

(1997) 03 KAR CK 0043

In the Karnataka High Court

Case No : Writ Petition No. 1154 of 1997

Managing Committee, Masjid-e-idgah, Mysore and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 04-03-1997

Acts Referred:

Waqf Act, 1995 — Section 112, 65

Citation : (1997) 4 KarLJ 599

Hon'ble Judges : G. C. Bharuka, J

Judgement

1. The petitioner is a Committee constituted by the respondent-Wakf Board under its order dated 7-6-1993, (Annexure-A) for the Management of a Wakf viz., Masjid-e-Idgah, Mysore. The Committee is constituted of 24 members. It has come up before this Court in the present proceedings for quashing of the order dated 8-1-1997 (Annexure-F). This order appears to have been passed pursuant to the powers conferred on the Board under Section 16 of the Wakf Act, 1954, whereunder an ad hoc Committee consisting of 5 members as named therein has been constituted to manage the day-to-day affairs of the Wakf in question.

2. The petitioner-Committee represented through its Secretary has questioned the validity of the impugned order on the grounds that (i) no such ad hoc Committee could have been constituted for the Management of Wakf in question unless the petitioner-Committee was expressly superseded in terms of Section 67; and (ii) that it has been passed without compliance with the principles of natural justice as also the statutory requirements prescribed under the proviso to Section 67(2) requiring issuance of notice to the existing Committee to show cause against the proposed supersession.

3. The order dated 7-6-1993, (Annexure-A) appointing the petitioner-Committee was passed under Wakf Act, 1954 which has since been repealed by the Wakf Act, 1995 (in short "the Act"). The Act has been brought into force in the State of Karnataka with effect from 1-1-1996. Therefore, any order which is passed by

the Wakf Board must be shown as permissible and justifiable under the provisions of the Act.

4. Section 3(r) of the Act defines "Wakf" to mean the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes:-

(i) a Wakf by user but such Wakf shall not cease to be a Wakf by reason only of the user having ceased irrespective of the period of such cesser;

(ii) "grants", including Mashrut-ul-Khidmat for any purpose recognised by the Muslim Law as pious, religious or charitable; and (iii) a Wakf-alal-Aulad to the extent to which the property is dedicated for any purpose recognised by Muslim Law as pious, religious or charitable, and "Wakf" means any person making such dedication.

5. Section 3(1) of the Act defines "Mutawalli" to mean any person appointed, either verbally or under any deed or instrument by which a Wakf has been created, or by a Competent Authority, to be the Mutawalli of a Wakf and includes any person who is a Mutawalli of a Wakf by virtue of any custom or who is a naib-Mutawalli, khadim, mujawar, sajjadanashin, amin or other person appointed by a mutawalli and save as otherwise provided in this Act, any person, Committee or Corporation for the time being managing or administering any Wakf or Wakf Property:

Provided that no member of a Committee or Corporation shall be deemed to be a Mutawalli unless such member is an office bearer of such Committee or Corporation;

6. Section 65 of the Act provides for assumption of direct Management of certain Wakfs by the Board. It reads thus:-

"Section 65. Where no suitable person is available for appointment as a Mutawalli of a Wakf, or where the Board is satisfied, for reasons to be recorded by it in writing, that the filling up of the vacancy in the Office of a Mutawalli is prejudicial to the interests of the Wakf, the Board may, by notification in the Official Gazette, assume direct Management of the Wakf for such period or periods, not exceeding five years in the aggregate, as may be specified in the notification".

7. Section 18 (old Section 16) empowers the Board to establish Committees and Section 27 (old Section 22) authorises the Board to delegate its powers, inter alia, to such Committees. These two sections read as under:-

"Section 18.-(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 and the term of office 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.

Section 27.-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.

8. Section 67 of the Act provides for supervision and supersession of the committee of the Management. Since the answer to the questions raised in the writ petition will essentially depend upon a reading and understanding of this section, therefore, the same is quoted hereunder in extensio. It is to the following effect.-

"Section 67.-(1) Whenever the supervision or Management of a Wakf is vested in any Committee appointed by the Wakf, then, notwithstanding anything contained in this 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, whichever is earlier:

Provided that such Committee shall function under the direction, control and supervision of the Board and abide by such directions as the Board may issue from time to time:

Provided further that if the Board is satisfied that any scheme for the Management of a Wakf by a Committee is inconsistent with any provision of this Act or of any rule made thereunder or with the directions of the Wakf, it may, at any time, modify the scheme in such manner as may be necessary to bring it in conformity with the directions of the Wakf or of the provisions of this Act and the rules made thereunder.

(2) Notwithstanding anything contained in this Act and in the deed of the wakf, the Board may, if it is satisfied, for reasons to be recorded in writing, that a Committee, referred to in sub-section (1) is not functioning properly and satisfactorily, or that the Wakf is being mismanaged and that in the interest of its proper Management, it is necessary so to do, by an order, supersede such committee, and, on such supersession, any direction of the Wakf, insofar as it relates to the constitution of the Committee, shall cease to have any force.-

Provided that the Board shall, before making any order superseding any Committee, issue a notice setting forth therein the reasons for the proposed action and calling upon the Committee to show cause within such time, not being less than one month, as may be specified in the notice, as to why such action shall not be taken.

(3) Every order made by the Board under sub-section (2) shall be published in the prescribed manner and on such publication shall be binding on the Mutawalli and all persons having any interest in the Wakf.

(4) Any order made by the Board under sub-section (2) may, within sixty days from the date of the order, appeal to the Tribunal:

Provided further that the Tribunal shall have no power to suspend the operation of the order made by the Board pending such appeal.

(5) The Board shall, whenever it supersedes any Committee under sub-section (2), constitute a new Committee of Management simultaneously with the order made by it under sub-section (2).

(6) Notwithstanding anything contained in the fore-going sub-sections, the Board may, instead of superseding any Committee under sub-section (2), remove any member thereof if it is satisfied that such member has abused his position as such member or had knowingly acted in a manner prejudicial to the interests of the Wakf, and every such order for the removal of any member shall be served upon him by registered post:

Provided that no order for the removal of the member shall be made unless he has been given a reasonable opportunity of showing cause against the proposed action:

Provided further that any member aggrieved by any order for his removal from the membership of the Committee may, within a period of thirty days from the date of service of the order on him, prefer an appeal against such order to the Tribunal and the Tribunal may, after giving a reasonable opportunity to the appellant and the Board of being heard, confirm, modify or reverse the order made by the Tribunal in such appeal shall be final".

9. On an analysis of the above statutory provisions, it becomes clear that the Board on assumption of direct Management of Wakf in terms of Section 65 (old Section 43-A), subject to the limitations prescribed therein, can constitute a Committee under Section 18 (old Section 16) for the purpose of delegation of its powers of Management in favour of such Committee as has been done under Annexure-A in favour of the petitioner-Committee. A Committee vested with the power of Management of a Wakf becomes a Mutawalli within the meaning of Section 3(1) of the Act. Once a Committee is so constituted, under the legislative mandate it can be superseded only on compliance with the requirements as envisaged under Section 67 of the Act.

10. Sub-section (2) of Section 67 of the Act provides that a Committee like the petitioner, in which the Management of a Wakf is vested, can be superseded only if, (a) it is not functioning properly and satisfactorily; or (b) that the Wakf is being mismanaged, and (c) that in the interest of its proper Management, it is necessary so to do.

11. In the present case, admittedly neither any notice was served on the petitioner-Committee requiring it to show cause against the proposed supersession in terms of Section 67(2) of the Act, nor, in fact, any order of supersession has been passed.

12. Sub-section (5) of Section 67 of the Act specifically and in unambiguous terms provide that a new Committee of Management has to be constituted simultaneously with the supersession of the existing Committee. Therefore, a new committee cannot be constituted unless the old Committee is superseded under and in accordance with the statutory provisions noticed above.

13. The respondent-Board in its statement of objections has stated and was accordingly canvassed on its behalf at the Bar that under its order (Annexure-A) the petitioner-Committee was constituted during the pleasure of the Board and therefore Section 67 of the Act cannot be pressed into service. In this context a specific reference was made to condition No. 9 of the said order, which reads thus.-

"The Board shall be entitled, without giving any notice or assigning any reasons to dissolve the Managing Committee or to remove any member or members therefrom and to constitute another Committee or replace other member or members instead".

By relying on the said terms embodied in the order under Annexure-A, it has been stated that the Board can at any point of time without assigning any reason whatsoever can revoke its pleasure leading to a civil death of the Committee and it can proceed to appoint another Committee at its sweet-will and pleasure. The stand of the Board is that it has absolute and unbridled power to dissolve any Committee constituted for Management of a Wakf without being answerable to anybody for its act.

14. In my opinion, the bald stand taken on behalf of the respondent-Board is in the teeth of the statutory provisions contained in the Act to which it owes its existence and it cannot take upon itself any authority beyond such provisions. Section 67 of the Act provides for the fulfillment of certain pre-conditions for supersession of a Committee of Management and the procedure to be followed for taking any such action, as noticed above. The pleasure term embodied in the impugned order at Annexure-A and Condition No. 9 thereof are clearly in conflict with the statutory requirements contained in Section 67(2) of the Act. The order Annexure-A appointing the petitioner-Committee was made under the repealed Act of 1954. Section 112 of the Act, which is the repealing and savings clause, in its sub-section (2) provides that anything done or any action taken under the repealed Act shall be deemed to have been done or taken under the corresponding provisions of the Act. Therefore, after coming into force of the Act, Annexure-A will be deemed to have been made only under the Act. Admittedly, the Act does not concede any doctrine of pleasure or subjective or secretive act in favour of the Board. It has been advisedly so done, or else it would have been ultra vires the transparency and reasonableness clause, namely, Article 14 of the Constitution of India. Therefore, the pleasure clause and Condition No. 9 of Annexure-A are clearly ultra vires the powers of the Board. Those are accordingly declared as null, void and non est and they cannot be relied upon by the Board for any purpose what-so-ever.

15. The Counsel appearing for the respondent-Board has placed reliance on a Bench decision in the case of Anjuman-E-Islam v Karnataka Board of Wakfs and Others, 1990(1) Kar. L.J. 1. In my opinion, the said judgment cannot be of any help to the respondent-Board since under the Old Act there was no provision like Section 67 as has been incorporated in the Act of 1995.

16. For the said reasons, the impugned order (Annexure-F) cannot be sustained and is accordingly quashed. The Members of the ad hoc Committee constituted under the impugned order, if they have taken over the Management of the Wakf in question, then they should restore the same to the petitioner-Committee. Any how, it is clarified that it will be always open for the Board, if so advised and warranted, to initiate and take appropriate action under and in accordance with the provisions contained under Section 67 of the Act even in respect of the petitioner-Committee. The writ petition is accordingly allowed, but without costs.