
(2001) 12 AP CK 0056
In the Andhra Pradesh High Court
Case No : CRP No. 5537 of 2001

Shaik Ghouse Mohiuddin

APPELLANT

Vs

Andhra Pradesh State Wakf Board and Others

RESPONDENT

Date of Decision : 28-12-2001

Acts Referred:

Waqf Act, 1954 — Section 29
Waqf Act, 1995 — Section 42, 63, 83(9)

Citation : AIR 2002 AP 344 : (2002) 1 ALD 751 : (2002) 1 APLJ 154

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : M.A. Bari, for the Appellant; S.M. Subhani, SC and Imamullah Baig, for the Respondent

Final Decision : Dismissed

Judgement

Motilal B. Naik, J.—In this revision petition, the orders dated 19-11-2001 made by the Andhra Pradesh Wakf Tribunal, Hyderabad (hereinafter referred to as "the Tribunal") in Appeal No. 6 of 1998 is challenged on various grounds.

2. The petitioner is the son of the late Abdul Gaffoor, who worked as Muthawalli of the Dargah Hazrath Baji Shaheed (hereinafter referred to as "the Dargah"). The petitioner approached the Andhra Pradesh Wakf Board (hereinafter referred to as "the Wakf Board") to notify and recognize him as Muthawalli of the Dargah u/s 29 of the Wakf Act, 1954 corresponding to Section 42 of the Wakf Act, 1995 as per the direction of this Court in WP No. 2248 of 1997.

3. Pursuant to the direction issued by this Court while disposing of WP No. 2248 of 1997, an enquiry was held by appointing an Enquiry Officer Sri Khader Mohiuddin and thereafter it was resolved in the meeting of the Wakf Board to accept the finding of the Enquiry Officer to appoint the petitioner as Muthawalli of the Dargah. Pursuant to the said resolution, the petitioner was appointed as Muthawalli of the Dargah by proceedings F. No. A/1/GNT/138/77 (R3) dated 31-3-1998. Respondent No. 3 herein challenged the appointment of the

petitioner under the above proceedings before this Court in WP No. 10403 of 1998, which was disposed of directing the 3rd respondent herein to approach the Wakf Tribunal, and accordingly he preferred an appeal in Appeal No. 6 of 1998 challenging the appointment of the petitioner as Muthawalli of the Dargah.

4. The A.P. Wakf Tribunal, Hyderabad, by judgment dated 19-11-2001 allowed the appeal and set aside the proceedings dated 31-3-1998 appointing the petitioner herein as Muthawalli of the Dargah holding that the appointment of the petitioner as Muthawalli through the above proceedings is not in conformity with the provisions of Section 63 of the Wakf Act. It is this order, which is challenged before this Court on various grounds.

5. On behalf of the petitioner Sri M.A. Bari, learned Counsel, submitted that the Tribunal has committed a great error while construing the provisions of Section 63 of the Act and set aside the appointment of the petitioner as Muthawalli of the Dargah only on the ground that his appointment is not in conformity of the provisions of Section 63 of the Act. He submitted that the appointment of the petitioner could not have been set aside by the Tribunal only on the technicality and therefore, it requires interference by this Court in the revision petition filed u/s 83(9) of the Act.

6. On the contrary Sri Mirza Imamulla Baig, learned Counsel for the 3rd respondent, which is Mujaawara Association, represented by its President, submitted that appointment of Muthawalli, when made u/s 63 of the Act, the Appointing Authority shall indicate the term of the office and in the absence of any term being specified in the appointment order, such an order is unsustainable as is evident from the provisions of Section 63 of the Act. He further stated that neither the petitioner has any deed nor right to be appointed as Muthawalli and the appointment made without specifying the term of the office and without specifying conditions is unsustainable and the Tribunal has rightly set aside the appointment of the petitioner as Muthawalli and no interference is required.

7. I have also heard Sri Subhani, learned Counsel for the 1st respondent/A.P. Wakf Board also in this regard.

8. On hearing of the learned Counsel for the parties, the point for consideration is, whether the appointment made in favour of the petitioner as Muthawalli of the Dargah - by proceedings F. No. A1/GNT/138/77, dated 31-3-1998 is in accordance with the provisions of Section 63 of the Act?

9. The relevant para in the proceedings F. No. A1/GNT/138/77, dated 31-3-1998 appointing the petitioner as Muthawalli of the Dargah reads as under:

"The Muthawalli should discharge his legitimate duties in accordance with the provisions of Wakf Act, 1995 and rules made thereunder, and to submit Budget, Income and Expenditure statements regularly and should pay the wakf fund, and also to see that the property attached to the subject institution be protected and

the same is neither mortgage nor leased out without prior permission of the A.P. State Wakf Board. Any deviation or misuse of the institutions property will be viewed seriously and liable to take necessary action as per provisions of the Wakf Act.

The A.P. State Wakf Board has got right to revise/alter/change this proceedings at any time without assigning any reasons thereof."

10. In the back ground of the submissions made on behalf of the contesting respondent i.e., 3rd respondent that the proceedings appointing the petitioner as Muthawalli is not in tune with the provisions of Section 63 of the Act as it fails to specify the term for which the petitioner has to function as Muthawalli of the said Dargah, it is necessary to trace the provisions appearing u/s 63 of the Act, which read as under:

"Section 63: When there is a vacancy in the office of the muthawalli 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 muthawalli is disputed, the Board may appoint any person to act as muthawalli for such period and on such conditions as it may think fit."

In order to appreciate the issue, it would be appropriate to further elaborate the provisions u/s 63 of the Act. According to this provision, when there is a vacancy in the office of the Muthawalli of a Wakf and there is no one to be appointed under the terms of the deed of the Wakf and when the right of any person to act as Muthawalli, the Wakf Board is empowered to appoint any person as Muthawalli. In the present case the appointment of the petitioner as Muthawalli to the Dargah is disputed before the Tribunal. In the absence of any deed in favour of the petitioner, he cannot be automatically appointed as Muthawalli though his late father was Muthawalli of the Dargah. In such a situation the Wakf Board may appoint any person to act as Muthawalli for such period and on such conditions as it may think fit.

11. A reading of the provisions of Section 63 of the Act would amply demonstrate that a person can be appointed as Muthawalli in the above circumstances, but while making such appointment by the Wakf Board in favour of any person to act as Muthawalli. the period for which the said person is appointed should be specified in the order. A reading of the appointment order dated 31.3.1998 appointing the petitioner, as Muthawalli of the Dargah, as discussed earlier, does not specify the period for which the petitioner was appointed. Though it is indicated in the order of appointment in the penultimate paras of the proceedings that the Board has got right to revise/alter/change the proceedings at any time without assigning any reasons, it cannot be understood to say that the Board has specified the period for which the petitioner was appointed to the office of Muthawalli.

12. In Mohan Kumar Singhania v. Union of India, 1992 (1) SLR 77, the Supreme Court laid down the parameters for interpreting a statute, as under:

"However, it is suffice to say that while interpreting a statute the consideration of inconvenience and hardships should be avoided and that when the language is clear and explicit and the words used are plain and unambiguous, we are bound to construe them in their ordinary sense with reference to other clauses of the Act or Rules as the case may be, so far as possible, to make a consistent enactment of the whole statute or series of statutes/Rules/Regulations relating to the subject-matter. Added to this, in construing a statute, the Court has to ascertain the intention of the law making authority in the backdrop of the dominant purpose and the underlying intendment of the said statute and that every statute is to be interpreted without any violence to its language and applied as far as its explicit language admits consistent with the established rule of interpretation."

13. As held by the Supreme Court in the above decision, when the language is clear and explicit and the words used are plain and unambiguous, I am bound construe them in their ordinary sense.

14. In the circumstances envisaged u/s 63 of the Act, the Wakf Board is though entitled to appoint any person to the office of the Muthawalli, the Board shall specify the period and such conditions in the appointment order made in favour of such person. A reading of the appointment order dated 31-3-1998 does not indicate the period for which the petitioner was appointed to the office of Muthawalli of the Dargah. In my considered view, the Tribunal is justified in declaring that the appointment order dated 31-3-1998 so made appointing the petitioner as Muthawalli is not in tune with the provisions of Section 63 of the Act and setting aside the, same.

15. In view of above discussion, I am of the considered view that the Tribunal is justified in setting aside the appointment order dated 31-3-1998 appointing the petitioner as Muthawalli of the Dargah and no interference is required by this Court u/s 83(9) of the Act.

16. Accordingly, the CRP is dismissed affirming the order dated 19-11-2001 made by the A.P. Wakf Tribunal, Hyderabad. No costs.

17. Since I affirmed the order made by the Tribunal setting aside the appointment order dated 31-3-1998 appointing the petitioner as Muthawalli of the Dargah and dismissed the revision petition, the vacuum created in the management of the Dargah has to be remedied tilt a proper person is appointed. Therefore, I direct the 1st respondent/Wakf Board to take steps immediately to fill up the vacancy of Muthawalli of the Dargah at the earliest and till a regular incumbent is appointed as Muthawali the Wakf Board shall be entitled to manage the affairs of the Dargah.