

(1987) 07 KAR CK 0023
In the Karnataka High Court
Case No : W.P. No. 7277/1987

Molvi Azmathulla Saheb

APPELLANT

Vs

Karnataka Board of Wakfs

RESPONDENT

Date of Decision : 15-07-1987

Acts Referred:

Waqf Act, 1954 — Section 42

Citation : (1987) 2 KarLJ 215

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

Judgement

Chandrakantharaj Urs, J.-Petitioner is aggrieved by the order made by the respondent-Karnataka Wakf Board. The order is dated 15th May, 1987. By the said order, which is at Annexure-D to the petition, a Committee of nine members is appointed as the Muthawalli for the management of Mosque, Khabharsthan and Idgah (Sunni), in Lakkur village, Malur taluk, Kolar District.

2. The order is in purported exercise of its power under Section 42 of the Wakf Act, 1954 (in short the "Act"). Petitioner was Chairman of a Committee of Management, which had been appointed by an earlier order of the respondent-Board on 10-11-1983. That Committee was constituted in exercise of its power under Section 16 of the Act.

3. Section 16 of the Act is as follows:

"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".

4. From the marginal note as well as the contents of the Section itself it is

apparent that the Board exercised its power to get an agent to act on its behalf to carry out a specified purpose in a, specified area and no more. Even others wise, the appointment of the earlier Committee with the petitioner as the Chairman was for a period not determined but during the pleasure of the Board.

5. To exercise power under Section 42 of the Act certain condition precedents are essential. They are: (1) there should be a vacancy in the office of the muthawalli; (2) A muthawalli may be a person or it may be a group of persons including a Committee as defined under Section 3(f) of the Act and (3) there should be no other person available to be appointed in terms of the instrument or deed of wakf or where the right of any person (i.e. an individual human being) to act as muthawalli is disputed. If the above ingredients are not there, then power under Section 42 of the Act cannot be exercised by the Wakf Board.

6. The order presupposes that there was vacancy, no body else has come forward claiming that he is entitled to act as muthawalli. Therefore, the other two conditions are also fulfilled.

7. What is more important is that the petitioner was represented by Counsel and was heard by the Board before the impugned order was passed. That has been done after inviting objections to the proposal for the appointment of the Committee now constituted as Muthawalli.

8. In that view of the matter, this is not a fit case in which this Court should interfere. Petition is therefore rejected at the stage of preliminary hearing.