
(1982) 10 DEL CK 0022

In the Delhi High Court

Case No : Civil Writ Appeal No. 532 of 1982

Shamshad Begum Dar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-10-1982

Acts Referred:

Citation : (1983) ILR Delhi 414

Hon'ble Judges : S.B. Wad, J

Bench : Single Bench

Advocate : Harbans Lal, S.K. Bagga, Sushma Ralhan, D.P. Wadhawa, Atul Kumar and S.K.Mehta, for the Appellant;

Judgement

S.B. Wad, J.

(1) This writ petition is filed by the Chairman of the Punjab Wakf Board against the order dated 11-11-1981 superseding the Board -and also against the order of the extension of time of the supersession, Punjab Wakf Board is a composite Board for the States of Punjab, Haryana, Himachal Pradesh and Union Territory of Chandigarh. This is the richest Wakf Board in India. The Board was constituted by nomination of eleven members an 11-8-1978.

(2) Before the supersession of the Board a Show Cause Notice u/s 64(1) of the Wakf Act, 1954 was issued on 3-10-1981. The said show cause notice reads as under : "F. No. 4(13) [81-Wakf Government of India Ministry of Law, Justice & Company Affairs (Legislative Department) New Delhi, 3rd October, 1981 Show Cause Notice Whereas it has come to the notice of the Central Government that the Punjab Wakf Board (hereinafter referred to as the "Board" : (i) has been unable to perform the duty imposed on it by or under the Wakf Act, 1954 (hereinafter referred to as the Act) as detailed in the accompanying Annexure 1; (ii) has persistently made default in the performance of the duty imposed on it by or under the Act as detailed in the accompanying Annexure II; and (iii) has exceeded \\abused its powers as detailed in the accompanying Annexure III.

Now, Therefore, in pursuance of the proviso to sub-section (1) of section 64 of the Act read with the Notification of the Government of India in the Ministry of Law, Justice and Company Affairs (Legislative Department) No 413 j 73-Wakf dated 30-12-1975, the Central Government hereby calls upon the Board to show cause within a period of thirty days. from the date of receipt of this notice why a notification superseding the Board under the said subsection (1) should not be made .Coplios of importan.t documents connected with this notice have been set out in Annexure IV. By order and in the name of the President of India. Punjab Wakf Board (through Chairman) 50, Sardar Patel Marg Ambala Cantt. 133001. (Aslam Mahmud) Deputy Secretary to the Govt. to India. Ministry of Law, Justice & Company Affairs. Annexure I The Board has exhausted its bank balances and is running an overdraft of several lakhs. "This situation is the result of the Board being unable to manage its financial affairs on the right lines. If the affairs of the Board had been managed prudently, it would have resulted in substantial balances of the order of several lakhs. Annexure Ii (i) The Board has persistently failed to comply with the provision of sub-section (2) of section 43A in that it has failed to have accounts of wakfs under the direct management audited annually. The Central Government, in exercise of the powers conferred by section 63 of the Act, had directed the Board, vide the Ministry of Law, Justice and Company Affairs (Legislative Department) letter No. 4(5)\77-Wakf dated 19-11-1977 that the Board should get the accounts of every wakf under its direct management audited annually by an auditor as required under sub-section (2) of section 43A of the Act and should submit a copy of the audited accounts to the Central Governments latest by 30th June of each year. The audited accounts of the wakfs under the direct management of the Board which should have been recei,ved by the Central Government by 30th June, 1977, 30th June, 1978, 30th June, 1979, 30th June, 1979-80, have not been received by the Central Government. This involves a serious and persistent default of the provisions of section 43A(2) of the Act and of the afore- said direction of the Central Government. (2) The Board has persistently failed, in "spite of repeated reminders, to furnish information asked for by the Central Government with regard to allegations of a serious nature against one of the members of the Board, Shri Shaukat "Ali, and also with "respect to allegations against the Board made in several complaints to the Central Government. (i) A complaint against Shri Shaukat Ali, member of the Board, was forwarded to the Board, vide Ministry of Law, Justice & Company Affairs (Legislative Department) registered letter No. 13(14)UU79-Wakf dated 11-10-79 levelling serious allegations against Shri Shaukat Ali, Clarifications were called for with respect to these by the Central Government, vide Ministry of Law, Justice and Company Affairs (Legislative Department) Registered letter No. 13(14) j21-79-Wakf, dated 17-12-1979. The Board, in its reply No. AS(C) 173110417-130, dated 11-1-80, instead of furnishing the clarifications stated that since the complaint was not supported by an affidavit as required u/s 44 of the Act the Board was not in a position to consider such a complaint, the said section 44 relates only to applications to the Board by persons interested in a Wakf. In the Ministry of Law Justice and Company Affairs (Legislative

Department) registered letter No. 13(14)121179- Wakf dated 13-3-80, it was made clear that the clarifications. were needed by the Central Government in order to determine whether the charges leveled against Shri Shaukat Ali could stand scrutiny .Nevertheless, in spite of subsequent reminders, the Board has not so far furnished the required clarifications. (ii) Copies of various complaints of corruption\\and irregularities on the part of the Board were forwarded to the Board, vide Ministry of Law, Justice and Company Affairs (Legislative Department) registered letters No. 4(2)179- Wakf dated 4-3-1979 and No. 4(2)\\79-Wakf (2) dated 18-8-79 and comments on the complaints were called for. The Chairman of the Board by letter No. AS(C) 231104151184 dated 10-9-79, the Chairman referred to Section 44 of the Act and stated that any application from a person interested in a Wakf relating to the administration of Wakf should be supported by an affidavit. Although the section had no relevance and it was made clear that the Central Government wanted its comments, the Board failed to furnish the, .comments. (iii) A statement of charges against the Board furnished by Shri) Rahim Khan, one of the members of the Board, was forwarded to the Board for comments vide the Ministry of Law, Justice and Company Affairs (Legislative Department) registered letter No. 4(2) 179-Wakf (2) dated 12-11-79 and in spite of reminders, no reply has been received. (iv) The Board at its meeting held on 2-4-79 resolved that "the monthly aid to Baba Farid Islamia Middle School Patiala, is raised to Rs. 4800 per month". As it was understood that the father of one of the members of the Board was the President of the school the remarks of the Board were called for vide Ministry of Law, Justice and Company Affairs (Legislative Department) Registered letter No. 13(14)13\\79-Wakf dated 15-11-1979 to clarify the position and also to explain as to whether such a continuing grant is being made in violation of the direction issued by the Central Government u/s 63 of the Act, namely, that the Board should not make a donation to the same individual or organisation from the income of any Wakf for a second time within a period of five years without obtaining the prior sanction of the Central Government. No Explanation has been offered by the Board so far. (v) In exercise of the powers conferred by section 63 of the Act, the Board was directed, vide the Ministry of Law, Justice and Company Affairs (Legislative Department) registered letter No. 15(14) 113\\80-Wakf dated 19-3-1981 that, the Board should take steps to furnish the details of the proposed construction of a school building at Malerkotla together with copies of architectural plans and estimate"s architect and] or other local authorities and to ensure that the construction work is started only after the approval of the Central Government has been obtained and also the account of the utilisation of rupees eighty lakhs fixed deposit withdrawn from the Ambala Cantt, Banks and transferred to Malerkotla is furnished. The Board has failed to submit the required information to the Central Government. Annexure Iii (I) In exercise of the powers conferred by section 63 of the Act, the Board was directed, vide the Ministry of Law, Justice and Company Affairs (Legislative Department) registered letter No. 4(5)\\77-Wakf dated 19-11-1977, that the Board should obtain the prior sanction of the Central Government before any wakf to any individual or organisation. In

contravention of the aforesaid direction the Development Committee of the Board sanctioned the following grants : (a) Masjid and Dini Maktah, Ksiraka, District Gurgaon Rs. 25,000.00 (b) Masjid and Dini Maktah. Mauza Hathine, District Gurgaon. Rs; 10,000.00 (c) Musafirkhana Malerkotia Rs. 25,000.00 (d) Masjid Palwal Rs. 5,000.00 (e) Masjid Sultanpur Punhana Rs. 5,000.00 (f) Idgah Malerkotia. Rs. 10,000.00 Without obtaining the prior sanction of the Central Government the Board in its meeting held on . 3 Or1 ?-197 8 accepted these recommendations of the Development Committee made on 28-12-1978. (2) In exercise of the powers conferred by section 63 of the Act, a general direction was issued to the Board [vide the Ministry of Law, Justice and Company Affairs (Legislative Department) registered letter No. 4/5/77-Wakf dated 19-11-1977] to the effect that the Board should ensure that the sale proceeds of the Wakf properties and the amounts received from the Government as a result of the acquisition of the wakf with the same or similar objects for which the properties of wakfs should or acquired were originally meant. A specific direction was also issued to the Board under the said Section 63 (Vide Ministry of Law, Justice and Company Affairs (Legislative Department) registered letter No. 4/5/77-Wakf dated 7-9-79) to the effect that the Board should take immediate steps to withdraw the cheque issued in the name erf the President, Islamia High School Building Committee, Malerkotia; of the amount received an compensation for the Wakf property in Sangrur and deposit the said amount in Fixed Deposit and to report to the Central Government compliance by 15-9-79 positively, The Board has failed to comply with the general direction. The Board has not till the date of this notice reported about the action taken for compliance with the specific direction. (3) The Board terminated the services of Shri Akhtar Hussain, its Secretary, on 23-7-79, notwithstanding that the Board has no powers to terminate the services of Shri Akhtar Hussain. u/s 21(1) of the Act, read with Section 16 of the General Clauses Act, 1897, and notification No. 4j3]73-Wakf da.ted 30-12-75 (issued u/s 72 of the Punjab Re-organisation Act, 1966), the power can be exercised only by the Central Government. The Board failed to rescind its aforesaid order which was otherwise null and void, even after the Central Government, vide Ministry of Law, Justice & Company Affairs(Legislation Department Registered letter No. 13(14) (19) /79-Wakf dated 24-7-79 immediately required the Board to enable the Secretary to function as such. (4) In exercise of the powers conferred by section 63 B of the Act, the Board was directed vide the Ministry of Law, Justice and Company Affairs (Legislative Department) registered letter No. 12(14)/2/79-Wakf dated 26-7-1979 that the Board shall not create any new post or fill up any post already created either on the Wakf Board or on the Aukaf side without the prior held on 11-8-79 the Board created a new post of office on Special Duty for a period of three months and created again the post of five Assistants and four Rent Controllers on the Aukaf side which had been abolished earlier. The creation of all these posts was without the prior approval of the Central Government. The Board have not till the date of this notice even applied for ex-post facto sanction of the Central Government. (5) From the Interim Order, dated 19-12-1980, in Civil Writ Petition No. 4292 of

1980 (Imam-ud-din v. Union of India and others) of Punjab and Haryana High Court it has come to the notice of Central Government that the Board in contravention of the provisions of section 23 of the Act delegated financial powers to a person who is neither the Chairman nor a member Secretary. Officer or servant of the Board."

(3) As no cause was shown the impugned order of super- session was passed. The order is as under : "MINISTRY Of Law, Justice And Company Affairs (Legislative Department) Notification New Delhi, the 11th November, 1981, S.O. 796. Whereas in pursuance of the proviso to sub-section (1) of Section 64 of the Wakf Act, 1954 (29 of 1954) (hereinafter referred to as the Act) a notice (hereinafter referred to as the show cause notice) stating that it has come to the notice of the Central Government that the Punjab Wakf Board (hereinafter referred to as the Board) (i) has been unable to perform the duty imposed on it by or under the Act as detailed in Arme-xure I to the show cause notice; (ii) has persistently made default in the performance of the duty imposed on it by or under the Act as detailed in Annexure Ii to the show cause notice; and (iii) has exceeded abused its powers as detailed in Annexure Iii to the show cause notice, was issued to the Board on the 3rd day of October, 1981 and "was duly served on the Chairman of the Board on the same date; And Whereas the show cause notice required the Board to show cause within a period of 30 days from the date of its receipt is why a notification superseding the Board under subsection (1) of Section 64 of the Act should not be made; And Whereas a few days before the expiry of the aforesaid period of 30 days a request was received from the Chairman of the Board for extension of time and the Central Government granted extension of time, as a special the 10th day of November 1981 and also made it clear that the Central Government would not entertain any request for farther extension of time. And Whereas the Chairman of the Board has by her letter dated November 8, 1981, which has been received on the 10th November, 1981, only asked for further extension of time and the Board has not offered any Explanation or raised any objections or shown any cause why it should not be superseded; Now, Therefore, in exercise of the powers conferred by Sub-Section (1) of Section 64 of the Act read with the Notification of the Government of India in the Ministry of Law, Justice and Company Affairs (Legislative Department) No. 4\\3\\73-Wakf dated 30-12-75, the Central Government hereby supersedes the Board for a period of three months with immediate effect and directs that all the powers and duties which may. by or under the provisions of the Act be exercised or performed by or on behalf of the Board shall during the aforesaid period of supersession, be exercised and performed by Shri S.C. Dhosiwal, Indian Administrative Service . Deputy Commissioner, Ambala. No. 4(13) \\81-Wakf. By order and in the name of the President of India. A. K. Srinivasamurthy Joint Secretary and Legislative Counsel."

(4) The original order of supersession was for three months. It was later on extended for another one year. The said orders are challenged on the following grounds : (i) Effective opportunity to show cause was denied to the Board. It was

brought to the notice of the Central Government that the Board was unable to hold the meeting for preparing a reply to the show cause notice for two reasons. The sub-judge Ambala canton ment in a suit filed by one Zahoor Ahmad against the Board had restrained the Board to hold any meeting of the Board. The interim injunction order was passed on 14th October, 1981 and was later on confirmed. Secondly, there was no Secretary appointed to the Board by the Central Government at the relevant time. u/s 21 of the Act the Secretary acts as the Chief Executive Officer and the administration of the Board is. under his control. The meetings of the Board are called by the Secretary and in his absence the meeting could not be held.. (ii) The impugned orders are non-speaking orders. and are passed without the application of mind. (iii) The impugned orders were mala fide. They were passed in order to favor one Akhtar Hussain who was earlier appointed as a Secretary and then as an Administrator after the supersession. The respondents have denied these allegations. They submit that the Board avoided any reply to the Show Cause Notice and on the flimsy grounds tried to postpone the filing of the reply. The request for extension of- time to file the reply was granted once. The second request was rejected as the grounds for extension of time were same. The respondents further submit that the grounds of supersession are self evident and in absence of arty reply denying them on merits the order of supersession cannot be challenged on the ground of being non-speaking orders. The respondents have produced the original files concerning this case. On the basis of the nothings on the file it is submitted that the impugned orders were passed on pro per application of mind. The charge of mala fides is denied. It is submitted that Mr. Akhtar Hussain was a retired District Judge of Uttar Pradesh Judicial Service. His appointments were made on merit. The grounds regarding mala fides are vague and imaginary.

(5) The Show Cause Notice was to be replied within thirty days. On 26-10-1981 the Chairman of the Board requested for extension of time on the plea of the absence of a Secretary and the injunction of the court. The respondents did not accept the pleas but as a special case permitted seven days extension. The second request was made by the Board on November 8, 1981 for extension of time for three months, on the same pleas. No further time was granted and the order of supersession was passed. It is true that under the provisions of the Act the meetings of the Board are called by the Secretary but from the record it is seen that the post of Secretary was vacant for two years prior to the order of supersession and an acting Secretary was discharging the functions of the Secretary. Monthly meetings of the Board for two years were called by the Acting Secretary. The absence of a regular Secretary was not a valid ground for not holding the meeting of the Board. It is also true that the order restraining the Board from holding a meeting was passed by the court of Sub-Judge, Ambala Cantt. The initial order was passed on 14-10-1981. The question of supersession of the Board was a question of life and death for the Board. The Board could have moved the Sub-Judge in time for holding a meeting for drafting an appropriate reply to the show cause notice. I do not think that any court could

have refused permission to hold the meeting of the Board for this purpose. No such attempt was made by the Board. Even in the applications for extension of time the Board could have requested the Central Government to extend the time till they secure appropriate orders from the Sub-Judge. But that was not done. The petitioner has not furnished any facts regarding the suit in which the said injunction, order was issued. There is also no evidence to support the respondent's contention that the suit was a collusive suit. However, the conduct of the Board would suggest a reasonable interference that the Board was not interested in obtaining any modification of the injunction from the Sub-Judge. The Board had got the period of about 38 days for replying to the show cause notice. The period cannot be said to be too short or otherwise unreasonable. On the facts of the case it cannot be said that the respondents un-reasonably rejected the second application for extension. I hold that the Board had got reasonable opportunity to show cause out it did not avail of it.

(6) An order superseding a statutory Board has such serious civil consequences that ordinarily it should be a reasoned order. The order must disclose the application of mind. To start with there must be uncontroverted facts and evidence. They must be weighty in the sense that an extreme step of supersession would alone be a solution. But the requirement of speaking order and an order with application of mind take different forms in different situations. Take a case where no show cause notice is served and a body is straightaway superseded. This is what it happened in *S.L. Kapoor Vs. Jagmohan and Others*, . New Delhi Municipal Committee was superseded without any show cause notice. In another situation a show cause notice is issued and a cause is shown with a proper reply. In *Satish Chandra Khandelwal v. Union of India and Others*, ILR 1981 1 Delhi 917 is a case of this type. Delhi Municipal Corporation was superseded in 1981. By giving a show cause notice and after considering the reply. There can be a third situation like the present case. A show cause notice is issued but no cause has been shown by a proper reply. In cases. where no reply has been filed, prima facie the grounds stated in the show cause notice can be assumed to be true. Since there is no contest To the position taken by the Central Government, what further reasons can be stated in the order. The reasons are required to be given to show how the contentions of the contesting party are incorrect. There is no such occasion when there is no contest. In such case also the order of supersession speaks but it speaks only for reiterating, the reasons. It is not required to speak more in its Justification. The impugned orders are speaking orders in this sense. I have gone through the relevant files. It is clear from the nothings that all relevant material has been considered and the material was sufficient for imposing the extreme penalty of supersession. The aspect whether the supersession alone is a remedy has also been considered. The decision is not based on any irrelevant or extraneous considerations. The examination of the question is done with keen application of mind. The impugned orders cannot be faulted on this ground. Another aspect of the matter cannot be overlooked .For each of the charges leveled in the show cause notice separate

letters were written to the Board from time to time and directions were given. None of these letters, were replied on merits. For example, when the serious charges of corrupt practices were brought to the notice of the Board the Board refused to reply on the ground that the complaint was not supported by an affidavit. The plea was that Section 44 requires that the complaints should be supported by an affidavit. This section has also been invoked by the Board where the complaint was sent to the Board regarding misuse of funds in the litigations. Reliance on section 44 by the Board was totally mis-conceived. That section pertains to an enquiry relating to the administration of wakf. A person interested in a wakf can make an application for such an enquiry where the affairs are being mismanaged. The section has nothing to do with the corruption and mis-management of funds by the Board itself. Not only that the irregularities were not rectified by obeying the directions of the Government but no effort was made even to explain the circumstances. This fact may not be sufficient to dispense with the requirements of show cause notice where supersession is proposed but it will partially dis-entitle the Board from complaining that the supersession was bad for not stating the reasons or for no application of mind.

(7) The grounds regarding mala fide vague and are not supported by any factual data as to who was interested in favoring Mr. Akhtar Hussain and in what way Akhtar Hussain was influencing the decision of the Government. Akhtar Hussain was appointed as a Secretary by the Government first. Before his term of one year was over he was removed by the Board on the alleged ground that he tampered with the minutes of the meeting so as to create an impression that his term was extended for two years more. Board is not the appointing authority of a Secretary. It is the Government which appoints a Secretary. His further appointment or extension can only be done by the Government. The entire allegation in this regard is mis-conceived and is made in ignorance of the provisions of the Act. It is true that Mr. Akhtar Hussain was appointed as an Administrator after supersession. But he was appointed on 10-3-1982. that is, after the petition was filed in this court. Immediately, after the supersession one Shri S. C. Dhosiwal was appointed as an Administrator. The orders of supersession and the extension are thus not failed with any mala fides.

(8) The petitioner has not challenged the impugned orders on merits. For example, it is not stated as to whether any of the charges mentioned in the show cause notice were factually incorrect. This was at least necessary to be stated in the writ petition to demonstrate in the court that the order was not justified on facts. Statement on a true position of facts regarding the charges could have enabled the court to appreciate as to whether there was proper application of mind. It is, Therefore, not necessary to go in details of the charges leveled against the Board. It must be said that they are serious: enough to Justify the order of supersession.

(9) For the reasons stated above the writ petition is dismissed with costs, The rule is discharged.