

(1982) 10 AP CK 0016

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 537 and W.A.M.P. No's. 1395 and 1408 of 1982

Rahmatullah Khaleem and Others

APPELLANT

Vs

The Andhra Pradesh, Wakf Board and Others

RESPONDENT

Date of Decision : 25-10-1982

Acts Referred:

Waqf Act, 1954 — Section 16

Citation : AIR 1983 AP 116

Hon'ble Judges : K. Madhava Reddy, Acting C.J.;Amareswari, J

Bench : Division Bench

Advocate : E.V. Bhagiratha Rao, for the Appellant; Syed Sadatullah Hussain and C. Seetharamayya, for the Respondent

Judgement

Amareswari, J.—This writ appeal is directed against the order of our learned brother chennakesav reddy j. Dismissing the writ petition at the stage of admission. The matter relates to the Constitution of a Managing committee to the Azampura mosque which is a registered wakf Institution under the andhra pradesh Wakf Institution under the Andhra pradesh wakf Act 1954. At a general body meeting held on 9-5-1982 for the purpose of electing members to the Managing committee of the Mosque 16 persons including the appellant herein contested. Seven persons including the petitioner-appellant were declared elected as they got more votes than others. On 11-6-1982 the chairman Andhra Pradesh Wakf Board in proceedings No. 10/16/81-K nominated four out of the defeated candidates to be on the Managing committee of the Mosque. The Wakf board by its proceedings dated 15-6-1982 constituted the Managing committee with the 7 elected and the 4 nominated members and convened a meeting on 16-8-1982 for electing the president and the other office-bearers and directed the inspector Auditor, Wakf Board to preside over the said meeting. The meeting scheduled to be held on 16-6-1982 was postponed and after a fresh notice a meeting was held on 20-6-1982 at which the president was elected and the president in his turn nominated the vice-president and secretary.

2. At this stage, the appellant filed the writ petition challenging the Constitution of the committee and the proceedings of the chairman. Wakf Board dated 11-6-1982 nominating the four defeated members respondents 2 to 5 herein to the Managing committee of the Mosque the main contention was that nomination of defeated members is bad in law and destructive of democratic process. The learned single Judge dismissed the writ petition holding that there is no error apparent on the face of the record or patent illegality in the Constitution of the committee.

3. Assailing the validity of the said order, the petitioner preferred this appeal. Two others who were elected on 3-5-1982 to the managing committee of the Mosque filed the W.A.M.P. No. 1395 of 1982 to implead themselves as appellants. Since they are the members of the managing committee and as such vitally interested in the proceedings before this honourable Court, they are impleaded as appellants.

4. The contentions of the appellant are two-fold. The nomination of persons who were defeated in the elections is contrary to law and in violation of all democratic conventions. We find no force in this submission. Whatever may be the merits or demerits soundness or otherwise of such a procedure there is no provisions either in the bye-laws or in the wakf Act disentitling the defeated members from being nominated. In the absence of any express or implied prohibition, we are unable to hold such action legally impermissible. We therefore reject this contention.

5. It is next contended that the Azampura Mosque is an ordinary Mosque and under bye-laws 7 and 8 the managing committee cannot be constituted with 11 members consisting of 7 elected and 4 nominated. It is contended that the Managing committee should consist of 4 elected members and 3 nominated members and the election held on 9-5-1982 electing 7 persons and nominating 4 members on 11-6-1982 is contrary to bye-laws 7 and 8 of the bye-laws for the management of the mosque framed under S. 16 of the central wakf Act of 1954. This contention was raised for the first time in the writ appeal by way of an additional ground and as no investigation into facts is necessary we permitted the petitioner to raise this ground. In the counter filed on behalf of the Wakf Board and respondents 2 to 5 it is admitted that the committee was constituted with 11 members consisting 7 elected and 4 nominated. According to the respondent, the Azampura Mosque is a jamia Mosque and not an ordinary Mosque and as such the strength of the Managing committee is 11 and not 7 as contended by the appellant. Though there was some initial controversy, the learned counsel for the appellant practically conceded that it is a jamia mosque. Even then it is submitted that the composition of the committee is contrary to bye-law 8 as there were 7 elected members instead of 6 and 4 nominated members instead of 5.

6. To appreciate this contention. It is necessary to refer to bye-laws 7 and 8.

7. Every Mosque would constitute a managing committee consisting of 7 members in all common Mosques and in Jamia Mosque or Mosques of special nature, the Board would decide the strength of the committee which will be 11 in maximum".

8. The majority of the managing committee of common mosques i.e. 4 members would be elected by secret ballot and the remaining 3 members be nominated by the district or ward committee. In Jamia Mosque or mosques of special nature whose strength would be decided by the Board under R. 7, 6 members among 11 would be elected by the Majlis Musalliyan through secret ballot and remaining 5 members be nominated by own discretion of the Board after duly consulting with the district or ward committee.

The election of the members of the managing committee by the Majlis Musalliyan through secret ballot is subject to the confirmation of the chairman of Wakf Board.

As per bye-law 7 in the case of an ordinary mosque the strength of the managing committee is 7 whereas in the case of a jamia Mosque the strength of the committee has to be fixed by the Board subject to a maximum of 11. As observed earlier, though there was a dispute about the nature of the mosque, it is practically agreed and the arguments proceeded on the footing that the Azampura Mosque is a jamia Mosque and the strength was fixed at 11. Under Bye-law 8, in the case of an ordinary mosque the committee should consist of 4 elected members and 3 nominated members and in the case of Jamia Mosque or mosques of special nature, the committee should consist of 6 elected members and 5 nominated members. Bye-law 7 deals with the Constitution and the strength of the committee and bye-law 8 speaks of the composition of the committee. In the instant case there is no dispute that it is a jamia Mosque. There is also no dispute that the committee was constituted with 11 members. But the committee was constituted with 7 elected members and 4 nominated members and as such the Constitution of the committee is in clear violation of bye-law 8. But Mr. C. Sitaramayya, learned counsel for the respondents submits that the nomination of 4 members need not be set aside and the Board may be directed to nominate one more member to be in conformity with bye-law 8. We cannot agree. The election of 7 members instead of 6 members on 9-5-1982 is patently illegal being contrary to bye-law 8. When once the election is held to be illegal the proceedings nominating 4 members cannot be upheld. Bye-law 8 says that out of 11, 6 members would be elected and the remaining 5 members are to be nominated by the Board. The words "remaining" Assumes importance in the context and it indicates that nomination can be done only after election of the required number of members. Otherwise there is no necessity to use the expression remaining. The bye-law would have simply said that the Managing committee should consist of 6 elected members and 5 nominated members. The use of the expression "remaining" indicates that the nomination can be done only after the election. If the members are to be nominated first and elections are to

be held next, the words remaining 5 members to be nominated" would become meaningless. Further once the Constitution of the committee is held to be illegal, the entire committee is non-existent and the respondents will have to reconstitute the committee in accordance with bye-laws 7 and 8. Under bye-law 14 the elected and nominated members should elect the president and the president in his turn has to nominate the vice-president and the secretary from among the members to the managing committee under bye-law 15. Since the committee itself is constituted contrary to bye-law 8, the election of the president and the nomination of the vice-president and the secretary are equally illegal. The entire proceedings relating to the Constitution of the Mosque starting with the election of 7 members and nomination of 4 members and the election of the president by such a Board and nomination of the vice-president and the secretary by the president is illegal.

7. For the above reasons, we hold that the Constitution of the Managing committee of the Azampura Mosque is contrary to bye-laws 7 and 8. We accordingly set aside the entire proceedings relating to the Constitution of the Managing committee starting from elections on 9-5-1982 and direct the first respondent to constitute the Board in accordance with bye-laws 7 and 8 and in the light of the observations made above.

8. The writ appeal is accordingly allowed No costs.

9. Appeal allowed.