
(1959) 03 MP CK 0013

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Petition No. 75 of 1957

Nawab Usman Ali Khan and Others

APPELLANT

Vs

Choudhry Faezulla and Others

RESPONDENT

Date of Decision : 31-03-1959

Acts Referred:

Constitution of India, 1950 — Article 226

United Provinces Muslim Wakf Act, 1936 — Section 11, 18, 42, 52, 62

Citation : AIR 1959 MP 377 : (1960) JLJ 158 : (1959) 4 MPLJ 771

Hon'ble Judges : V.R. Newaskar, J

Bench : Single Bench

Advocate : M.A. Khan, for the Appellant; G.M. Chaphekar, for Respondent 1 and P.R. Sharma, Government Advocate for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

V.R. Newaskar, J.

This is a petition under Article 226 of the Constitution and relates to properties comprised in the Wakf known as Hussain Tekri Sharif in the town of Jaora. The petitioners are Nawab Usman Ali Khan of Jaora and the members of the Intazamia Committee appointed by the Nawab in his capacity as the alleged Mutawalli of the trust. The petition is directed against the Chairman (called President in the petition) and the Madhya Bharat Muslim Wakf Board appointed under the Muslim Wakfs Act, 1954, as also against the Government of Madhya Pradesh and the Union of India.

The case of the petitioner is that the Wakf in question was founded by Nawab Ismail Khan the ancestor of the present petitioner and the Ruler of Jaora about 150 years back; that he during his life-time and after his death his descendants including the petitioner No. 1 used to manage the affairs of the Trust including administration of its properties either by themselves or through their nominees acting under their directions; that petitioner No. 1 in his capacity as the Mutawalli actually administered the Trust till 3-11-1952 on which date he by his

order appointed a committee consisting of six persons including himself to provide for better management; that the Trust was being administered through the Intazamia Committee in that manner in lawful exercise of the right of petitioner No. 1 and the Intazamia Committee when the Parliament passed Act No. 29 of 1954 known as the Muslim Wakfs Act which came into force on 15-1-1955; that in pursuance of the power vested in the State Government u/s 11 of the Act the Madhya Bharat Government constituted a Board of which respondents Nos. 1 and 2 are the Chairman and Secretary respectively; that the said respondent No. 1 occupied a portion of the Wakf property which he was called upon to vacate or to pay rent therefore but he failed to comply with either of the alternatives; that Civil and Criminal proceedings thereupon started between respondent No. 1 and the Intazamia Committee; that with a view to defeat the claim of the Intazamia Committee and particularly that of petitioner No. 1 regarding the administration of the Wakf respondent No. 1 manipulated complaints against the said Committee and created a situation suggesting disputes as against the right of the petitioners pertaining to the administration of the said Wakf and that a notice was then got served upon the Intazamia Committee to hand over charge of the Wakf to a Committee appointed by the Board in exercise of its power u/s 42 of the Act.

On these facts the petitioners felt aggrieved by the aforesaid action of the Board and seek by the present proceedings to quash the said action on the grounds:--

Firstly: that Section 11 of Act No. 29 of 1954 passed by the Parliament is ultra vires as it negatives the fundamental right guaranteed under Articles 25 and 26 of the Constitution by conferring arbitrary and unrestricted power upon the State Government to appoint any person as a member of the Board leaving no scope for the voice of the Wakfs, Wakifs, their descendants and members of the Muslim community who are the beneficiaries of the Wakf and their descendants in its management; that other provisions of the Act including Sections 18, 52, 62, 63, 64, 67 (a), (b), (c), (d), (h), (j), (k) and (n) also run counter to the rights guaranteed under Articles 25 and 26 of the Constitution. Secondly; that even on the assumption that the aforesaid provisions of the Act are within the legislative competence of the Parliament the exercise of the power by the State Government u/s 42 of the Act is inappropriate as the said provisions have no application to the situation in hand so as to deprive petitioner No. 1 of his right as Mutawalli to administer the Trust or to prevent the Intazamia Committee appointed by him from functioning and to give preference to persons who have no interest in the maintenance of the shrine and who are incapable of taking part in its management.

The petitioners, therefore, seek a declaration that the provisions of the Act referred to in ground No. 1 be declared as unconstitutional and a further declaration that the Muslim Wakf Board constituted by the State of Madhya Bharat u/s 11 of the Act be held to have no legal existence. They further seek suitable writ or direction ordering respondents Nos. 1 and 2 not to interfere with

the petitioners" management of the Wakf in question.

Returns on affidavit are submitted on be-half of the respondents Nos. 1 and 2 by Choudhry Faezulla and on behalf of the State of Madhya Bharat by the Collector Indore opposing the petition.

Respondents Nos. 1 and 2 in their return denied the claim of petitioner No. 1 that the shrine Husain Tekri Sharif was founded by Nawab Ismail Khan, the ancestor of the petitioner No. 1 or that he was the Wakif thereof. The claim of petitioner No. 1 to act as Mutawalli of the Wakf as being the descendant of Nawab Ismail Khan was also denied. It was asserted that as the shrine in question was situated in the erstwhile State of Jaora the Nawab of Jaora, including the present petitioner, while he was the Ruler of that State in his capacity as "Parens Patriae" looked after its management.

When, however, the said State merged into Madhya Bharat the power of petitioner No. 1 as "Parents Patria" came to an end and he no longer had any right to exercise the functions he used to do prior to merger. The appointment of Intazamia Committee by petitioner No. 1 by his order dated 3-11-1952, several years subsequent to the merger, was without any lawful authority. After the Board was constituted by the State of Madhya Bharat in exercise of its powers under the Act the said Board called upon the Intazamia Committee to satisfy it as to its right to manage the affairs of the Wakf.

But the said Committee not only failed to produce material in support of their claim but petitioner No. 1 went to the length of asserting by means of a letter sent through his Advocate that the said shrine and the properties appurtenant to it are his private properties. The Board had decided to inquire into the particulars as required by Section 25(7) of the Act owing to the attitude adopted by the Intazamia Committee and its Secretary Sultan Hamid Khan petitioner No. 2 and the divergent information received by the Board regarding the said Wakf and its management.

With a view to obstruct the Board from functioning with reference to the Wakf in question petition No. 35 of 1957 was filed by one Gulam Jeelani under Article 226 of the Constitution in the High Court for issue of writ of quo warranto against respondents Nos. 1 and 2 and for a declaration that the Board was not legally constituted. The petition was dismissed on 30-7-1957 as not pressed after an unsuccessful attempt to prevent respondents Nos. 1 and 2 from acting as the members of the Board.

The Board thereafter sent a letter addressed to the Secretary Husain Tekri Sharif informing him that the said Wakf had been registered u/s 28 of the Act and invited him to appear before the Board for enquiry on 9-8-1957. Petitioner No. 3 as the Secretary sent a reply denying the legal status of the Board.

Due to the recalcitrant attitude adopted by the Intazamia Committee and undue claim put forward by petitioner No. 1 and also due to persistent refusal of the

Committee to participate in the enquiry the Board had no option but to appoint a Committee to act as temporary Mutawalli of the Wakf till the dispute about the Mutawalliship is finally decided. This was done on 10-9-1957. On 12-9-1957 the Board gave notice to the Intazamin Committee why action u/s 41 ought not to be taken against it for not supplying requisite information to the Board.

By another letter dated 19-9-1957 the Board called upon the Intazamia Committee to hand over charge of the Wakf and its properties to the Committee appointed by the Board. This action, it is asserted, had been taken by the Board bona fide in the best interest of the Wakf and beneficiaries thereof. Petitioner No. 3 had submitted another petition similar to one filed by Gulam Jeelani which too was dismissed as not pressed. Unconstitutional character of the impugned provisions of the Act was denied as also the inpropriety of the action of the Board in appointing the Committee to take over the management of the Wakf. This appointment" was said to be strictly within the limits of power vested in the Board under the Act.

The return submitted on behalf of the State of Madhya Pradesh is practically similar.

On the basis of allegations contained in the petition and the return, four questions are principally involved in the consideration of the petition:--

First: Whether the Wakf in question was founded by Nawab Ismail Khan and whether he and after him his descendants are the Mutawallis thereof?

Second: Whether the action of the Board in appointing a Committee to take over management of the Wakf is mala fide?

Third; Whether the provisions of Sections 11, 18, 52, 62, 63, 64, 67 (a), (b), (c), (d), (h), (j), (k) and (n) of the Muslim Wakfs Act, 1954, are unconstitutional on the ground that they run counter to Articles 25 and 26 of the Constitution? Fourth; Whether the action of the Board in appointing a Committee to take over the management is proper and is within the limits of its powers under the Act?

As regards the first question Mr. Khan, the learned counsel for the petitioners, conceded that it would involve disputed questions of fact and that for that reason they could not be gone into and determined in the present proceedings. He confined his arguments on second, third and fourth questions.

On the second question it was contended that the mala fide use of the power by the Board was patent and was motivated by the consideration of depriving the Intazamia Committee of their right to make recovery of rent from the Chairman who was in occupation of a portion of the Wakf property.

On the third question Mr. Khan contended that the doctrine of Wakf is closely interwoven with Mohammedan religion and is referable either to Koran or Hedaya. Any variation in the rule regarding Wakf as laid down in the scriptures of Mohammedan religion is a direct interference with that religion. In this

connection he referred to Amirali's Mohammedan Law Chapter VII pages 152-53 and Chapter VIII page 216 and submitted that according to Hedaya Wakf is a matter of religion.

The learned counsel then referred to Article 26(b) of the Constitution and contended that it is the guarantee given under this provision which will be applicable to the present case. Muslim community in Jaora as a religious denomination is entitled to manage its affairs in the matter of religion as guaranteed under the aforesaid provision of the Constitution and since affairs of religion include a Wakf it is entitled to manage the affairs of Wakfs existing in the town of Jaora.

The guarantee under Article 26(b) of the Constitution unlike that under Article 26(d) is not subject to any law and is absolute. The Muslim Wakfs Act, 1954, and particularly the machinery created thereunder u/s 11 and other impugned sections has the effect of cutting down or restricting the aforesaid freedom guaranteed by the Constitution and for that reason the impugned provisions are beyond the legislative competence of the Parliament. The learned Counsel in this connection referred to the observations of the Supreme Court in *Commr., The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, at p. 290 where they discuss what the term religion does signify. Particular emphasis is laid by him upon the words at the close of Para 17 where their Lordships observed:--

"A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress."

Proceeding to examine the impugned provisions the learned counsel contended that the effect of Section 11 of the Act is to clothe the Government with power to nominate persons on the Board at their sweet will and without the members of the denomination having any voice in the choice thereof! Section 18 moreover clothes the Government with power to remove a Chairman or any member of the Board. The effect of both these provisions is to invest the Government with having a whip-hand with it in the matter of appointment and removal without the Muslim community having a say in the matter.

Section 52 also confers unrestricted powers upon the Government to pass any order, as it may think fit, after it has examined the report of the auditor and called for an explanation from any person with regard to any matter mentioned in the report. Such a power cannot but result in direct interference in the matter of religion. Sections 62 and 63, it is further contended, clothe the Central and State Governments with power of issuing directions to the Board which the latter

is bound to comply.

If the administration of Wakf is to be with the religious denomination by reason of guarantee under Article 26(d) then, according to the learned counsel, the law made by the legislature within its legislative competence must subserve that primary object and it could not be of a nature to totally cloud that object. Sections 62 and 63, according to the learned counsel, have the effect of creating a situation in which hardly any semblance of freedom will be left with the religious denomination in the matter of administration of the properties and affairs of the Wakfs. The learned counsel practically gave up the stand taken in the petition regarding ultra vires character of Section 67 (a), (h), (c), (d), (h), (j), (k) and (n) as they relate to the Board and not to the Wakf or its properties.

As regards the fourth question the learned counsel submitted that the power u/s 42 of the Act has been exercised when the conditions as laid down in the section had not existed. There was neither vacancy in the office of the Mutawalli nor was the right of petitioner No. 1 to act as Mutawalli ever disputed.

The contentions regarding question No. 4 can be easily answered. It has been conceded by Mr. Khan that he would not be in a position to press his stand regarding Nawab Ismail Khan being the founder of the Trust and the petitioner No. 1 being entitled to be the Mutawalli of that Trust on the ground of his being the descendant of the Wakif since the respondents have not admitted the petitioners' allegations on those questions of fact and the point involved disputed questions of fact which could not be gone into in this petition under Article 226 of the Constitution. In view of this position it has to be assumed for the purpose of this petition that the right of petitioner No. 1 to act as the Mutawalli is a disputed one.

Section 42 of the Muslim Wakfs Act, 1954, provides that:--

"When there is a vacancy in the office of the Mutawalli of a Wakf and there is no one to be appointed under the terms of the deed of the Wakf, or where the right of any person to act as Mutawalli is disputed, the Board may appoint any person to act as Mutawalli for such period and on such conditions as it may think fit."

Annexure 4 to the return submitted on behalf of the Chairman of the Board indicates that the Secretary of the Intazamia Committee constituted by petitioner No. 1 in his capacity as Mutawalli of the Wakf was called upon by the Board by its letter addressed to him to produce materials regarding the claim regarding Mutawalliship. The Secretary, in his reply dated 7-8-1957, refused to recognise the status of the Board to exercise functions under the Act on the ground that the legal status of the Board lawfully constituted under the Act was not acceptable to the said Intazamia Committee including the alleged Mutawalli petitioner No. 1.

On receipt of the aforesaid reply Annexure 5 the Board, in its meeting dated 10-9-1957, decided to hold an enquiry into this dispute and pending

consideration of the matter appointed a Committee to act as the temporary Mutawalli in exercise of the power vested in the Board u/s 42. Therefore the action of the Board in appointing a Committee of individuals to take over management of the Wakf in face of the dispute cannot be said to fall outside the terms of Section 42 of the Muslim Wakfs Act.

The exercise of this power in this state of facts cannot be said to be inappropriate and this ground of attack upon the action of the Board is untenable.

This brings us to question No. 3 namely whether the impugned provisions of the Act namely Sections 11, 18, 52, 62, 63 and 64 run counter to Articles 26(b) and (d) of the Constitution as urged by Mr. Khan.

In order to appreciate the contentions raised on behalf of the petitioners it will be useful to have a general survey of the principal provisions of the Act with a view to appreciate the purpose and the scheme of the Act.

Chapter I deals with the application of the Act and definitions of the principal terms in the Act.

Chapter II deals with the subject of survey of Wakfs within the limits of the State through an officer called Commissioner of Wakf with the aid of as many additional and Assistant Commissioners as may be found necessary. The Commissioner after making the required survey is required to submit a report to the Government containing information as laid down in the Act. On "receipt of the report the State Government has to forward a copy of the same to the Board who after examining the same cause a list of Wakfs existing in the State to be made.

Disputes concerninc- a Wakf on the questions of its property or its Shia or Sunni nature has to be resolved by recourse to a suit filed witJv"n one year from the date of publication of the list. Sub-feet to the result of any such suit, if filed, the list is to be conclusive.

Chapter III deals with the establishment of the Wakf Board, its composition, appointment of members" from amongst certain defined categories, their term of office, disqualifications, meetings of the Board and its functions. It further provides for constitution of Committee for performing the work of supervision of Walcf for a particular area and the mode to be adopted by the Chairman Or a member for submitting resignation. There is also a provision empowering a State Government to remove any Chairman or member in the event_of their being subject to any disqualification specified in the Act or in the event of their refusal or incapacity to act or their failure to attend three consecutive meetings.

Provision is also made for filling up the vacancies caused in this manner. The Board is empowered to appoint its officers except the Secretary who is to be appointed by the State Government in consultation with it. Power of delegation is given to the Board whereby the Chairman, member or Secretary or any other officer might be assigned certain of its functions.

Chapter IV deals with the subject of registration of Wakfs whether created before or after the Act. It provides for submission or applications for registration of Wakfs either by the Mutawalli, Wakif, his descendants, or any beneficiary or even any member of the Muslim community of the sect to which the Wakf belongs. The application ought to contain particulars as laid down in the Act. The Board to whom the applications are to be submitted is empowered to call for further particulars or information and to institute enquiries regarding genuineness of any such particulars or information initially given or subsequently supplied.

The Board is required to give a hearing to the person administering the Wakf properties before registering the Wakf. The Board is required to maintain a register of Wakfs containing particulars as laid down in the Act and is empowered to collect information and decide questions regarding any property being Wakf property and any Wakf being of Shia or Sunni character which is to be final subject to the decision of Civil Court if resorted to by any party.

Chapter V deals with Mutawallis and the accounts of a Wakf. The Mutawalli is required to prepare a budget in a prescribed form for approval of the Board. The Mutawalli is required annually to submit statements of accounts which are to be got audited by the Board. Provision is made for making recoveries of the dues from any person found liable in the report of the auditor, Mutawalli is required to carry out directions of the Board and to furnish necessary particulars and information to it and to permit inspection of accounts besides carrying out other duties mentioned in the Act. Penalties are provided for the defaults committed by the Mutawalli indicated in Section 41. The Board is authorised to remove a Mutawalli under certain circumstances as laid down and to appoint a Committee or person to act as Mutawalli with power to remove them in accordance with the provisions made therefor.

Chapter VI deals with the finance of the Board and creation of fund known as Wakf Fund out of contribution paid annually by the Mutawalli after providing for its expenses.

Chapter VII deals with judicial proceedings including of suits u/s 14 of the Religious Endowment Act and Section 92 of the CPC and proceedings under Land Acquisition Act.

Chapter VIII deals with provisions empowering the Central Government to issue directions on questions of policy and the State Government to give any general or special directions. The State Government is further empowered to supersede the Board on certain specified grounds and is further empowered to make rules to carry out the purposes of the Act. The Board is also authorised to make regulations with the previous sanction of the Government.

With the aforesaid general scheme of the Act in view we have to see whether the provisions of the impugned sections run counter to Articles 25 and 26 of the Constitution.

Article 25 of the Constitution guarantees all persons the right freely to profess, practise or propagate religion subject of course to public order, morality or health and to the other provisions of Part III but Sub-section (2) of Article 25 saves inter alia the legislative competence of the State to make laws regulating secular activities associated with religious practice. Article 26 guarantees to every religious denomination subject to public order, morality and health the right:--

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its affairs in the matter of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law.

Mr. Khan tries to bring the case of Wakf including its supervision and control even as regards the secular part of it under Article 26(b) and wants to say that the guarantee under it is not restricted any way as is one under Article 26(b) of the Constitution.

In view of clear provisions contained in Article 25(2)(a) and Articles 26(d) of the Constitution it is difficult to accept Mr. Khan's contention regarding applicability of Article 26(b) of the Constitution to the secular aspects of Wakf. The dispute in this case is as regards administration of the properties of Husain Tekri Sharif. The petitioners were not prepared to recognise the Board and to subject themselves to its lawful authority and were not prepared to submit information and produce materials pertaining (to matters which the Board is lawfully empowered to call for. There was no attempt at interference in the matter of religion. It is not necessary to dilate this point any further as the decisions as regards the correct import of the guarantees referred to in Articles 25 and 26 of the Constitution are clear and contain reasoning which is both decisive and binding.

The Supreme Court in the case reported in AIR 1954 S. C. 282 at p. 289, while considering the true scope of Article 26(b) of the Constitution have answered the question where to draw the line between what are matters of religion and what are not. They observe :--

"It will be seen that besides the right to manage its own affairs in matters of religion, which is given by Clause (b), the next two clauses of Article 26 guarantee to a religious denomination the right to acquire and own property and to administer such property in accordance with law. The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matter of religion. The latter is a fundamental right which no legislature can take away, whereas the former can be regulated by laws which the Legislature can validly impose. It is clear, therefore, that questions merely relating to administration group or institution are not matters of religion to which Clause (b) of the Article applies."

While explaining what the term "religion" in this connection means they observe:

"Religion is certainly a matter of faith with individuals or communities and it is not necessarily ineistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of belief or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress."

In another case which went to the Supreme Court from Bombay reported in *Ratilal Panachand Gandhi Vs. The State of Bombay and Others*, *Ratilal v. State of Bombay*, their Lordships again reiterated the aforesaid view. They observe:

"So far as Article 26 is concerned, it deals with a particular aspect of the subject of religious freedom. Under this Article, any religious denomination or a section of it has the guaranteed right to establish and maintain institution for religious and charitable purposes and to manage in its own way all affairs in matters of religion. Rights are also given to such denomination or a section of it to acquire and own movable and immovable properties and to administer such properties in accordance with law.

The language of the two Clauses (b) and (d) of Article 26 would at once bring out the difference between the two. In regard to affairs in matters of religion, the right of management given to a religious body is a guaranteed fundamental right which no legislation can take away. On the other hand, as regards administration of property which a religious denomination is entitled to own and acquire, it has undoubtedly the right to administer such property but only in accordance with law. This means that the State can regulate the administration of trust properties by means of laws validly enacted; but here again it should be remembered that under Article 26(d) it is the religious denomination itself which has been given the right to administer its property in accordance with any law which the State may validly impose. A law, which takes away the right of administration altogether from the religious denomination and vests it in any other or secular authority, would amount to violation of the right which is guaranteed by Article 26(d) of the Constitution."

In view of these pronouncements of the Supreme Court and the purpose and general scheme of the Act as is discernible by the general survey of the principal provisions of the Act made above it is futile to contend that the question regarding Wakf in so far as it relates to the properties comprised therein and the right of Mutawali or any person to manage the same, properly falls under Article 26(d) of the Constitution. It falls under Article 36(d) of the Constitution and PS such is subject to the law made by the Parliament The legislative competence of the Parliament therefore to make the aforesaid Act cannot be questioned. There is nothing in the impugned Sections which deprives the religious denomination

namely Muslims of their right of administration or administering properties owned and acquired by it altogether with a view to vest it in any other or secular authority.

Section 13 of the Act makes it necessary that every member of the Board must be a Muslim. There, is therefore no attempt at introduction of a person not professing Muslim religion in the matter of formation of a body, which may effectively be possessed of authority to interfere with the management of the property of the Wakf, even temporarily. The right to manage and administer property however is left to the denomination itself except where temporary intervention is considered necessary in the interest of the Wakf itself.

This brings us to the consideration of specific provisions of the Act sought to be impugned. It may be observed here that in seeking to attack the specific provisions of the Act the provisions having a real bearing on the functions and powers of the Board are left out of account and comparatively innocuous provisions are assailed. I shall now discuss those provisions which are challenged in this petition.

Section 11 empowers the State Government to appoint members of the Board and lays down certain categories from which such appointment could be made and provides for proper strength of Shia or Sunni members in the Board having regard to the number and value of Wakfs of the respective sects. Having regard to the functions which the Board is required to perform under the Act it is difficult to say that Section 11 of the Act is any way contrary to any right guaranteed by the Constitution.

Section 18 of the Act deals with the power of the State Government of removing a Chairman or a member on specified grounds which cannot be assailed even on the ground of propriety much less of legality.

Section 52 which empowers the State Government to pass orders on the report of the Auditor, as it may think fit, as against any person referred to in the Auditor's report after calling for an explanation from him, cannot be assailed on the grounds of its being contrary to natural justice or propriety. Much less can it be assailed on the ground of legality.

Sections 62, 63 and 67 which deal with powers of Central Government and State Government to give directions to the Board are intended merely to safeguard proper functioning of the Board in the discharge of its duties under the Act.

The contentions of the petitioners that these provisions run counter to Articles 25 and 26 of the Constitution proceed more as a result of confusion of thought than from any genuine complaint regarding violation of constitutional guarantees given under those Articles. It is not without significance that Section 42 under which the Board acted in appointing a Committee has not been assailed as unconstitutional.

The petition, therefore, is devoid of any force and ought to be dismissed with

costs. Counsel's fee shall be assessed at Rs. 200/-.

Ordered accordingly.