
(2003) 01 AP CK 0053
In the Andhra Pradesh High Court
Case No : Writ Petition No. 1261 of 2003

K.M. Safiullah

APPELLANT

Vs

A.P. State Wakf Board and Others

RESPONDENT

Date of Decision : 24-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Waqf Act, 1995 — Section 64(1), 64(5), 70, 71
Wakf Rules, 2000 — Rule 24

Citation : (2003) 2 ALD 440 : (2003) 2 ALT 253

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : Vedula Venkataramana, for the Appellant; A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

N.V. Ramana, J.—The petitioner, who is the Mutawalli of the Wakf Institution, by name Jamia Mosque, has filed this writ petition impugning the Notice No. B3/1/ATP/2003, dated 18-1-2003, issued by the 1st respondent, calling upon him to show cause as to why action should not be taken u/s 64(5) of the Wakf Act, 1995.

2. The petitioner is a permanent Mutawalli of Jamia Mosque. He was appointed on 30-5-1984. He claims to have been discharging his duties sincerely and in the best interest of the institution. While so, on the basis of certain allegations made against him by the 2nd respondent-District Collector, the 1st respondent-Wakf Board, in its meeting held on 18-1-2003, unanimously resolved to place the petitioner under suspension for a period of ten days, it was also resolved to issue show cause as contemplated u/s 64(5) of the Wakf Act, 1995 (for short "the Wakf Act"). In pursuance of the said resolution, the 1st respondent issued two different notices dated 18-1-2003, one placing the petitioner under suspension for a period of ten days, to which there is no challenge in the writ petition, and another enumerating 64 allegations, to which there is challenge in the writ petition, calls upon the petitioner to explain the charges and to show cause as to

why action should not be initiated against him u/s 64(5) of the Wakf Act.

3. The learned Counsel for the petitioner attacked the impugned notice on the following grounds, namely (1) The impugned notice is vague inasmuch as it does not divulge the names of the persons who levelled the allegations against him, it also does not mention the action that is proposed to be taken u/s 64(5) of the Wakf Act. (2) Unless enquiry as contemplated under Sub-section (3) of Section 64 of the Wakf Act, and the procedure contemplated for conducting enquiry under Sections 70 and 71 thereof and Rule 24 of the Wakf Rules, 2000 are complied with, no action can follow u/s 64(5) of the Wakf Act, and therefore, the impugned notice, which is issued without complying with the said provisions, has no statutory or legal basis. (3) If the impugned notice is to be understood as one traceable to Sub-section (5) of Section 64 of the Wakf Act, the petitioner should be given reasonable opportunity of being heard against the proposed action, and the action proposed thereunder should be limited to one of extension of the suspension beyond the period of ten days and not anything else, and (4) The impugned notice is without authority and bad in law for the reason that the 1st respondent has issued the same under the influence of the State Government and District Collector, which amounted to surrender and abdication of power by the 1st respondent to the said authorities.

4. The learned Additional Advocate General defended the impugned notice. He would contend that the action proposed u/s 64(5) of the Wakf Act is limited to placing the petitioner under suspension until the conclusion of the enquiry, and does not contemplate action of removal of the petitioner from the post of Mutawalli u/s 64(1) of the Wakf Act, and therefore, neither the provisions of Sections 70 and 71 of the Wakf Act, nor the provision of Rule 24 of the Wakf Rules, 2000 are attracted. Inasmuch as the Wakf Board unanimously resolved to place the petitioner under suspension until the conclusion of the enquiry, which may well go beyond the initial suspension period of ten days, the 1st respondent in terms therewith first placed the petitioner under suspension for a period of ten days, and simultaneously issued the impugned notice in terms of the proviso appended to Sub-section (5) of Section 64 of the Wakf Act, to give the petitioner reasonable opportunity of being heard, before his suspension is extended beyond the period of ten days. The impugned notice, as contended by the learned Counsel for the petitioner, is not vague, and on the other hand, it specifies the charges alleged against the petitioner, which enables the petitioner to meet them properly and effectively in his defence or in the representation or explanation which he may submit to the show cause notice. Inasmuch as the impugned notice has been issued by the 1st respondent in pursuance of the unanimous resolution passed by the Wakf Board, the 1st respondent cannot be said to have surrendered or abdicated his power to the State Government or the District Collector.

5. A close reading of the impugned notice dated 18-1-2003 issued by the 1st respondent would disclose that he had information before him through the

representation dated 23-12-2002, made by the general public of Anantapur, representation dated 12-1-2003 of one Sri Khazi Imam Shareef, Khazi, Anantapur and the D.O. Letters dated 7-1-2003 and 8-1-2003 from the Office of the Principal Secretary to Government, Minorities Welfare Department, that the petitioner indulged in certain acts of malfeasance and mismanaged and misappropriated the properties of the Wakf to his personal use and benefit, and a unanimous resolution was passed by the Wakf Board vide Resolution No. 713/2003, dated 18-1-2003 resolving to place the petitioner under suspension pending enquiry. In pursuance of the said unanimous resolution of the Wakf Board, the 1st respondent issued the impugned notice u/s 64(5) of the Wakf Act, calling upon the petitioner to explain the allegations and charges, numbering 64 levelled against him therein.

6. I have heard the learned Counsel for the petitioner as well as the learned Additional Advocate General for the respondents. I have also perused the material on record, including the impugned notice.

7. It is well settled principle of law that the Writ Court would not ordinarily interfere at the stage of show cause notice for it favours the quasi-judicial authority vested with the power to exercise and discharge its statutory functions, with a free hand, independent from outside control.

8. In State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, , the order of the Allahabad High Court, quashing the show cause notice, issued to an employee, was challenged. The Apex Court while allowing the appeal filed by the State held thus:

When a show cause notice is issued to a Government servant under a statutory provision, calling upon him to show cause, ordinarily the Government servant must place his case before the authority concerned by showing cause and the Courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause is to afford opportunity of hearing to the Government servant and once cause is shown it is open to the Government to consider the matter in the light of the facts and submissions placed by the Government servant and only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature.

9. In Special Officer, Urban Land Ceilings, Nampally, Hyderabad and others Vs. M. Vijayalakshmi and others, a Division Bench of this Court while declining to entertain a writ petition filed against a show cause notice issued under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976, held as under:

Scope of Judicial reviewability is extremely limited and the High Court would be rather slow and loath to intervene at this stage of proceedings since the authority ought to be given a free hand and a full play in the matter of enquiring into the circumstances which prompted the authority concerned to issue the show cause notice. Ordinarily, a writ petition is not maintainable against a show cause notice

inasmuch as, when a show cause notice is issued, the party gets an opportunity to place his case before the authority concerned, and there are elaborate procedures by way of an appeal and/or revision against such order passed in such proceedings.

10. In Kapa Veerabhadurudu and others Vs. Special Deputy Collector, West Godavari District, , a show cause notice issued under A.P. Scheduled Areas Land Transfer Regulations 1 of 1970, was challenged. A learned Single Judge of this Court, while refusing to entertain the writ petition, held as follows:

Generally speaking, at the stage of show cause notice, the jurisdiction under Article 226 of the Constitution is not attracted. This is because, a Court of judicial review is always inclined to allow the quasi-judicial authority vested with the power to exercise discretion and discharge its statutory functions. If even at the show cause notice, this Court interferes and records a finding; in a given case the findings may as well go against the citizens and deprive them of other remedies under law. When a statutory authority issues a show cause notice, the recipient of the show cause notice has ample opportunity to approach the quasi-judicial authority and place his/her case before such authority that will decide in accordance with law. If an order passed by the quasi-judicial authority goes against the person, it is always open to such person to avail the remedy of appeal and then approach this Court under Article 226 of the Constitution, if it is permissible under law. A writ petition against a show-cause notice is, ordinarily, not maintainable.

11. The ratio laid down in the above cases, only point to the conclusion that the Writ Court will not ordinarily interfere with a show cause notice.

12. We shall now proceed to consider whether the impugned notice, which is only a show cause notice, can be interfered with by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India.

13. Before venturing to answer the above question, a brief reference may be made to the provisions of the Wakf Act, Section 64 of the Wakfs Act deals with removal of Mutawalli. Sub-section (1) thereof enumerates the grounds on which a Mutawalli can be removed, while Sub-section (2) protects the rights of the Mutawalli consequent upon his removal. Sub-section (3) states that the Wakf Board shall not take any action under Sub-section (1) unless it holds an enquiry into the matter in the manner prescribed and decision taken by a majority of not less than two-thirds of the members of the Wakf Board. Appeal against an order passed under Clauses (c) to (j) of Sub-section (1) shall lie before the Tribunal under Sub-section (4), and the decision of the Tribunal on such appeal is final. Subsection (5) states that where any inquiry under Sub-section (3) is proposed, or commenced, against any Mutawalli, the Board may, if it is of opinion that it is necessary so to do in the interest of the Wakf, by an order suspend such Mutawalli until the conclusion of the inquiry, provided that no suspension for a period exceeding ten days shall be made except after giving the Mutawalli a

reasonable opportunity of being heard against the proposed action. Sections 70 and 71 of the Wakf Act deal with inquiry relating to administration of Wakf and the manner in which the inquiry has to be held.

14. Sub-section (3) of Section 64 of the Wakf Act make it clear that the Mutawalli cannot be removed for the grounds mentioned in Section 64(1) unless an enquiry is held in the manner prescribed and a decision taken by a majority of not less than two-thirds of the members of the Wakf Board, while Sub-section (5) thereof authorises the Wakf Board to place a Mutawalli under suspension, if in its opinion, it is necessary to do, however the proviso appended thereto stipulates that if the period of suspension is to exceed more than ten days, a reasonable opportunity of being heard should be given to the Mutawalli against the proposed action.

15. The impugned notice is not only specific with respect to the allegations made against the petitioner, but it makes a reference of the material which the authority had before it for issuance of the same, namely the representations of the general public, Khazi Imam Shareef and the D.O Letters of the Principal Secretary to Government in the Minorities Welfare Department, and that apart, it also mentions the provision under which it has been issued, namely Section 64(5) of the Wakf Act. Inasmuch as the Wakf Board has resolved to place the petitioner under suspension, until the conclusion of the enquiry for the allegations levelled against him under the impugned notice, and inasmuch as the enquiry was likely to go beyond the period of ten days, the Wakf Board decided to invoke the proviso appended to Section 64(5) of the Wakf Act, to give the petitioner an opportunity of being heard, to explain the allegations, before proceeding to place him on suspension beyond the period of ten days. Therefore, the contention of the petitioner that the impugned notice is vague and bereft of details, cannot be accepted.

16. In view of the submission made by the learned Additional Advocate General that the impugned notice is only a show cause notice issued u/s 64(5) of the Wakf Act, intended to place the petitioner under suspension until the conclusion of the enquiry, which may well go beyond the period of ten days, and not a notice issued u/s 64(1) of the Wakf Act, for removal of the petitioner as Mutawalli, the contention of the petitioner that unless the procedure contemplated under Sections 70 and 71 of the Wakf Act, and Rule 24 of the A.P. Wakf Rules, 2000, is scrupulously followed, no action u/s 64(5) of the Wakf Act can follow against the petitioner, has no basis and cannot be accepted. The question of following the procedures laid down under Sections 70 and 71 and Rule 24 of the Wakf Rules, 2000 would arise only if the respondents have proposed or have commenced action for removal of the petitioner u/s 64(1) of the Wakf Act, but that is not the case on hand. Having regard to the seriousness of the allegations levelled against the petitioner in the representations referred to in the impugned notice, at references 1 to 3, the Wakf Board unanimously resolved to place the petitioner under suspension till the conclusion of enquiry, to

facilitate a free and fair enquiry, and in view of the proviso appended to Section 64(5) which requires giving an opportunity of being heard if the suspension period was to extend before the period of ten days, issued the impugned notice calling upon the petitioner to explain the allegations levelled against him therein. Therefore, the contention of the petitioner that the impugned notice has no statutory or legal basis, cannot be accepted and falls flat to the ground.

17. Merely because the impugned notice has enumerated the allegations levelled against the petitioner, it cannot be said that the respondents have pre-judged the issue to remove the petitioner. In order to keep the petitioner informed of the allegations made against him, and to enable him to defend the allegations made against him properly and in an effective manner, the 1st respondent felt it appropriate to mention them in the impugned notice. The enumeration of the allegations in the show cause notice would in no way work to the disadvantage of the petitioner, and on the other hand, enables him to deal with them properly and effectively, in the representation or explanation, which he may submit to the impugned show cause notice.

18. The contention of the petitioner that the letters addressed by the District Collector and Principal Secretary to Government in the Minorities Welfare Department, have influenced the 1st respondent in issuing the impugned notice, and it amounted to surrender and abdication of power by the 1st respondent to the said authorities, cannot be accepted for the reason that the 1st respondent has issued the impugned notice in pursuance of the unanimous resolution passed by the Wakf Board resolving to place the petitioner under suspension till the conclusion of the enquiry, and it can be safely be taken that the Wakf Board while resolving to place the petitioner under suspension had considered the material before it, which the 1st respondent had referred to in the impugned notice, at references 1 to 3, namely representations from the general public and Khazi Imam Shareef and the D.O. Letters of the Principal Secretary to Government in the Minorities Welfare Department. The 1st respondent in the penultimate para of the impugned notice observed:

The Board after examining the whole issue and the allegations made in the representations, prima facie, found that it is a fit case to initiate enquiry against you u/s 64(3) of the Wakf Act, 1995 and unanimously resolved to conduct an enquiry in respect of the allegations made against you by its Resolution No. 713/2003, dated 18-1-2003.

19. Therefore, mere reference to the D.O. Letters of the Principal Secretary to Government in the Minorities Welfare Department, in the impugned notice, cannot be said to have influenced the mind of the 1st respondent or have not acted independently, in issuing the impugned notice, amounting to surrender and abdication of his power to the said authority.

20. There can be no quarrel on the proposition that the Government has no power to meddle with the affairs of the Wakf Board and decision relied upon by

the petitioner in Managing Committee, Wakf Vs. State of Andhra Pradesh and Others, . In the case on hand, the 1st respondent while issuing the impugned notice, had before him not only the D.O. Letters of the Principal Secretary in the Minorities Welfare Department, but also had before him the representations received from the general public and one Khazi Imam Shareef, making allegations of corruption and mismanagement of affairs of the Wakf by the petitioner, which representations having been considered by the Wakf Board, unanimously resolved to place the petitioner under suspension till the conclusion of the enquiry. Mere reference of the D.O. Letters of the Principal Secretary in the Minorities Welfare Department, in the impugned notice, cannot by any stretch of imagination, be said that the Government has interfered with the affairs of the Wakf Board in any manner.

21. In view of the foregoing discussion, and having regard to the decision of the Apex Court as also the decisions of this Court, referred to supra, and the provisions of Section 64 of the Wakf Act, especially the proviso appended to Section 64(5) of the Wakf Act, under which the impugned notice, came to be issued, it cannot be said that the same is illegal and bad in law.

22. In the result, the Writ Petition has no merit, and is accordingly dismissed.

No costs.