
(1990) 07 KAR CK 0075
In the Karnataka High Court
Case No : W.P. No. 15524/1983

K.P. Basheer Khan and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-07-1990

Acts Referred:

Constitution of India, 1950 — Article 14
Waqf Act, 1954 — Section 16

Citation : (1991) 1 KarLJ 219

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

Judgement

Chandrakantaraj Urs, J.-The petitioners are all residents of Shimoga Town. They are aggrieved essentially by the Constitution of a Committee by the 2nd respondent-Karnataka Board of Wakfs (hereinafter referred to as the Board). The members of the Committee so constituted are respondents 4 to 22. Since then those respondents have been replaced by the other members and they have also been impleaded. After such change in the Constitution of the Committee further changes have taken place.

2. Therefore, the challenge made to the appointment of a Committee docs not survive for consideration as the new members of the Committee are not made parties to this proceeding and no useful purpose will be served in allowing the petitioners to bring the new Committee members on record after a lapse of seven year's.

3. Mr. Kashinath, learned counsel appearing for the petitioners, has pressed his arguments in relation to one of the prayers which is to strike down Section 16 of the Wakf Act, 1954 (hereinafter referred to as the Act) as unconstitutional inasmuch as it has conferred arbitrary and unguided power on the Board and therefore violative of Article 14 of the Constitution.

4. In the scheme of the Act, the Board is the highest authority. When power is conferred so that it is exercised by a high authority, necessary guidelines are not necessary as such high authority is expected to act with responsibility in a

judicious manner and not arbitrarily. Mere absence of guidelines cannot be a ground for striking the provision of law which confers such unguided power, assuming it to be unguided power. Even if such unguided power is conferred, the exercise of that power resulting in some action may be questioned on grounds of arbitrariness but not the conferment of power itself. This is more or less the settled view having regard to a catena of decisions of the Supreme Court. (See *Ramkrishna v Tendolkar*, 1959 SCR 279).

5. But I do not find such a vice in Section 16 of the Act which is as follows:

"16. Committees of the Board.-(1) The Board may, whenever it considers necessary, establish either generally or for a particular purpose or for any specified area or areas, Committees for the supervision of wakfs;

(2) The Constitution, functions and duties of such Committees shall be determined from time to time by the Board:

Provided that it shall not be necessary for the members of such Committees to be members of the Board."

If the section is carefully read, the provisions made therein themselves act as guidelines. The Board must consider before any Committee is appointed which means that the Board must apply its mind before acting under Section 16 of the Act. Consideration means application of mind. They also must apply their mind within the limited field as to whether the Committee established is general or for a specific purpose and whether it relates to any specified area or areas for purposes of supervision of wakfs. Therefore, the power must be exercised in order to ensure the supervision of the wakfs which may be for a general purpose or may be for a specific purpose and therefore the provision itself offers sufficient guideline and check for the Board to exercise that power depending on the purpose for which such Committees are formed. Under sub-section (2) of Section 16 of the Act, Board is empowered to assign duties from time to time which again compels the Board to properly apply its mind. There is guideline also that the Committee could be broad based to serve the purpose of the Act as it is not confined to the membership of the Board itself.

6. I, therefore, find no substance in the arguments that the power conferred is arbitrary and therefore Section 16 of the Act is violative of Article 14 of the Constitution.

7. Section 16 of the Act is declared to be constitutionally valid and not violative of Article 14 of the Constitution.

8. In the result, the petition is dismissed.

Writ Petition dismissed.