
(2017) 03 KAR CK 0136
In the Karnataka High Court
Case No : 200676-677 of 2017

SHAFIQ UR REHAMAN

APPELLANT

Vs

THE STATE OF KARNATAKA & ORS

RESPONDENT

Date of Decision : 21-03-2017

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court
Wakf Act, 1995

Citation : (2017) 03 KAR CK 0136

Hon'ble Judges : Rathnakala

Bench : SINGLE BENCH

Advocate : AMEET KUMAR DESHPANDE, SHIVAPUTRA S. UDBALKAR, LIYAQAT FAREED USTAD

Judgement

1. The petitioner is aggrieved by the Orders at Annexures-A and D. Vide Annexure-A the Administrator is appointed for the administration of the Muslim Hostel Madeena Building, Station Road, Kalaburagi District of which the petitioner claims to be the Mutuwalli. Vide Annexure-D, the revision petition filed by the petitioner challenging the order at Annexure-A is dismissed.

2. Sri.Ameetkumar Deshpande, learned counsel for the petitioner submits that the order at Annexure-A is in utter violation of the procedure and also principles of natural justice. It is not a speaking order also. The revision petition was dismissed under the assumption that the petition was not maintainable. The respondent nos.2 and 3/authority is relying on the audit report of 2013-14 for which he had already submitted his reply. There is no consideration of the reply submitted by him in the order at Annexure-A. Unless office of Mutuwalli is vacated by following the procedure contemplated under Section 64 of Wakf Act 1995 (for short "Act") an administrator cannot be appointed. No such enquiry under the provisions of Section 64 of the Act was held before passing the order at Annexure-A. He being the hereditary Mutuwalli, same having been accepted

by the Board, long back now the Board in projecting at Annexure-A as if enquiry was held. Hence both Annexures-A and D are liable to be quashed.

3. Sri.Liyaqat Fareed Ustad, learned counsel for the respondent nos.3 and 4 - WAKF submits that there was serious allegation of mismanagement and misappropriation against the petitioner. Annexure-A depicts that a notice in Form-79 was issued to the petitioner on the basis of Audit report and his objection to the same was considered. Enquiry as contemplated under Section 64 of the Act does not always mean that a trial has to be held. It is enough that the petitioner is informed of the allegations against him and given opportunity to file objections. The allegations made in Annexure-A is passed on consideration of his objection statement and it cannot be held that Annexure-A is passed without holding enquiry. So far Annexure-D is concerned, the revisional authority on assessment of the case of the petitioner, did not find any merits in his case. Hence revision petition is dismissed as not maintainable. Wherefore, both orders may be sustained and petition may be dismissed.

4. In the light of the above submissions, perused Annexure-A - the Order dated : 12.01.2016. Section 64(3) of the Act contemplates thus :- "No action shall be taken by the Board under sub-section (1), unless it has held an inquiry into the matter in a prescribed manner and the decision has been taken by a majority of not less than two-thirds of the members of the Board."

5. Though a notice under Form-79 is said to have been issued to the petitioner, there is nothing from the said order that the reply submitted by the petitioner was considered. The tone of the Order is unilateral and it is a non speaking order, thus violative of principles of natural justice.

6. In Woolcombers of India Ltd. vs. Woolcombers Workers Union and another the Apex Court observed thus : "5. The giving of reasons in support of their conclusions by judicial and quasi-judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion."

7. In State of Orissa Vs. Dhaniram Luhar the Apex Court observed that reason is the heartbeat of every conclusion and without the same it becomes lifeless.

8. The revision Under Section 65(2) of the Act is provided against the order passed under Section 64(1) of the Act (regarding direct management of Wakf by Board). The revision authority without adverting to the procedure contemplated by Section 64(3) of the Act has dismissed the petition on the sole reason that condition no.10 of confirmation to his post as Mutuwalli had reserved right to remove him and constitute any committee or replace every Mutuwalli. The condition no.10 of his appointment cannot be ultra virus to the statutory provisions of Section 64(3) of the Act. Hence, the order at Annexure-D is also vitiated and liable to be set-aside. Petitions are allowed. Annexures-A and D are

quashed.

9. The respondents Board of Wakf is directed to pass order in accordance with law as per the procedure contemplated under Section 64(2) of the Act, after giving audience to both parties and in the light of the observations made above.