
(1999) 08 AHC CK 0076
In the Allahabad High Court
Case No : Writ Petition No. 3687 (M/B) of 1999

Saeedul Hasan Hashmi

APPELLANT

Vs

U.P.Sunni Central Board and Others

RESPONDENT

Date of Decision : 27-08-1999

Acts Referred:

Waqf Act, 1995 — Section 65

Citation : (1999) 08 AHC CK 0076

Hon'ble Judges : Ikram-Ul-Bari, J and Pradeep Kant, J

Judgement

1. We have already quashed the impugned order dated 9/13th July, 1999, as contained in Annexure 11 to the writ petition and also the notification issued by the State Government, published in official Gazette vide the order dated 2781999 we are hereby setting the reasons for allowing the writ petition.

2. The petitioner who was admittedly appointed as NaibMutwalli and was looking after the property of Waqf after the death of Mutwalli with due permission of the Board, has approached this Court being aggrieved by the order dated 9/13th July, 1999, passed by the Chief Executive Officer of U.P. Surini Central Board of Waqf by virtue of which the management has been taken over directly by the Board for a period of five years or till the dispute regarding "Tauliat" (Mutwalliship) is decided, whichever is earlier.

3. The learned Counsel for the petitioner urged that this order passed by the Chief Executive Officer in purported exercise of powers under Section 65(1) of the Waqf Act, 1995, does not conform to the provisions mentioned therein. Further the argument is that under Section 65 of the above Act the Board can take the management on two conditions, namely (i) where no suitable person is available for appointment as Mutwalli of a Waqf, or (li) where the Board is satisfied, for reasons to be recorded in writing that the filling up of the vacancy in the office of Mutwalli is prejudicial to the interest of the Waqf. The impugned order does not indicate that any of the two ingredients were either considered or were present at the time of passing of the said order and the sole reason that

there is a dispute regarding Mulwalliship cannot be a ground for taking over the management under Section 65 of the above Act particularly when the petitioner has been appointed as NabMutwalli and has been looking after the affairs of the Waqf allegedly satisfactorily after the death of the Mutwalli with the permission of the Court.

4. It has further been submitted by the learned Counsel for the petitioner that it is a Waqf Alalaulad and he being the deceased, out of Waqf is entitled to be appointed as Mutwalli whereas the opposite party No. 4 is (sic) cannot be appointed Mutwalli. The nature of the Waqf as Waqf Aialaulad is being disputed by the opposite parties.

5. The learned Counsel for the respondents Sri Umesh Chandra submitted that by inference if there is a dispute regarding appointment of Mutwalli the Board was conferred with the powers to issue orders under Section 65(1) for taking away the Management in its own hands. It has further been submitted that an application was moved by opp. party No. 4 on 6th July, 1999 and therefore, a dispute has arisen as to who should be appointed as Mutwalli.

6. The learned Counsel for opposite parties also tried to impress upon the Court that there was certain charges against the NaibMutwalli, therefore, it will not be in the fitness of things to interfere in the impugned order.

7. The learned Counsel for the petitioner disputed this allegation and asserted that his working has not been found unsatisfactory till date nor any notice has been given to him indicating the short coming which might have been occurred during the management of the petitioner.

8. There is some dispute regarding the date of passing of the impugned order also. The order has been passed on 9th July, 1999, but the same has been signed on 13th July, 1999. To attract the allegation of mala fide, the learned Counsel for the petitioner assured that although the order was signed on 13th July, 1999, it has been brought to the notice of the Court by producing the Gazette Notification that the same has been published in Extraordinary Gazette on 9th July, 1999. The contention of the learned Counsel for the petitioner, that this could not have been done with the order itself was passed on 9th July, 1999 the question of its publication in official gazette on 9th July, does not arise.

9. Without entering into the merits of mala fides or the allegations regarding evidence of the petitioner to be appointed as Mutwalli but with a view to do justice between the parties, we find that nothing has been brought on record to indicate that there was any sort of notices or warning to the petitioner regarding his conduct of affairs during the entire period of NaibMutwalli, or after the death of Mutwalli, when he was permitted to look after the work of Mutwalli.

10. We also find that Section 65 of the above Act is a provision which divests the members of the Waqf, Mulwalli and NaibMutwalli of their rights of managing the Waqf property in case the action is taken under the said provisions. The said

provision which divest the right of a person and the office bearers including Mulwalli and NaibMutwalli and then the power to take the management by the Board in its own hands, is to be construed strictly in accordance with the provisions of the said Section. The powers cannot be exercised on any ground which does not fall within the ambit of Section 65 because such exercise of power would amount to passing of the order of taking over an extraneous consideration.

11. In Section 65(1) two conditions have been mentioned that where no suitable person is available for appointment as Mutwalli of a Waqf. or where the Board is satisfied, for reasons to be recorded in writing that the filling up of the vacancy in the office of Mutwalli is prejudicial to the interest of Waqf, the Board may by Notification in the office Gazette, assume direct management of the Waqf for such period or periods not exceeding five years in aggregate as may be specified in the Notification.

12. Apparently, in the present case the order does not refer or mention any of the two conditions which necessitated the Chief Executive Officer to exercise powers, at the relevant time he was authorised to exercise powers of the Board under the orders of the High Court. The so-called dispute regarding Mutwalliship cannot be a ground for invoking the provisions of Section 65 more so when the petitioner has applied for his appointment as Mutwalli in the year 1997, and the opposite party No. 4 moved an application only on 6th July, 1999 and immediately thereafter without considering the question of appointment of Mulwalli, the impugned order has been passed. Since the impugned order does not conform to the conditions mentioned in the Section namely, Section 65(1) we do not find any justification for upholding the said order.

13. At this stage, when we were willing to pass an interim order in favour of the petitioner the learned Counsel Sri Umesh Chandra appearing on behalf of Opp. Party submitted that the impugned order be quashed instead of staying its operation and he would have no objection.

14. We for the reasons recorded above and also after holding that the impugned order has been passed on the ground not mentioned in the provisions of Section 65(1) and is based on extraneous consideration which reflects nonapplication of mind by the Chief Executive Officer, we have already quashed the said order including the Notification published in the official gazette in pursuance of the said order, vide our order dated 27/8/1999, in open Court. Petition allowed.