf Board, on being moved by the affected parties, set aside the constitution of the Ad Hoc Committee, but maintained the suspension order of the petitioner. The petitioner, thereafter, approached this Court in its writ jurisdiction by filing C. W. J. C. 2074 of 1977, which was allowed on 9-3-1976. The order of the suspension of the petitioner was quashed and he was allowed to join as Mutawalli. The petitioner has imputed bad faith on the part of the Chairman of the Wakf Board and has alleged that subsequently without making any legal enquiry, he got the petitioner dismissed by a resolution of the Board dated 5-6-1978. The petitioner again filed another application in this Court under Article 226 of the Constitution, which was registered as C.W.J.C. 2691 of 1978 (Pat). By order dated 17-7-1978 passed by us, the order of dismissal of the petitioner was set aside and the petitioner again joined the office of Mutawalli. Thereafter, the impugned order as contained in Annexure "3" dated 31-8-78 was passed by the State Government appointing an Executive Officer for the Wakf Estate for the purpose of management of the property, finance and administration of the Estate. The petitioner was informed through a letter of the Secretary to the Government, Law Department, dated 31-8-1978, a copy whereof has been annexed to the writ application as Annexure 4, that the respondent No. 3 Shri S. M. Shafiuddin had been appointed as the Executive Officer. By the present application, the petitioner has prayed for quashing of the orders mentioned in Annexures 3 and 4.

2. Mr. Ashgar Hussain, learned counsel for the petitioner, has contended that the Chairman of the Wakf Board is prejudiced against the petitioner and had earlier unsuccessfully attempted to remove the petitioner from the office of the Mutawalli without any just cause. The resolution of the Board dated 5-6-1978 referred to above, had been passed without any enquiry in the conduct of the Mutawalli and after the same was quashed in C. W. J. C 2691 of 1978 (Pat), a fresh attempt is being made by passing the impugned order to the same effect. Additional Advocate General, appearing for the State Government, has rightly contended that the question of mala fides cannot be examined in the present case in absence of the Sunni Waqf Board and its Chairman, who have not been impleaded as parties to the present case. But the second question raised on behalf of the petitioner appears to be well founded. It has been urged that the State Government does not have any authority whatsoever to remove the Mutawalli of a Waqf and for that reason the impugned orders in Annexures 3 and

4 are without jurisdiction. The only provision in the Wakf Act, 1954 which has been relied upon on behalf of the respondents is section 63 of the Act which reads as follows:

"63. Subject to any directions on question of policy issued u/s 62, the State Government may, from time to time give to the Board such general or special directions as the State Government thinks fit and in the performance pf its functions, the Board shall comply with any such directions,"

3. The question which arises in this case is as to whether Section 63 of the Act clothes the State Government with the power to pass orders as contained in Annexure 3 and 4. The learned Additional Advocate General argued that the interpretation by the petitioner of the impugned orders that they amount to removal of the petitioner from Mutawalliship, is erroneous. The learned Counsel states that the petitioner has not been disturbed from his office and by Annexures 3 and 4 the State Government has merely appointed an Executive Officer which cannot be challenged by the Mutawalli. I am afraid, the matter does not appear to be so simple as suggested. The powers of the Executive Officer have been mentioned in six paragraphs at the end of Annexure 3. The first item states that the Executive Officer would be the highest officer with the authority to manage the property, finance and administration of the Wakf Estate. It has been correctly asserted on behalf of the petitioner and not challenged by the learned Additional Advocate General that the Mutawalli was vested with the highest authority in regard to the administration of the Wakf and its property; and so there does not appear to be any manner of doubt that by orders in Annexures 3 and 4, the petitioner has been deprived of his rights and the same have been vested in the respondent No. 3. If is, therefore, futile to suggest that the petitioner has not been prejudiced so as to maintain this application. It; is clear that the petitioner has been divested of his authorities, although not in express terms, and, in substance he has been removed from the office of Mutawalliship. I. therefore, hold that the petitioner is fully entitled to come to this Court for she redress of his grievance.

4. So far as the interpretation of Section 63 of the Act is concerned, the language clearly suggests that what the State Government has been authorised to do is to give general or special directions to the Board and the Board would, in that case, be bound to comply with them jn the performance of its functions. It is not within the authority of the State to pass an order directly removing the Mutawalli. The distinction between these two kinds of powers is not formal in nature; it is of vital consequence. So far as the authority of the Board is concerned, it has been dealt with in some detail by the Act and Section 43 empowers the Board to remove a Mutawalli from his office but only on specified grounds as detailed in Sub-section (1) and that too only according to the procedure prescribed by Sections 44 and 45 where they are applicable. Section 45 requires the Board to hold an enquiry in the prescribed manner and the procedure has been detailed in the rules framed u/s 67. An examination of the

grounds on which a Mutawalli can be removed by the Board, mentioned in Section 43(1) indicates that there may be some cases in which the Board can pass an order of removal, without holding a full-fledged enquiry as mentioned in Section 45; as for example, there may be a case where the Mutawalli has been convicted of an offence of criminal breach of trust satisfying the condition in Clause (d). On the other hand, if there is an allegation against the Mutawalli of misappropriating the property of the Wakf, which the Mutawalli does not admit, an enquiry will have to be held before coming to a finding on the disputed question. If that is not done, there will be a serious violation of the principles of natural justice. In essence, proper guidelines are given for the Board in the matter of its taking any steps for removal of a Mutawalli. No such provisions are available either in the Act or in the Rules for the benefit of the State Government. It goes without saying that the Board would be bound to carry out only such directions of the State Government which may be lawful for the Board to do so. In the case of removal of a Mutawalli, the Board would not be justified in removing a Mutawalli on the assumed ground of improper dealing with the property of the waqf, without holding an enquiry and without giving the Mutawalli reasonable opportunity to meet the allegations. Thus being the scheme of the Act, there does not appear to be any reason to depart from the plain grammatical meaning of Section 63 of the Act which indicates that the authority of the State Government is limited to giving directions to the Board and not to pass orders straightway removing a Mutawalli of a Waqf. The orders in Annexures 3 and 4 must, therefore, be quashed.

5. Even if the State Government were held to be empowered to directly remove a Mutawalli, it, could not lawfully do so in a whimsical way. In the facts of the present case, it appears that there was some allegation made against the petitioner which was never enquired into. In the circumstances the petitioner could not be deprived of his powers as Mutawalli on an assumption that he was guilty. Besides, the impugned orders do not indicate the grounds on which such a step was being taken. The orders violate the well established principles of *audi alteram partem* and are clearly bad.

6. For the reasons mentioned above, the orders mentioned in Annexures 3 and 4 are quashed and the writ application is allowed, but without costs. I would, however, like to clarify that this Judgment does not fetter the rights of the authorities concerned to commence a proceeding against the petitioner in accordance with law and to remove him from the office of the Mutawalli, if grounds are made out.

K.B.N. Singh, C.J.

7. I agree.