

(1997) 07 AP CK 0073

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22899 of 1996

M.A. Aziz

APPELLANT

Vs

A.P. State Wakf Board and Another

RESPONDENT

Date of Decision : 24-07-1997

Acts Referred:

Constitution of India, 1950 — Article 14
Waqf Act, 1954 — Section 18
Waqf Act, 1995 — Section 18, 27

Citation : AIR 1998 AP 61 : (1997) 5 ALD 396 : (1998) 1 AnWR 688

Hon'ble Judges : B.K. Somasekhara, J

Bench : Single Bench

Advocate : Mirza Imamullah Baig, for the Appellant; A. Narendra, and Mohd. Azizullah Khan, for Respondents Nos. 3 to 8, for the Respondent

Final Decision : Allowed

Judgement

B.K. Somasekhara, J.—The petitioner claiming to be the Secretary of the Managing Committee of Madina Masjid, situated on Station Road, Secunderabad has assailed the proceedings No. 133/Hyd.III/JI/ Kulyath/86/dated 19-10-96 of the Chairman of respondent No. 1, as illegal and unconstitutional and further seeks a direction to respondent No. 1 to continue the Managing Committee of the petitioner in the management of the Madina Masjid (for short "the Mosque"). Respondent No. 1 is the A.P. State Wakf Board and respondent No. 2 is described as the Managing Committee of the Mosque represented by its President, Janab Mohd. Nazeer. The reason behind such assailment can be found in the facts disclosed from the petition and the counter-affidavit filed on behalf of the respondent No. 1. It appears that originally the Mosque was a small one and it was being looked after by its Muthawalli, late Md. Ibrahim. The petitioner claims that after the death of Md. Ibrahim, a Committee comprising respectable persons of the locality was formed in the year 1963 with Yaseen Ali as the President and the petitioner as the Secretary, and there was an order dated 18-7-63 in this regard. The petitioner claims that since 1963 onwards, he along with the

Committee members looked after the affairs of the Mosque and was managing the same. After the death of the President, Yaseen Ali, in the year 1970, a new Committee was formed with Syed Moinuddin as its President, who continued till 1973. It appears that Md. Asgar Ashraf became the President in the year 1974, and functioned as such subsequently. The petitioner claims that he and the Committee, while managing the Mosque, developed it, arranged to put up double storied building, and now it is a big building with several mulgis let out to tenants, which are yielding sufficient income in addition to other income from thousands of worshippers. The petitioner claims that accounts are being maintained regularly with regard to the income of the Mosque and the Wakf funds are being regularly remitted to the Wakf Board, and whenever a new Committee was constituted it was being intimated to the Wakf Board, which was acknowledged by them. Even the remittance of the charges for three years from 1-1-94 to 31-12-96 is said to have been acknowledged by receipt dated 4-1-94. It appears, according to the petitioner, one Syed Khaja, was interfering in the peaceful prayers conducted in the Mosque and also in other activities, which was attempted to be stopped, and therefore, he approached the Wakf Board, based upon which the impugned orders have been passed without any basis or legal support. It is also contended that the impugned orders are passed without giving an opportunity to the petitioner or the existing committee in regard to the allegations made by the said person or others before passing the impugned orders, and thus there has been violation of the principles of natural justice in passing such an order.

2. Sr. Mirza Imamulla Baig, learned advocate for the petitioner has contended that the impugned orders are illegal as it is the Chairman who has. passed the order, whereas the law contemplates that such an order should be passed by the Wakf Board, which is quite different from the Chairman himself. He has also contended that even assuming the Chairman has passed such an order, it could not have been done without giving opportunity to the petitioner or the Committee, particularly when serious allegations are made touching the status and reputation of the persons involved and concerned with the Mosque, which left a stigma on them, and therefore, the impugned proceedings are vitiated and cannot be allowed to be in force in law.

3. The learned Advocates Sri A. Narendra, appearing for respondent No. 1 and Sri Mohammed Azizullah Khan for respondent No. 2 have contended that in the first place there was no Committee at all, much less the office bearers, the Secretary or any other person as President, and in the second place, like any other Mosque or holy place of the Muslim community, the Mosque has been looked after by certain individuals, including worshippers, but not by any Committee or the Secretary or the President etc., and the petitioner's claim is one of self-styled attire as Secretary and making somebody as the President of some Committee without any authority or recognition by the Wakf Board at any time. It is also their contention that the Chairman of the Committee, to whom the powers are delegated in law by the Wakf Board, in accordance with the

procedure is justified in passing the impugned proceedings, which is within the power and jurisdiction, and therefore, there was no question of either violation of principles of natural justice or the provisions of the Wakf Act, 1995, and therefore, according to the respondents, the writ petition has to be dismissed.

4. There is no dispute that the Mosque in question is a Wakf within the meaning of Section 3(r) of the Wakf Act, 1995 (for short "the 1995 Act). There is also no dispute that there is a Wakf Board constituted for the purpose of management of the Wakf within the meaning of Section 3(c) of the 1995 Act, and that Janab Syed Yousuf Ali is the Chairman of the Wakf Board in question. It is apparent that respondent No. 2 Managing Committee was constituted only under the impugned proceedings by the Chairman of the Wakf Board dated 19-10-96, and till then it was not in existence. Even in the counter filed on behalf of respondent No. 1 there is no indication that there was any Managing Committee constituted as such for the Wakf in question by respondent No. 1 before it was constituted by virtue of the 1995 Act in question nor the respondent No. 2 had anything to do with the Wakf or its management till the date of the impugned proceedings. It is nobody's case that the Mosque in question was totally deserted, or not managed by anybody till the date of the impugned proceedings. On the other hand, a number of material papers produced by the petitioner establish that the Mosque was being managed by somebody or the other, including the petitioner or some members like Yasin Ali as the Chairman in the year 1963 and members Md. Aminuddin, M.S. Md. Ibrahim, Md. Abdul Aziz, Syed Mahbub Shah and Hakim Mahmood Khan. In fact, in several correspondence emanated between the petitioner or the secretary of some Committee, and also the Wakf Board or the authorities, certain charges were also remitted periodically and it has been acknowledged by the Secretary of the Wakf Board in the receipt dated 4-1-94. In fact, a letter had been addressed prior to that on 31-12-93 by the petitioner, M.A. Aziz himself to the Secretary, Wakf Board in question, mentioning that the Mosque is being managed efficiently serving for over 40 years and maintaining certain things which was being reported in the local newspapers also, and sanction of the Wakf Board was sought for in favour of the Managing Committee for a period of three years from 1-1-94 to 31-12-96. It is only thereafter, the letter dated 31-12-1996 has been acknowledged by the Secretary of the Wakf Board in the receipt dated 4-1-94. It is significant to note that there is not even a whisper on the part of the respondent No. 1 that any funds were made available for the maintenance of the Mosque in question by the Wakf Board or any other Committee till the impugned proceedings were passed. In the totality of the circumstances of the case it is very clear that not only the Mosque in question has been in existence since a very long time, but was being managed by several persons or the Committee, possibly including the petitioner and other members stated above, which was never questioned by respondent No. 1 at any time as can be made out from the materials produced before this Court. It is only under the impugned proceedings a new committee-respondent No. 2 was constituted by the Chairman of the Wakf Board, whereby there is a clear

direction that the arrears of the Wakf fund Rs. 32,810/- shall be remitted by the Committee constituted under the proceedings in three equal instalments commencing from October, 1996. It is not understandable as to how such funds came from, who collected, where it was kept and how respondent No. 2 is payable. If such funds have been already collected by somebody else, including the petitioner or some other Committee, that itself is sufficient to support that the Mosque in question was being managed by certain persons since a very long time before the impugned orders were passed directing the Committee-respondent No. 2 to remit the wakf fund. Wakf fund was remitted periodically to the Wakf Board and it was being consistently and with all consent acknowledged by respondent No. 1 or its authorities. It may be that the petitioner or any other Committee was not constituted in accordance with the provisions of the Wakf Act nor recorded as such in any registers of respondent No. 1, but still the fact remains that the Mosque in question was being managed by certain persons, including the petitioner also. Not only the petitioner and some other persons, but the so called Committees are answerable to such management, including accountability of the funds, building and assets of the Mosque, regarding which ultimately duty is cast upon respondent No. 1 to deal with in accordance with law.

5. If we go through the impugned proceedings, it is very clear that the order is passed by the Chairman of the Wakf Board u/s 18 of the 1995 Act. The order was passed in view of certain complaints against the self-styled Managing Committee, claiming to be managing the affairs of the Mosque and mismanaging the funds of the Mosque collected as donations etc. As already pointed out, the arrears, of Wakf fund to the extent of Rs. 32,810/- bear to show that somebody or the petitioner or some Committee had already collected such funds in relation to the Mosque, which were to be remitted to the Wakf Board, regarding which accounting was necessary. In fact, the newly constituted Committee has been called upon to get the accounts from the date of last audit, audited by the Inspector Auditor Wakf within one month, and to maintain accounts etc. It also speaks about the money existing prior to 19-10-96, and as such, the matter has to be tested, examined, corrected or regulated. The learned Advocates for both sides are not able to point out any specific provision in the Wakf Act or the Rules in regard to the constitution of the Committee, for the management of the Wakf. But Section 18 of the Wakf Act, 1954 deals with the power of the State Government to remove the Chairman of the Board or any member thereof under certain circumstances. Even Section 18(1) of the 1995 Act does not indicate the powers of the Wakf Board or the Chairman to constitute any Committee as such for the management of any particular Wakf or the Mosque etc. But on the other hand, it indicates the powers of the Board to establish either generally or for a particular purpose or for any specified area or areas Committees for the supervision of Wakfs. Patently, it does not indicate the constitution of any Committee for a particular Wakf or a Mosque. Even though the provision does not contemplate the constitution of the Committee by the Chairman, the learned Advocates for the respondents have pointed out that such powers have been

delegated to the Chairman, regarding which a statement has been made in the counter-affidavit, but no copy of the delegation is produced. According to Section 18(2) of the 1995 Act also, the constitution, functions and duties and the term of such Committees shall be determined from time to time by the Board and not the Chairman. The learned advocate for respondent No. 1 is pointing out a copy of the Resolution No. 51 of 1996 dated 6-8-96 in regard to Item No. 49 to the effect that the Board unanimously resolved that the existing delegation of powers to Chairperson, Secretary and other officials will continue. It is difficult to understand from such an ambiguous or blanket delegation of powers to the Chairman to do everything on behalf of the Board is something which is negation of the rule implications of the Wakf Act. It only means that the Board is totally divested itself of its powers in favour of the Chairman, which is not permissible in any event. The simple question is whether the power of the Board u/s 18 of the Wakf Act, 1954 has been delegated to the Chairman and not blanket delegation of powers. The learned advocate is pointing out Section 27 of the 1995 Act regarding delegation of powers by the Board, which reads as follows :

"Delegation of powers by the Board.-- The Board may, by a general or special order in writing, delegate to the Chairperson, any other member, the secretary or any other officer or servant of the Board or any area committee, subject to such conditions and limitations as may be specified in the said order, such of its powers and duties under this Act, as it may deem necessary."

A simple reading of the above provision shows that the Board either by a general or special order in writing, delegate to the Chairperson, any other member, the Secretary or any other officer or servant of the Board or any area Committee, such of its powers and duties under the Act as it deems necessary, to mean thereof that each and particular power of the Board should be delegated specifically referring to a particular provision and not with a blanket delegation. Even if such a delegation is intended to be made, it cannot be supported. Constitution of the Boards and their powers have been enumerated in Chapter IV of 1995 Act. It mentions the powers of so many authorities, which are required to be exercised in accordance with the provisions, and particularly the constitution of the Committee u/s 18. There must be clear delegation of powers or else either there shall be scope for confusion or scope for powers. At the same time, it is difficult to think that Section 27 of the 1995 Act contemplated total delegation of powers of the Board to other persons to sit by itself quiet and watch the fun of the consequences. Therefore it is difficult to think that specific power u/s 18 to constitute any such Committee is delegated to the Chairman from among several delegations. Moreover, the resolution shown has been the delegation of the existing powers, which is very vague, too ambiguous and too general in nature, which is beyond the true meaning of "delegation of power of a statutory authority". The Board is a statutory authority constituted in law to function within its powers or to delegate any or more of the powers in accordance with law and not to totally disassociate itself from the management of the Committee by delegating all its powers. Therefore, it is difficult to think in

the nature of such a resolution, which is said to have been passed earlier under the Wakf Act, 1954, to have bearing effect on the 1995 Act for the purpose of delegation u/s 27 to think that the Chairman is vested with such power to act u/s 18 of the Act. Therefore, the constitution of the Committee-respondent No. 2 under the impugned proceedings cannot have a legal basis as it is not constituted by the Board and is constituted by the Chairman without even mentioning in the impugned proceedings that it is being exercised by virtue of the powers under the delegation.

6. Now coming to the impugned proceedings, it is apparent that it has got the effect of dislodging or removing the existing persons or self-styled Committee or individuals from the control or the management of the Wakf or the Mosque in question. The proceedings are definitely passed on the basis of allegations of mismanagement and misuse of funds of the Mosque by certain persons self-styling themselves as the Committee etc. In fact, the preamble of the impugned order reads as follows :

"In the representation of the Mussallies of Madina Mosque, self-styled Managing Committee is managing the affairs of the said Mosque and it is mismanaging the funds of the Mosque collected as donations etc."

The above clearly indicates the basis of the order which is passed on such allegations. The second part of the impugned proceedings show that an enquiry was conducted in regard to such allegations and the matter was placed before the Chairman of the Wakf Board, upon which the impugned proceedings were passed by constituting a Committee. What sort of enquiry was made, and how it was made is not known from the materials which are produced or not produced. Now the learned advocate for respondent No. 1 is showing a file said to contain certain papers in relation to such an enquiry. The file does not contain even one paper showing that either any notice was given to the petitioner or any member of the Committee or person in regard to the Mosque in question, who are said to have mismanaged or misappropriated the funds etc., as per the allegation, an opportunity for meeting such an allegation to mean that an opportunity to make a representation or to be heard or to produce any materials was not given before passing the impugned order. In regard to a statutory body, regarding its own impressions on certain matters without such an opportunity being given to the affected person, can never be said to be an enquiry in law to have the effect of enforcement. At any rate, the impugned proceedings are passed accepting the allegations of certain persons in regard to certain mismanagement by certain persons as self-styled Committee, which was really functioning as such rightly or wrongly with such conduct, as per the allegations, require to be enquired into in true sense of the term, and it is not being done by the Chairman and not by the Board, and therefore, this Court is not in a position to support the impugned proceedings in law for the purpose of enforcement.

7. It is fundamental to note that whenever any stigma is cast on any individual or Committee or group of persons, before passing any order by the statutory

authority, some opportunity is bound to be given as otherwise it would offend the principles of natural justice. Particularly, in this case, the allegations are very serious, which may even open such persons for any action, including criminal prosecution. The interest of a sacred Mosque is involved, and if its funds are misused or misappropriated, the Wakf Board is really entitled to take action, but according to law. It appears that the respondents are treating the matter more with prestige and sensitiveness than in the reality, which cannot be accepted as a part of rule of law and the rule of legal discipline. This Court wants to reiterate that as a guardian of all the persons and institutions in the country notwithstanding the implications of the Wakf Act is interested in maintaining not only the sanctity of the Wakf, but also the propriety, dignity and regularity in the enforcement of rule of law, to ultimately achieve the object and implications of the Wakf Act, and to preserve and maintain the sacred Wakfs. The in fight or individual or group feelings cannot override the true sacred performances of such laws. Therefore, with all anxiety this Court is dealing with the matters to set the things right and to remind the Wakf Board and the authorities under the Act to act in accordance with the principles of natural justice not guided by any other consideration than its" (sic).

8. The learned advocate, Sri. Mohammed Azizullah Khan has pointed out Section 67 of the 1995 Act in regard to supervision and suppression of committee of management. He contended that whenever the supervision or management of a Wakf is vested in any Committee appointed by the Wakf, notwithstanding anything contained in the Act, such Committee shall continue to function until it is superseded by the Board or until the expiry of its term, as may be specified by the" Wakf which ever is earlier. It must be reminded that such a constitution or supersession must be according to law. For the reasons referred above neither there is constitution nor there is Committee existing according to law, and therefore, such an implication of the provisions will not come into operation.

9. In the result, the writ petition is allowed with the following observations and directions :

10. The impugned proceedings are quashed. The respondent No. I Wakf Board shall be entitled to pass any order in relation to the Wakf in question in accordance with law after giving opportunity to the petitioner with reference to the provisions of the Wakf Act and the principles of natural justice. Till then the status quo shall be maintained to impress upon the petitioner or any other person, who is a incharge or concerned with the Mosque in question to maintain the state of affairs in the same position and produce all the materials before respondent No. 1, including the funds and the account books for its perusal for the purpose of passing appropriate orders ultimately. The respondent No. 1 shall deal with the matter in accordance with law, however, after giving reasonable opportunity to the affected persons. The respondent No. 1 shall fix a date calling upon the petitioner to produce all the materials or any material as per the directions for the purpose of enquiry.