
(2013) 10 KAR CK 0091

In the Karnataka High Court

Case No : Writ Petition No. 41196 of 2013 (GM-WAKF)

Mohiyuddin Jumma Masjid Muslim Jamath (Regd)

APPELLANT

Vs

The Chief Executive Officer

RESPONDENT

Date of Decision : 31-10-2013

Acts Referred:

Waqf Act, 1995 — Section 69(1)

Citation : (2013) 10 KAR CK 0091

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : D.R. Chandrappa, for the Appellant; S.R. Anuradha, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—The petitioner was registered on 29.7.1997 under the provisions of the Wakfs Act 1954 (Central Act 29 of 1954). Managing Committee of the petitioner comprising of 17 members was constituted by the Karnataka State Board of Wakfs, by issue of an order dated 24.12.2007 for a period of three years. Petitioner submitted its annual statement of accounts to the Chief Executive Officer of Karnataka State Board of Wakfs on 25.4.2012. on 7.2.2013, the President of the petitioner proposed a panel of 20 members with office bearers, for constitution of the Managing Committee for further period of three years. In view of the differences which arose between the members, Karnataka State Board of Wakfs issued a notice dated 15.6.2013 and informed the concerned to appear before the Chairman and members of Karnataka State Board of Wakfs on 20.6.2013 to hear the objections pertaining to the constitution of Managing Committee. The meeting did take place on 20.6.2013 and after detailed deliberation it was decided that the General Body Meeting of the petitioner should be convened immediately after "Ramzan" to constitute the Managing Committee and till such time, the existing Managing Committee was permitted to manage the affairs of the institution with a stipulation that they

shall not take any policy decision or take up new construction activity etc. The Managing Committee of the petitioner agreed to adopt the Scheme of Administration and obtain the approval immediately. Scheme of administration for the management of the petitioner vide Annexure-N was approved on 30.8.2013. In exercise of power conferred u/s 69(1) of the Wakfs Act, 1995, Karnataka State Board of Wakfs passed an order dated 31.8.2013 and appointed an Election Officer to hold the election for the constitution of Managing Committee of the petitioner. The Election Officer appointed was directed to conduct the election to the members of the Managing Committee of the petitioner as per the approved scheme of administration of Wakf, within a period of one month and submit the list of elected members. Assailing the said order, as at Annexure-Q, this Writ Petition has been filed. Sri. D.R. Chandrappa, learned Advocate for the petitioner contended that the time stipulated in the order at Annexure - Q to conduct the election to the membership of the Managing Committee of the petitioner as per the approved scheme of administration, within a period of one month is unreasonable. He submitted that in terms of the approved scheme, Identity cards have to be issued to all the members of the petitioner, after preparing the list of enrolled members, which is a time consuming process. He further submitted that it is for the petitioner to appoint a Returning Officer for the purpose of conducting election, who should publish the calendar of events 21 days before the date of election and complete the process of election within 30 days from the date of notification. He submitted that the impugned order being arbitrary and illegal, warrants interference.

2. Sri. B.S. Hadimani, learned Advocate submitted that an impleading application has been filed in the Registry and the case of the applicants is that the time stipulated by the respondent in the order at Annexure-Q, being contrary to the scheme of administration of the Wakf, more particularly the provisions appearing in Chapter 8 of Annexure-N, impugned order warrants interference. He submitted that soon after the list of enrolled members is prepared and ID cards are issued, election can take place.

3. Smt. S.R. Anuradha, learned Advocate for the respondent, on the other hand submitted that the petitioner was very much aware of the proceedings of the meeting held on 20.6.2013 and that it was agreed that a general body meeting of the petitioner shall take immediately for the purpose of the constitution of the Managing Committee. She submitted that, since the period of existing committee expired long ago, the office bearers of the petitioner having not taken any steps in the matter of conducting election for constituting of the Managing Committee, the order dated 31.8.2013, as at Annexure-Q was passed. She pointed out that the procedure for election of members of the Managing Committee as per clause 23 of the scheme of administration vide Annexure-N applies only in a case where Managing Committee is elected committee and that the existing committee is not an elected committee but a nominated committee in terms of order dated 24.12.2007 as at Annexure-C. Learned counsel further submitted that, even though the period of existing committee expired on 23.12.2010, the members

who have overstayed for almost double the period, are interested in stalling the constitution of the elected Managing Committee. Learned counsel submitted that in view of the proceedings of the meeting dated 20.6.2013, the Managing Committee of the petitioner ought to have taken steps to prepare the eligible voters list and ought to have been issued ID cards. She further submitted that, since steps were not taken even after expiry of 20 days after Ramzan 2013, in the interest of the petitioner and its better management, the Election Officer was appointed and he was directed to hold the election within one month. Learned counsel submitted that a time schedule for the purpose of holding of election to elect the members of the Managing Committee of the petitioner may be passed so that an election can take place and all eligible voters can vote and elect the Managing Committee for better administration of the petitioner.

4. Having heard the learned counsel on both sides, perused the Writ Petition.

5. A committee to manage the petitioner was constituted vide Annexure-C on 24.12.2007. 17 members were nominated to be the members of the Managing Committee of the petitioner. The period stipulated in the said order expired on 23.12.2010. A public notice was issued on 7.2.2013 by the President of the petitioner proposing a panel of 20 members with office bearers as Managing Committee for management of the petitioner. Disputes having been arisen between the members of the petitioner, the respondent intervened by issue of a notice on 15.6.2013. A meeting was held on 20.6.2013 in the office of the respondent and Mr. Mohammed Salam, Secretary of the petitioner has also participated. In the said meeting, after lengthy deliberation, it was decided as follows:

1. To hold General Body Meeting immediately after Ramadan to constitute a Managing Committee for the management of the above said Wakf, till such time, the present management shall manage the affairs of the institution subject to the condition that they shall not take any policy decision or take any new constructions/projects etc.

2. Permitted the present management to lay the foundation stone by taking into confidence of all concerned and by inviting the sitting MLAs.

3. The present management shall adopt the Model Scheme of Administration and get approval of the same immediately.

6. The scheme of administration of the petitioner vide Annexure-N was approved on 30.8.2013. Since the period of existing committee has expired long ago, provisions under clause 23 of Annexure- N is not applicable to the existing committee.

7. The respondent issued the order dated 31.8.2013 appointing Sri. Abdul Khader B., Junior Engineer, City Corporation, Mangalore as Election Officer to conduct election to the members of the Managing Committee of the petitioner. There is no impediment for the petitioner to issue the identity cards to all its

enrolled members. The Returning Officer having been appointed on 31.8.2013, should issue the calendar of events for the purpose of conducting of election of members to the Managing Committee.

8. The existing Managing Committee whose term has expired almost 3 years ago cannot continue to remain in office and cause delay in the matter of the constitution of the new committee. In view of the unpreparedness on the part of the present committee to conduct election and its action in proposing to have a nominated body, the respondent is justified in issuing an order as at Annexure-Q. In the facts and circumstances of the case, it was unnecessary for the respondent to have given an opportunity of hearing to the petitioner i.e., prior to passing of the order at Annexure-Q, particularly in the light of the agreement reached between the parties in the meeting held on 20.6.2013. No prejudice as such has occasioned to the petitioner in the matter of appointment of election officer to conduct election. If there was any difficulty in the matter of preparation of voters list and the issue of ID cards, the Election Officer could have been approached to grant reasonable time to update the enrolled members list and for issue of identity cards. Instead, by filing this Writ Petition, an attempt has been made to stall the election process. In the circumstances of the case, there being lack of bonafides on the part of the petitioner, I do not find any merit in the Writ Petition.

In the result, Writ Petition being devoid of merit is dismissed. Sri. Abdul Khader B., Junior Engineer, City Corporation, Mangalore appointed as the Election Officer shall take necessary steps to hold the election to the Managing Committee of the petitioner. It is open to the petitioner to update the enrolled members list and issue ID cards to the enrolled members before 30.11.2013. The Election Officer shall publish the calendar of events for the purpose of conducting of the election before 31.12.2013.

If the enrolled members of the petitioner are not issued with the identity cards, such members can produce the other modes of identity proof as was permitted by the Election Commission in the elections recently held to the Karnataka Legislative Assembly.

The Returning Officer shall convene a meeting within 15 days from the date the election is held and counting is over i.e., for the purpose of electing the office bearers of the petitioner that is the President, Vice President, Secretary, Treasurer etc., as are required to be elected under the scheme of administration of the petitioner.

The petitioner shall extend ready cooperation to the Election Officer appointed by the respondent, for the purpose of conducting election within the period indicated supra.

No costs.