
(2008) 08 KL CK 0035

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 30649 of 2006 and 6932 and 25659 of 2007

P.K.M. Kutty Haji

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 14-08-2008

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 28A, 32, 33
Kerala Co-operative Societies Rules, 1969 — Rule 39(1), 44, 46
Waqf Act, 1995 — Section 14, 14(1), 14(2), 15, 16

Citation : (2008) 08 KL CK 0035

Hon'ble Judges : K.P. Balachandran, J;J.B. Koshy, J

Bench : Division Bench

Advocate : P.S. Abdul Kareem, for the Appellant; T.B. Hood, Govt Pleader, P.A. Abdul Jabbar and M.M. Saidu Mohammed, for the Respondent

Final Decision : Allowed

Judgement

J.B. Koshy, J.—W.P.(C) Nos. 6932 and 25659/2007 are filed by the two members who were elected to the Kerala State Wakf Board from the constituency of the Muslim members of the State Legislative Assembly in November, 2003. The election and removal of service in the Kerala State Wakf Board are governed by the provisions of the Wakf Act, 1995. Section 14(2) of the Wakf Act reads as follows:

(2) Election of the members specified in Clause (b) of Sub-section (1) shall be held in accordance with the system of proportional representation by means of a single transferable vote, in such manner as may be prescribed:

Provided that where the number of Muslim Members of Parliament, the State Legislature or the State Bar Council, as the case may be, is only one, such Muslim Member shall be declared to have been elected on the Board:

Provided further that where there are no Muslim Members in any or the categories mentioned in Sub-clauses (i) to (iii) of Clause (b) of Sub-section (1),

the Ex-Muslim Members of Parliament, the State Legislature or ex-member of the State Bar Council, as the case may be, shall constitute the electoral college.

Section 15 provides that they shall hold office for a term of five years. Disqualification for being appointed, or for continuing as, a member of the Board are mentioned u/s 16 which reads as follows:

16. Disqualification for being appointed, or for continuing as, a member of the Board.- A person shall be disqualified for being appointed, or for continuing as, a member of the Board if:

- (a) he is not a Muslim and is less than twenty-one years of age;
- (b) he is found to be a person of unsound mind;
- (c) he is an undischarged insolvent;
- (d) he has been convicted of an offence, involving moral turpitude and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;
- (e) he has been on a previous occasion
 - (i) removed from his office as a member or as a mutawalli, or
 - (ii) removed by an order of a competent court or tribunal from any position of trust either for mismanagement or for corruption.

Section 20 deals with removal of Chairperson and members which reads as follows:

20. Removal of Chairperson and member.- (1) The State Government may, by notification in the Official Gazette, remove the Chairperson of the Board or any member thereof if he:

- (a) is or becomes subject to any disqualifications specified in Section 16; or
 - (b) refuses to act or is incapable of acting or acts in a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the wakfs; or
 - (c) fails in the opinion of the Board, to attend three consecutive meetings of the Board, without sufficient excuse.
- (2) Where the chairperson of the Board is removed under Sub-section (1), he shall also cease to be a member of the Board.

Petitioners in W.P.(C) Nos. 6932 and 25659/2007 ceased to be Members of the Legislative Assembly in May 2006. Both of them were issued with a show cause notice by the Chief Executive Officer of the Kerala State Wakf Board (Ext. P-1 letter). The contents of the letter is as follows:

I am enclosing herewith letter dated 17-2-2007 of Principal Secretary, Revenue

Department, Government of Kerala, Thiruvananthapuram. You are requested to submit the required explanation if any, within one week to the undersigned so as to forward the same to the Government for further action.

It shows that Chief Executive Officer simply forwarded (Ext. P-2) letter of the Government. Ext. P-2 reads as, follows:

It is the contention of the Petitioners that the above letter was very general and no specific allegations are raised. It is also not mentioned that under what provision of the Statute the notice was issued. The above show cause notice only mentioned about members who are continuously absent in the meetings without valid reasons. In fact, no notice to them was personally issued and even the names of the Petitioners were not mentioned in Ext. P-2. Even a formal reply cannot be filed as allegations are vague.

2. Petitioner in W.P.(C) No. 6932/2007 immediately approached this Court and obtained a stay of further proceedings. Petitioner in W.P.(C). No. 25659/2007 gave Ext. P-3 reply. He denied the allegation that he did not attend the meetings of the Wakf Board continuously without any valid reasons. He even attended the last meeting held on 15-2-2007 immediately before the date of issuance of notice. He also enclosed copy of the attendance register of the Board meeting for the period from 17-12-2003 to 15-2-2007 to show that he was regular in attending the meetings. Thereafter, no hearing was conducted and Ext. P-4 was issued removing the Petitioner in W.P.(C) No. 25659/2007 from the membership by invoking powers conferred by Clause (b) of Sub-section (1) of Section 20 of the Wakf Act. That is challenged in these writ petitions. It is also mentioned in Ext.P-4 that he ceased to be a Member of the Kerala Legislative Assembly but he was removed for the allegations under Clause (b) of Sub-section (1) of Section 20.

3. First question is whether merely by ceasing the membership of the Legislative Assembly, he will cease to be a member of the Wakf Board. Main argument put forwarded by the counsel for the Petitioner is that at the time of election, he was fully qualified. He was elected as a Member of the Legislative Assembly at the third time. He was lawfully elected. Once he is elected, term of office is for a period of five years. So he can continue till November 2008 unless he is specifically disqualified u/s 16. Ceasing to be a Muslim or convict in an offence involving moral turpitude etc. are reasons for disqualification. Ceasing of the membership in the Legislative Assembly is not considered as a disqualification. u/ s 20 also it is not stated that such person will automatically cease from the membership of the Wakf Board. Contention is that once he was elected from the Constituency, he will have to continue till the end of the term. Under the Kerala Co-operative Societies Act, Presidents and Vice Presidents are elected from the Committee members. There was no provision for removing a President and Vice President by a no confidence motion. A Full Bench of this Court in Lakshmanan v. Velliankeri 2002 (2) KLT 782 (F.B.) considered the matter and held that in the absence of such a provision, they cannot be removed by a no confidence motion.

Speaking for the Bench, Sri B.N. Srikrishna, Chief Justice (as he then was) observed at paragraph 16 as follows:

16. The Committee is elected by following the procedure prescribed under the Act and the Rules and is guaranteed a tenure as prescribed in the bye-laws, by virtue of Rule 39(1). It can only be removed by the procedure prescribed in the Act or the Rules or the Bye-laws. The only contingency under which the Committee may be removed before the end of its tenure is indicated in Section 33(I) of the Act. Section 33(I) of the Act envisages the passing of a no confidence motion by the General Body which results in wholesale removal of the committee. Barring this provision, there is no other provision by which an elected individual member of the committee can be removed. We are, therefore, unable to accept the contention of the Appellants that such a drastic power can be read into the Act, even where there are no provisions. The doctrine of "casus omissus" is squarely applicable to the situation. In page 33 of the Maxwell's Interpretation of Statutes, 12th Edition it is stated as under:

It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the Legislature intended something which it omitted to express. Lord Mersey said: It is a strong thing to read into an Act of Parliament words, which are not there, and in the absence of clear necessity it is a wrong to do"

"We are not entitled", said Lord Loreburn L.C., "to read into an Act of Parliament unless clear reason for it is to be bound within the four corners of the Act itself."

As not for the court to supply what is an omission in the statute. The Court must interpret the provision as they are without adding anything. This is one of the basic canons of construction of a statute. [See in this connection, Maruti Wire Industries Pvt. Ltd. Vs. S.T.O., Ist Circle, Mattancherry and Others, .]

Thereafter, Section 28 AA was intruded provisionally for the removal of President and Vice President by a no confidence motion of the committee. We also note that under the Co-operative Societies Act, in a Apex Society, a delegate member of the primary society can be elected as a member of the committee of the Apex Society. But specific provision made to the effect that he will cease to be a member of the Apex Society when he ceases to be a member of the primary society. Rule 46 of the Co-operative Societies Act reads as follows:

46. Term of office of member of committee who is delegate of another Society.

A delegate of one society sitting on the committee of another society shall cease to be a member of such committee:

(a) if the society which elected him as a delegate withdraws him or elects another delegate in his stead; or

(b) in case he was elected as a delegate by a society, on the supersession of the

committee of such society u/s 32;

(c) if the registration of the society, of which he is delegate, is cancelled, or

(d) if he incurs any disqualification mentioned in Rule 44, or

(e) if the society which sends him as delegate is in default to the society, in the committee of which he sits as a delegate.

It was further argued that once he is elected, he will cease to be a member of the Board only by provisions mentioned in the Act. The Apex Court in *Charan Lal Sahu v. Giani Zail Singh and Anr. with Nem Chanda Jain v. Zail Singh and Charan Lal Sahu and Others Vs. Giani Zail Singh and Another*, observed as follows:

24. These being the only provisions of the Act under which the election of a returned candidate can be declared void. The question as to whether the returned candidate is suitable for holding the office of the President is irrelevant for the purposes of this Election Petition. While dealing with an Election Petition filed u/s 14 of the Act, this Court cannot inquire into the question whether the returned candidate is suitable for the office to which he is elected. The rights arising out of elections including the right to contest or challenge an election, are not common law rights. They are creatures of the statutes which create, confer or limit those rights. Therefore, for deciding the question whether an election can be set aside on any alleged ground, the courts have to consult the provisions of law governing the particular election. They have to function within the framework of that law and cannot travel beyond it. Only those persons on whom the right of franchise is conferred by the statute can vote at the election.

Therefore, we are of the view that when one Muslim member of the Legislative Assembly is elected as the member of the Wakf Board, he will have to continue in office for five years in the absence of a specific provision that when he ceases to be a Member of the Legislative Assembly, automatically his membership in the Wakf Board also will cease and this Court cannot fill the allowed gap and the Legislature is free to add such a clause in the Wakf Act if it is really needed. But it is not for the Court to fill up the gaps imagining the intention of the Legislature.

4. Second question is whether the removal of the membership can be done by the Government for continued absence. It is the case of the Petitioners that u/s 20(1)(c), for absence of attending three consecutive meetings of the Board without sufficient excuse, a person can be removed, provided, the absence was without sufficient reasons. It is argued that only Board can remove a person for consecutive absence. Once a power is vested in the Board only the Board can give opinion to that effect. In this connection the decision of the Supreme Court in *University of Kashmir and Others Vs. Dr. Mohd. Yasin and Others*, was cited, wherein, at paragraph 8, it was observed as follows:

8. The ground urged successfully, as it were, before the High Court, of an implied engagement cannot, in our view, be sustained. When a statute creates a body and vests it with authority and circumscribes its powers by specifying limitations.

The doctrine of implied engagement de hors the provisions and powers under the Act would be subversive of the statutory scheme regarding appointments of officers and cannot be countenanced by the Court. Power in this case has been vested in the University Council only and the manner of its exercise has been carefully regulated. Therefore, the appointment of the Respondent could be made only by the Council and only in the mode prescribed by the statute. If a Vice-Chancellor by administrative drift allows such employment it cannot be validated on any theory of *factum valet*. We cannot countenance the alleged continuance of the Respondent in the University campus as tantamount to regular service under the University with the sanction of law. In short, the Respondent has no presentable case against the direction to quit.

A Division Bench of this Court in *Lakshmikutty Amma v. Vijayalakshmikutty* 1992 (2) KLT 341 also observed that once a duty is entrusted by an authority, only that authority can decide the matter. Chief Justice Sri. Jagannadha Rao (as he then was) observed for the Division Bench as follows:

It is now well-settled that if a statute prescribes that an act has to be done in a particular manner, that act can be done only in that manner, and in no other manner. If a statute gives a power to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden. [Taylor v. Taylor (1875) 1 Ch.D. 426 quoted in *State of Gujarat Vs. Shantilal Mangaldas and Others*, and *University of Kashmir and Others Vs. Dr. Mohd. Yasin and Others*,]

Contention of the learned Government Pleader is that they were not removed u/s 20(1)(c) but only u/s 20(1)(b) as they refused to act or is incapable of acting or acts in a manner which the State Government, after hearing any explanation that he may offer considers to be prejudicial to the interests of the wakfs. But Section 20(1)(c) is a specific provision dealing with consecutive absence of a member from the meetings and when there is specific provision, general provision u/s 20(1)(b) will not apply if the alleged disqualification is only for consecutive absence on the principle of "*Generalia Specialibus non derogant*" but "*Specialia derogant Generalibus*". It is well accepted principle that special provision will curtail general provision. Even if Section 20(1)(b) is applicable for attracting that Sub-section, show cause notice should be served on the parties specifically showing that their act detailed in the notice is prejudicial to the interests of the Wakf Board in the opinion of the State. Such a ground is not mentioned in Ext. P-2 show cause notice. Apart from that absence in the meetings is not enough to attract Section 20(1) (b). Section 20(1)(b) attracts only if a member refused to act or is incapable of acting in a manner prejudicial to the interests of the Wakfs. If action is taken against that order, specific show cause notice should be served stating that grounds and hearing should be granted. Such a reason should be mentioned. Here that reason was not specifically mentioned in the show cause notice. In fact, no show cause notice was served by the Government to the Petitioners. A general letter issued to the Chief Executive Officer without any

particulars will not be enough. In the above circumstances, the show cause notice issued in W.P. (C) No. 6932/2007 and show cause notice and orders issued in W.P.(C) No. 25659/2007 are set aside with consequential reliefs. We make it clear that this will not prejudice to take action according to law after complying with, the procedural formalities under the Act. We also note that their term of office will expire in November 2008. Therefore, it is time for taking steps for electing the Wakf Board according to law. W.P.(C) 30649/2007 was filed by a person, who alleged to be social worker stating that Government should take steps to remove the Respondents (Petitioners in the other writ petitions) on the ground of absence of attending consecutive meetings. For that, Wakf Board has to take a decision if anyone fails to attend three consecutive meetings of the Board without sufficient reasons. Since the matter is already covered by the earlier part of the judgment, no separate order is necessary. W.P.(C) Nos. 6932 and 25659/2007 are allowed and W.P.(C) No. 30649/2007 is disposed of as above.