
(1982) 11 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 332 of 1981

Mohammad Yahyah Ali Khan and Another	APPELLANT
Vs	
State of Madhya Pradesh and Others	RESPONDENT

Date of Decision : 23-11-1982

Acts Referred:

Waqf Act, 1954 — Section 11

Citation : AIR 1983 MP 53 : (1983) ILR (MP) 134 : (1983) JLJ 174 : (1983) 28 MPLJ 111

Hon'ble Judges : G.P. Singh, C.J; Faizanuddin, J

Bench : Division Bench

Advocate : Gulab Gupta and M.A. Khan, for the Appellant; R.K. Verma, D.A.G. and Fakhruddin, for the Respondent

Final Decision : Partly Allowed

Judgement

Faizanuddin, J.

By this petition under Article 226 of the Constitution of India, the petitioners seek quashing of the notification dated 27th Jan., 1981 (Annexure "A") issued by the State Government u/s 11 of the Wakf Act, 1954, appointing the respondents Nos. 3 to 13 as members of the Wakf Board, The petitioners also seek a direction to be issued to the State Government to appoint members of the Board in accordance with the provisions of Section 11 of the Wakf Act.

The facts in brief leading to this petition are that a Board of Wakfs was constituted and established for the State u/s 9 of the Wakf Act, 1954 (Act No. XXIX of 1954) (hereinafter referred to as the Act) which is a corporate body having perpetual succession with power to acquire and hold property and to transfer any such property subject to such conditions and restrictions as may be prescribed, Section 10 of the Act provides that the Board shall consist of eleven members in the case of a State and Union Territories of Delhi; and five members in the case of any other Union Territory and that there shall be a Chairman of the

Board who shall be elected by the members from amongst themselves. Then Section 11 of the Act which is the relevant provision for the purposes of this petition contemplates that the members of the Board shall be appointed by the State Government by notification in the Official Gazette, from any one or more of the categories of persons enumerated in Sub-clause (e) to (d) of the said Section 11, The first proviso added to Section 11 further contemplates that in no case more than one Mutawalli shall be appointed to the Board.

The State Government, by the impugned notification dated 27th Jan., 1981 (Annexure "A") in exercise of powers vested in it u/s 11 of the Act, appointed the respondents Nos. 3 to 13, as members of the Board which is challenged by the petitioners on the ground that the respondents 3, 5, 8 and 13 were Mutawallis in relation to the Wakf in the State and as such their appointment as members of the Board on that count is bad in law being in violation of the first Proviso to Section 11 according to which more than one Mutawalli could not have been appointed as member of the Board, and the appointment of the respondents 4, 6, 7 and 9 is also bad on law as none of them possesses the qualifications and requirements under any of the categories mentioned in Clauses (a) to (d) of Section 11 of the Act. It has been alleged that all these respondents were obliged only because they belong to the ruling party and that they are associated with persons in power and influence, Against respondent No. 5 Shri Mutie Ahmad Jafri, it has been further alleged that he is involved in a pending civil litigation with the representatives of the muslim community in which he is said to have purchased land out of the funds donated by the Muslim community for construction of a Musafir-Khana but he got the land transferred in his personal name,

Regarding respondent No. 11 (Shri Abdul Shakoor), it has been alleged that though he is a practising Advocate and also Government Advocate at Bhopal, he may be treated as a person having knowledge of law which is covered by the category (c) of Section 11, but he was not a fit person to be appointed as a member of the Board because at the time of such appointment he had to pay a sum of Rs. 10,400 on account of arrears of rent of the premises owned by the Board at Bhopal, which is occupied by the respondent No. 11 as a tenant. It is further alleged that on 18-2-1981, there was election of the Chairman of the Board, on which date he issued a cheque for the said amount but he himself was elected as a Chairman, and therefore, he avoided the collection of the amount of the said cheque with the result that the respondent No. 11 remained a defaulter. It has therefore, been contended that the respondent No. 11 is not a fit person for the management of the Wakf property or to discharge the functions of the Board u/s 15 of the Act. However, the appointment of respondent No. 10 Shri Mohommad Haroon who is a member of the Legislative Assembly for the State and the respondent No. 12. Shri M. S. Khan, who then was Deputy Transport Commissioner, have not been challenged in this petition as they are covered by categories (a) and (c) of Section 11 respectively. Thus, according to the petitioners, none of the respondents except respondents 10 and 12 satisfied the

requirements of Section 11 of the Act and as such their appointment as members of the Board was illegal and void.

Before examining the qualifications and eligibility of the respective respondents, for their appointment as members of the Board, we shall first look to the eligibility provisions and statutory requirements under the Act, for such appointment as also the reasons, object and relevance of the said requirements in relation to the category to which a particular member is said to be belonging.

As said earlier, eleven members were duly appointed by the State Government to constitute a Board. Section 15 relates to the functions of the Board according to which the general superintendence of all Wakfs in a State vests in the Board, and it is obligatory on the Board to exercise its powers under the Act in such a manner as to ensure that the Wakfs under its superintendence are properly maintained, controlled and administered, and the income thereof is duly applied to the objects and for the purposes for which such Wakfs are created. Amongst other obligations, it is also the function of the Board to give directions for the administration of Wakfs; to settle schemes for management of Wakfs; to direct the utilisation of the surplus income of a Wakf consistently with the objects of the Wakf and in what manner the income of a Wakf, the objects of which are not evident from any written instrument, shall be utilized, to scrutinise and approve the budget submitted by Mutawallis under Sections 31 and 32 of the Act and to arrange for auditing of accounts of the Wakfs u/s 33: to appoint and remove Mutawallis under Sections 42 and 43 of the Act and to assume direct management of the Wakf u/s 43-A, where no suitable person is available for appointment as a Mutawalli of a Wakf; to take measures for recovery of lost properties of any Wakf, and to institute suits and proceedings in a Court of law relating to Wakfs; to administer the Wakf Fund u/s 48 and to call for returns, statistics and accounts from Mutawallis; to inspect or cause inspection of Wakf properties, accounts thereof and to investigate and determine the nature and extent of Wakfs and Wakf property. If any question arises whether a particular property is Wakf property or not or whether a Wakf is a Sunni or Shia Wakf, it has the power to decide such questions u/s 27 of the Act. Thus a cursory glance at various provisions of the Act makes it evidently clear that the Board is enjoined with duties of maintenance, management and administration of Wakf properties and its funds; and utilisation of Wakf income including the scrutiny and approval of budget and auditing of accounts; matters relating to Mutawallis, determination of certain disputed questions and institution of suits and proceedings relating to Wakfs. These duties and functions of the Board definitely involve considerable degree of knowledge of administration, finance and law, which should ordinarily be possessed by a member of the Board if any person is so appointed from category (c) of Section 11 of the Act.

Section 11 which is directly relevant to the instant case runs as under:--

"11. Appointment of members:-- The members of the Board shall be appointed by the State Government, by notification in the Official Gazette, from any one or

more of the following categories of persons, namely:--

(a) members of the State Legislature and members of Parliament representing the State.

(b) persons having * (** **) knowledge of Muslim Law and representing associations such as State Jamiat-ul-Ulema-i-Hind (whether such persons are Manafi-Able. Hadis or Shefai) or State Shia Conference;

(c) persons having * (** **) knowledge of administration, finance or law.

(d) mutawallis of wakfs situate within the State;

Provided that in no case more than one Mutawalli shall be appointed to the Board:

Provided further that in determining the number of Sunni members or Shia members in the Board, the State Government shall have regard to the number and value of Sunni Wakfs and Shia Wakfs to be administered by the Board.

A fair reading of Section 11 reproduced above will go to show that in the first category of Clause (a), a special privilege has been given to the members of the State legislature and members of Parliament representing the State in their appointment as members of the Board by reason of their being the representatives of a large section of Society. u/s 13 of the Act, such M.L.A. or M.P. should necessarily be a Muslim. In the second category of Clause (b) fall the persons having knowledge of Muslim law and representing associations like State Jamiat-ul-Ulema-i-Hind or State Shia Conference. Then comes the third category of Clause (c) of persons having knowledge either in administration or finance Or law. Lastly comes the fourth category of Clause (d) of Mutawallis of Wakfs situated within the State. Then there is a proviso according to which more than one Mutawalli cannot be appointed a member of the Board.

9-10. The learned counsel for the respondents during the course of arguments conceded that all the respondents except respondent No. 10, who is M.L.A., were appointed from the third category, that is, persons belonging to Clause (c) of Section 11. Now having regard to the nature of duties of the members of the Board discussed above, they must possess at least one of the qualifications of having knowledge of administration, finance or law as there is direct nexus between the said qualificalional requirements of a member from category (Clause of Section 11 and the duties and functions of the members constituting a Board. It may be noted that the words "administration", "finance" or "law" occurring in Clause (c) of Section 11 have not been defined in the Act. Here we do not intend to attempt to give any meaning or definitions of these words which are in any way exhaustive. We simply intend to deal with the expressions as far as is necessary for the purposes of this case. Regarding knowledge of law, it has to be presumed if a person possesses any degree of law. The word "administration" postulates the management of public affairs as distinguished from the executive or political function of policy making. It means the

performance of service in any organisation in any capacity, in which certain principles, practice and rationalised techniques are employed in achieving the aims and objectives of an organisation or establishment. Similarly, the word "Finance" means the "pecuniary resources", raising of money and credit and all financial arrangements of the year for the provision of revenue. In other words, the actual cash resources of a particular kind of a particular concern. As pointed out earlier in the foregoing paras the members constituting the Board have to deal with the general superintendence of Wakfs, income and application thereof, budget and auditing of accounts etc. thereof and therefore it is necessary for the members so appointed from the category (c) to possess at least any one of the three requirements, that is to say, the knowledge of administration, finance or law so as to enable them to exercise their powers and duties under the Act more effectively so as to achieve the main and dominant objective under the Act, it is for this reason that the legislature in its wisdom deemed it necessary to prescribe the said requirements which could not be ignored while appointing a person as a member of the Board.

The State as well as respondents Nos. 2 to 12 in their respective returns have contended that none of these respondents was appointed as member of the Board from category (d) of Section 11 in their capacity as Mutawalli of any Wakf within the State. It has also been denied that respondents 3, 5, 8 and 13 or any of them are mutawallis of any Wakf within the State. The facts have been supported by an affidavit. There is neither any material nor any reason to disbelieve the affidavits and hence we accept the contention of the respondents. There is no provision in the Act which prohibited the appointment of any person who happens to be a Mutawalli as a member if he fulfilled the qualifications and requirements under other clauses of Section 11 and the very fact that a person is also a Mutawalli does not render him disqualified for such appointment under clauses other than Clause (d) if he is qualified under any of those other clauses. As pointed out in paragraph 9 above, it was conceded by the learned counsel for the respondents Nos. 1 to 12, that all the members except respondent No. 10, were appointed from among the persons belonging to category (c) of Section 11 of the Act. We shall now proceed to examine whether all the respondents or any of them did not fulfil the statutory requirement as provided in Clause (c) of Section 11 of the Act, as alleged by the petitioners.

In the return filed by the State respondent No. 1, it has been refuted that any of the respondents was appointed because of his political leanings or for being a member of the ruling party. It has been asserted that all the members of the Board appointed by the Government fulfilled the requirements of Section 11 of the Act and they are eligible for such appointment. The return of the respondents go to show that Shri Noor Hasan, respondent No. 8, and Shri Abdul Shakoore, respondent No. 11, are practising Advocates. Shri Noor Hasan was enrolled as an Advocate in 1977 as is clear from Annexure "R-2-2", and he was practising as a lawyer at Jaithari, district Shahdol. Shri Abdul Shakoore admittedly is a practising Advocate and also Government Advocate at Bhqpal. He is said to be unfit

because he has been alleged to have been a defaulter of the Wakf Board in respect of certain arrears of rent due against him. But the return shows that he had tendered a cheque for the amount of arrears due against him which was encashed on 14-3-1981 before filing of this petition. This fact is supported by an affidavit. There is no counter-affidavit filed by the petitioner. We, therefore, accept the affidavit filed in support of the encashment of the said cheque. In these circumstances, Shri Abdul Shakoor, respondent No. 11, cannot be said to be a person unfit for discharging the duties and obligations under the Act as a member of the Wakf Board. Since Noor Hasan (respondent No. 8) and Shri Abdul Shakoor (respondent No. 11) are practising lawyers there is every reason to presume that they are the persons having knowledge of law and clearly fulfil the requirements of Clause (c) of Section 11 of the Act. Thus, the appointment of respondents 8 and 11 as members of the Board is legal and valid.

The return filed by the respondents 2 to 12 discloses that Shri Ahmad ji Bhai (respondent No. 3) belongs to Dawoodi Bohra Sect and he was not appointed from category (d) to Section 11 for being a Mutawalli of any Wakf. In the return, it has been said that Ahmad Ji Bhai was a member of the Madhya Pradesh Haj Committee at the time of his appointment. He is also said to be a member of Divisional Railway Users' Consultative Committee for two years on account of which he is said to have sufficient knowledge of administration and finance and as such he fulfils the requirements of category (c) of Section 11, but we are unable to accept this proposition. During the course of arguments, we were shown the Rules of the said Haj Committee. A reading of the said Rules shows that the Haj Committee is nothing but only an Advisory Committee which served as a social body with no powers and its only function is of helping the pilgrims going for Haj. Almost similar is the position of the Railway Users Consultative Committee. Persons who are members of the Haj Committee or the Railway Users' Consultative Committee could not be regarded as persons having knowledge of administration, finance or law within the meaning of Clause (c) of Section 11 of the Act as there is neither any nexus nor any relative direct or indirect link between the sphere of activities of respondent No. 3 as a member of the aforesaid committees and the qualificational requirements laid down in Clause (c) of Section 11 of the Act. In our opinion, Shri Ahmad Ji Bhai (respondent No. 3) did not fulfil the requirements laid down in Clause (c) of Section 11 and therefore his appointment as a Member of the Wakf Board is certainly invalid and void.

According to the return, Shri Saeeduddin Patel (respondent No. 4) has been a member of the Board previously also for the period from 26-4-1969 to 3-2-1980 and then again from 4-2-1980 to 26-6-1981 and there were no objections in his being so appointed. He is thus said to be an experienced member in the administration of the Wakf property. Regarding Shri Mutie Ahmad Jafri (respondent No. 5), the return shows that he had also been a member of the Board previously without any objections from any quarter for the period from 2-9-71 to 25-4-75 and had acquired sufficient administrative experience. He has

also been President of the Municipal Committee, Khachrod in Ujjain district for 14 years and also worked as Administrator of the Municipal Committee for one year. He is also an ex-M.L.A. of the State. It has been denied that the respondent No. 5 was appointed from the category of Mutawallis. Shri Nizamuddin, respondent No. 6, is M.A. and Law (Prev.). Besides holding other positions, he is President of Malwa Co-operative Credit Society, Indore, also a President of Bal Niketan School. Indore and a member of the Finance Committee of Badminton Association of Indore. The aforesaid facts have been supported by an affidavit. For the reasons stated above, the respondents Nos. 4, 5, 6 and 9, in our opinion, must be having knowledge of administration, and hence it could not be said that they did not possess the required qualifications. We find no substance in the allegations against Muti Ahmad Jafri, respondent No. 5 that he was litigating with the community as the same is too vague an allegation and no material has been placed on record by the petitioners to substantiate the allegation.

Almost similar are the facts regarding Shri Abdul Mumtaz, respondent No. 9, in respect of whom the return shows that he had been the president of the District Wakf Committee, Sidhi for the last many years and had acquired knowledge of administration of Finance in respect of Wakf property.

Further, according to the return, the appointment of Shri Sardar Beg, respondent No. 7, is supported on the ground that he was appointed a Director of M. P. Co-operative Land Development Bank. Bhopal, by an order dated 30th Dec. 1980 (Annexure R-2-3) and that he is also the President of the Finance Committee of the said Bank for Gwalior. He is also said to be the President of the District Minority cell, Gwalior, and a member of Jamiat-ul-Ulema-a-Hind. It may be noted that he was appointed a member by Notification dated 27-1-1981, while he had only an experience of 28 days as Director of the Land Development Bank. This period of 28 days could not be regarded as a period sufficient for acquiring requisite knowledge of administration or finance in that capacity. His capacity as a Director of the said Bank, therefore, was of no assistance and it cannot be construed as a qualification under Clause (c) of Section 11 of the Act. As regards the other capacities, we do not find that he fulfils the requirements of Clause (c) of Section 11. His capacity of President of the District Minority cell has no nexus with the work and qualifications envisaged under Clause (c) of Section 11. Simply because he was a member of the Jamiat-ul-Ulema-a-Hind, he could not be said to be eligible under Clause (b) of Section 11 of the Act because under that clause, what is required is that a person should have knowledge of Muslim law and he should be representing an Association such as the said Jamiat-ul-Ulema-a-Hind. There is no assertion that the respondent No. 7, Shri Sardar Beg, had any knowledge of Muslim law. In such circumstances, we find that he did not fulfil the requirements of Section 11 of the Act, and therefore, his appointment as a member of the Wakf Board was also illegal and void.

This brings us to the last respondent No. 13, Kazi Wajdi-ul-Hussani, who is admittedly "Kazi" for the city of Bhopal. Literally speaking, a Kazi is a

Mohammedan Judge or Magistrate and a person devoted to religious observances and having an excessive reverence for the religious forms and traditions. Under the British Government, a Kazi used to be a Mohammedan Judge or a Magistrate who was competent to pass orders and sentences in cases, civil and criminal. He is regarded as an ecclesiastical figure, A Kazi is a person who has absolute command over Quran and religious affairs. In these circumstances, there is every reason to presume that the respondent No. 13 being a Kazi, must be having knowledge of Muslim law. But during the course of arguments, the learned counsel for the petitioners informed us that the respondent No. 13 had tendered his resignation from the membership of the Board, and therefore, his appointment was not seriously challenged before us. It is probably for this reason that the respondent No. 13 did not come forward to contest the petition.

In the result, this petition partly succeeds. The appointment of Sri Ahmad Ji Bhai (respondent No. 3) and Shri Sardar Beg (respondent No. 7) as members of the Wakf Board, vide Madhya Pradesh Rajpatra, General Administration Department Notification No. 426-2540-1 (4)-81, dated 27-1-1981 is quashed and the State Government is directed to appoint some other persons in their places in accordance with the provisions of Section 11 of the Act. There shall be no orders as to costs. The amount of outstanding security deposit be refunded to the petitioners.