
(1994) 12 KL CK 0033
In the High Court Of Kerala
Case No : W.A. No. 1582 of 1994

P.A. Sulaiman

APPELLANT

Vs

Managing Committee and Others

RESPONDENT

Date of Decision : 21-12-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Waqf Act, 1995 — Section 2(f), 32, 41, 42, 43

Citation : (1995) 1 KLJ 183

Hon'ble Judges : M.M. Pareed Pillay, Acting C.J.; T.V. Ramakrishnan, J

Bench : Division Bench

Advocate : K. Ramakumar, for the Appellant; M.M. Abdul Aziz (Sr. Advocate), Babu Karukapadath and P.K. Muhammed, for the Respondent

Final Decision : Dismissed

Judgement

Pareed Pillay, AG. C.J.

1. Appellant is the additional 7th respondent in O.P. 11389 of 1994. The Original Petition was filed by respondents 1 to 13 challenging the proceedings Ext. P-4 and Ext. P-5 order of the Kerala Wakf Board. For the sake of convenience, the position of the parties as it stood before the learned Single Judge is followed in the discussion hereunder.

3. The Wakf Board in suo motu proceedings appointed petitioners 2, to 13 and 4th respondent as members of the Managing Committee of the Jumaath Mosque by proceedings dated 15-12-1992. The Mosque belongs to Hanafi Jumaath. It was managed on the basis of a scheme framed by the Wakf Board. As per the scheme as amended, the Wakf Board had to appoint thirteen Hanafi Muslims to constitute the Managing Committee of the mosque. As the term of the earlier Managing Committee expired, the Wakf Board appointed petitioners 2 to 13 and 4th respondent in accordance with the scheme. Contention of the petitioners is that all of them have the qualifications prescribed in the scheme framed by the Board, that they were hanafi muslims at the time of their appointment as

members of the Managing Committee, that they were Hanafi muslims prior thereto and that they continue to be Hanafi muslims thereafter. While they were administering the mosque on the basis of their appointments as per Ext. P-1, the Wakf Board issued proceedings dated 7-7-1993 dissolving the Committee and directing the second respondent (Secretary, Kerala Wakf Board) to take charge of the administration of the mosque. The order was challenged by filing O.P. 9472 of 1993. this Court by Judgment dated 20-8-1993 set aside the said order making it clear that it is open to the Board to take a decision afresh after giving notice to the members of the Managing Committee. On 11-9-1993 the Board issued show cause notice to the members of the Managing Committee. They gave their explanation, Ext. P-3 asserting that they are Hanafi muslims and that they follow the Hanafi School of Thought. It appears that the whole controversy was raised by the issuance of a notice by one Sulaiman alleging that the newly appointed members of the Committee are not Hanafi muslims. The Board after hearing the members of the Managing Committee passed Ext. P-4 order dated 9-8-1994 dissolving the Committee and assuming the management and administration of the mosque. The Board also issued a direction Ext. P5 dated 11-8-1994 to the 6th petitioner to hand over the records, accounts cash if any, etc. to the second respondent. Ext. P-4 order and Ext. P-5 notice were challenged by the petitioner in the O.P.

3. Respondents 1 and 2 contended that members of the Committee were nominated under Ext. P-1 by the Board on the assumption that all of them were eligible to be nominated as members of the Committee, that it was found out that petitioners 1,3,5 to 11 and 4th respondent were not eligible to be nominated as they did not belong to Hanafi Madhab and that the mosque being a Hanafi one and as Ext. P-2 postulates that all the members of the Committee except the Board's representatives shall be Hanafi muslims from the area of the Corporation of Cochin it was found really necessary to take over the administration of the mosque pending the constitution of a committee in accordance with the scheme of administration. It is also contended that mere assertion of the members of the Committee that they belong to Hanafi Madhab is not sufficient to hold that they can continue as the Committee members and as they did not produce proof that they belong to Hanafi sect, there is no infirmity in Exts. P-4 and P-5. As regards the 10th petitioner it was contended that he could not produce any evidence to show that he is a resident within the area of the Corporation of Cochin and so he cannot be a member of the Committee in violation of the specific terms in Ext. P-2.

4. The learned Single Judge quashed Exts. P-4 and P-5 holding that the Wakf Board had made an erroneous approach on the question falling for decision and misdirected itself to arrive at its conclusion.

5. Learned Counsel for the appellant submitted that petitioners have no legally enforceable right which could be traced to the nominations and as it can be withdrawn at any time by the Wakf Board it is not a case for exercising powers of

this Court under Article 226 of the Constitution of India. It is also contended that the Wakf Board as a statutory body has exercised its power after affording reasonable and fair opportunity to the petitioners to answer the irregularities noted in their nominations and as it has entered into a finding on evidence on record the learned Single Judge erred in interfering with Exts. P-4 and P-5 and so long as there is no perversity or infirmity in the orders the learned Judge was not justified in quashing the same. It is further contended that even if two views are possible, the learned Judge ought not to have interfered with the orders of the Wakf Board as it would not be within the province of this Court under Article 226 of the Constitution of India to substitute its views in the place of the Board's. Learned Counsel for the petitioners, on the other hand, contended that as the petitioners have been nominated as members of the mosque Committee the Board could have removed them only u/s 43 of the Wakf Act and not in a perfunctory manner disregarding the Act. It is also contended by him that in view of the specific stand of the petitioners that they follow hanafi Madhab and as that declaration itself would be sufficient to be noticed and recognised by the Board its order of dissolution of the Committee cannot have any justification at all.

6. Section 2 (f) of the Wakf Act defines "mutwalli" It reads:

Mutwalli" means 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 mutwalli of a wakf and includes any person who is a mutwalli of a wakf by virtue of any custom or who is a naib-mutwalli, khadim, mejawar, wajjadanishin, amin, or other person appointed by a mutwalli to perform the duties of a mutwalli 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.

As per the definition, any person or Committee managing or administering any wakf property comes under the definition of "mutwalli". As Ext. P-1 discloses the fact that the petitioners were nominated as members of the mosque Committee, the Committee comprised by them is the mutwalli of the mosque.

7. Section 43 of the Wakf Act provides for the removal of mutwallis. This section contains various grounds under which a mutwalli can be removed by the Wakf Board.

A mutwalli can be removed from his office if such mutwalli

- (1) has been convicted more than once of an offence punishable u/s 41; or
- (2) has been convicted of an offence of criminal breach of trust or any other offence involving moral turpitude and such conviction has not been reversed and he has not been granted full pardon with respect to such offence; or
- (3) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him unfit to perform the functions and discharge the duties of a mutwalli; or

- (4) is an undischarged insolvent; or
- (5) is proved to be addicted to drinking liquor or other spirituous preparations, or is addicted to the taking of any narcotic drugs; or
- (6) is employed as a paid legal practitioner on behalf of or against the wakf; or
- (7) has failed, without reasonable excuse, to maintain regular accounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by sub-section(2) of section 32; or
- (8) is interested, directly or indirectly, in a subsisting lease in respect of any wakf property, or in any contract made with, or any work being done for, the wakf or is in arrears in respect of any sum due by him to such wakf; or
- (9) continuously neglects his duties or commits any misfeasance, malfeasance, misapplication of funds or breach of trust in relation to the Wakf, or in respect of any money or other wakf property; or
- (10) wilfully and persistently disobeys the lawful orders made by the Central Government, State Government, Board or Wakf Commissioner under any provision of the Act or rule or order made thereunder.

In view of Section 43, the Board can remove a mutwalli from his office only on the specified grounds. Section 42 has no application to a case where mutwalli has been appointed by the Board. Application of Section 42 arises only in a case where there is a vacancy in the office of the mutwalli 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 mutwalli is disputed. On a plain reading of Section 42 it is apparent that the power of appointment can be exercised only when there is a vacancy. This section enables the Wakf Board to step in when there is vacuum, there being none to act as a mutwalli. Section 43 (5) makes the position clear that the Board can order or direct the mutwalli to deliver possession of the wakf property to the Board or any officer thereof duly authorised in this behalf or to any person or committee appointed to act as the mutwalli of the wakf property only in a case where a mutwalli has been removed from his office under sub-section (1). As the power of appointment conferred by Section 42 can only be exercised when there is a vacancy, contention of the appellant that the Board's action can be justified u/s 42 is not tenable. As the Board has no case that the petitioners have committed any act of omission or commission coming within the purview of Section 43 (1), the dissolution of the Committee is without any legal basis.

8. Contention of the appellant that mere assertion of the petitioner that they belong to Hanafi sect would not be sufficient to hold that they really belong to that sect, is also not tenable. Any person who professes Islam and acknowledges that there is only one God and that Mahomed is His Prophet is a muslim. He may be a muslim by birth or may be a muslim by conversion. It is not necessary that he should observe any particular rites or ceremonies or be an orthodox believer

in that religion (Mulla's Mahomedan Law 19th Edition page 14). In *Abdool Razack v. Aga Mahomed* (1894) 21 I.A. 567 it has been held that no Court can test or gauge the seniority of religious belief. It is also apposite to refer to the following passage in the Muslim Law of India by Dr. Tahir Mahmood:-

According to a well-established tradition of the Muslim world, every Muslim individual is expected to adhere into one or another school of law; one cannot pick and choose legal rules for oneself out of the various schools. One can, however, freely abandon one school and adopt a different school. In the eyes of law all schools have equal legal validity and authority.

As the petitioners have made the declaration in Ext. P-3 that they are Hanafi Muslims and that they follow the Hanafi School of Thought, contention of the appellant that they cannot be considered as Hanafi muslims is without any merit. As the right to manage religious institution is a right which is recognisable and enforceable in a Court of law and as the mutwalliship of the petitioners is a fait accompli, they can be removed only by recourse to the method known to law. Contention that they were nominated by the wakf Board and so they could be removed whenever situation warranted and being nominated members they cannot challenge the action of the Wakf Board in a Court of law is untenable. We do not find sufficient reasons to interfere with the judgment of the learned Single Judge. In the result, the Writ Appeal is dismissed.