
(2005) 12 AP CK 0048

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11149 of 2005

Sk. Abdul Saleem

APPELLANT

Vs

A.P. State Wakf Board and Others

RESPONDENT

Date of Decision : 05-12-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Waqf Act, 1995 — Section 67, 67(2)

Citation : (2006) 2 ALD 501 : (2006) 2 ALT 76

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : V.S.R. Anjaneyulu, for the Appellant; A.M. Qureshi, for Respondent No. 1, Government Pleader for Revenue for Respondent No. 2, S.M. Subhani, S.C. for Respondent No. 3, V. Venkataramana, for Respondent Nos. 4 and 5 and E. Ayypu Reddy, for the Respondent

Final Decision : Allowed

Judgement

G. Rohini, J.—This Writ Petition is filed questioning the proceedings of the 1st respondent-A.P. Wakf Board, dated 7-5-2005, whereunder, the District Wakf Committee for Krishna District was dissolved with immediate effect and a new committee consisting of 14 members as specified thereunder has been constituted.

2. The Writ Petitioner is the President of the District Wakf Committee for Krishna District, which was constituted - vide proceedings of the Executive Officer of A.P. State Wakf Board dated 23-3-2004 for a period of two years i.e., up to 22-2-2006. While so, the 1st respondent issued a notice dated 17-3-2005 calling upon the Writ Petitioner to show cause as to why he should not be removed from the office of the President of the District Wakf Committee of Krishna District alleging that he committed several irregularities in discharging his functions. The Writ Petitioner submitted a detailed reply dated 11 -5-2005 explaining all the allegations made in the show cause notice. However, the impugned order dated

7-5-2005 was passed dissolving the District Committee and reconstituting a fresh committee. The said Order is under challenge in this Writ Petition contending inter alia, that the impugned Order which was passed without recording any reasons to dissolve the District Committee, is in violation of the principles of natural justice, and on that ground alone it is liable to be set aside. It is further contended that all the allegations made in the show cause notice were already considered and discussed by the Committee and having been satisfied that the said allegations were unfounded, the term was earlier extended for another period of two years from 23-7-2004. Hence, it is not permissible to reopen the issue and to pass the impugned proceedings on the basis of the very same allegations, which were found to be baseless.

3. In spite of the Rule Nisi ordered long back on 10-5-2005, the 1st respondent - Wakf Board, failed to file its counter-affidavit, rebutting the allegations made by the petitioner nor the records were made available to this Court. However, the learned Standing Counsel appearing for the Wakf Board raised a preliminary objection as to the maintainability of the Writ Petition contending that since an alternative remedy of appeal is available under the Statute, without exhausting the said alternative remedy, the petitioner cannot maintain this Writ Petition.

4. The respondents 4 to 7, who claim to be the members of the fresh Wakf District Committee constituted under the impugned Order dated 7-5-2005, filed separate counter-affidavits, pleading that pursuant to the impugned Order dated 7-5-2005, the new committee has taken charge on 9-5-2005 itself, and thus the new committee is continuing as on the date.

5. The learned Counsel for the respondents 4 to 7 vehemently contended that though the impugned Order was suspended by this Court on 10-5-2005, since by that date the new committee had already taken charge in accordance with the impugned Order, the Writ Petition is liable to be dismissed as infructuous. The learned Counsel further contended that the impugned Order, which was passed strictly following the procedure as contemplated u/s 67 of the Wakf Act, 1995, and after affording a reasonable opportunity to the petitioner to submit his explanation, is not amenable to the jurisdiction of this Court under Article 226 of the Constitution of India.

6. The learned Counsel also contends that since the power of supersession conferred u/s 67 of the Wakf Act can be exercised on the subjective satisfaction of the Board, the mere fact that reasons were not recorded is immaterial and on that ground the impugned Order cannot be held to be vitiated. The further contention is that since reasons for the proposed action of removal were specified in detail in the show cause notice, it is not mandatory to assign the reason in the final order. According to the learned Counsel since it was clearly stated in the impugned Order that the explanation was not satisfactory, reasons specified in the show cause notice automatically form part of the final order. A decision of the Supreme Court in *State Bank of Patiala and others Vs. S.K. Sharma*, , has been relied upon in support of the said contention. Further

contention raised by the learned Counsel is that the District Committee has no statutory right to complete its term of office, since the committee functions only during the pleasure of the Board. In support of the said contention, the learned Counsel placed reliance upon a decision of Karnataka High Court in Janab Shastry Khaja Hussai v. Karnataka Board of Wakf 1997 AIHCC 4146.

7. In the light of the submissions made by the learned Counsel, the questions that arise for consideration are as under:

(1) Whether the impugned order, which is apparently cryptic and lacks reasons, is in violation of the fundamental principles of natural justice and liable to be set aside on that ground?

(2) Whether the petitioner can maintain the Writ Petition under Article 226 of the Constitution of India without exhausting the alternative remedy of appeal available under the Wakf Act?

8. Point No.1: Section 67 of the Wakf Act, which provides for supervision and supersession of committee of management, to the extent it is relevant runs as under:

67. Supervision and supersession of committee of management:

(1) Whenever the supervision or management of a Wakf is vested in any committee appointed by the Wakf, then, notwithstanding anything contained in this Act, such committee shall continue to function until it is superseded by the Board or until the expiry of its term as may be specified by the Wakf, whichever is earlier:

Provided that such committee shall function under the direction, control and supervision of the Board and abide by such directions as the Board may issue from time to time:

Provided further that if the board is satisfied that any scheme for the management of a Wakf by a committee is inconsistent with any provision of this Act or of any rule made thereunder or with the directions of the Wakf, it may, at any time, modify the scheme in such manner as may be necessary to bring it in conformity with the directions of the Wakf or of the provisions of this act and the rules made thereunder:

(2) Notwithstanding anything contained in this Act, and in the deed of the Wakf, the Board may, if it is satisfied, for reasons to be recorded in writing, that a committee, referred to in Sub-section (1) is not functioning properly and satisfactorily, or that the Wakf is being mismanaged and that in the interest of its proper management, it is necessary so to do, by an order, supersede such committee, and, on such supersession, any direction of the Wakf, in so far as it relates to the constitution of the committee, shall cease to have any force:

Provided that the Board shall, before making any order superseding any committee, issue a notice setting forth therein the reasons for the proposed

action and calling upon the committee to show cause within such time, not being less than one month, as may be specified in the notice, as to why such action shall not be taken.

(3) Every order made by the Board under Sub-section (2) shall be published in the prescribed manner and on such publication shall be binding on the mutawalli and all persons having any interest in the Wakf.

(4) Any order made by the board under Sub-section (2) shall be final:

Provided that any person aggrieved by the order made under Sub-section (2) may, within sixty days from the date of the order, appeal to the Tribunal:

Provided further that the Tribunal shall have no power to suspend the operation of the order made by the board pending such appeal.

(5) The board shall, whenever it supersedes any committee under Sub-section (2), constitute a new committee of management simultaneously with the order made by it under Sub-section (2).

(6) ...

Provided....

Provided....

9. On a plain reading of Sub-section (1) of Section 67, it is clear that the District Committee constituted for the purpose of supervision or management of a Wakf is entitled to continue to function until it is superseded by the Board or until the expiry of its term whichever is earlier. Sub-section (2) prescribes a detailed procedure for superseding the Committee under which it is mandatory to issue a prior notice to the Committee setting forth the reasons for the proposed action and calling upon the Committee to show cause as to why such action shall not be taken. Sub-section (2) further makes it clear that the order of supersession can be passed only where the Board is satisfied that the Committee is not functioning properly and satisfactorily or that the Wakf is being mismanaged. It is also relevant to note that Sub-section (2) specifically provides that the order of supersession shall be "for the reasons to be recorded in writing". The said words employed in Sub-section (2) make it clear that the Board while passing an order of supersession is bound to record reasons. In other words, the satisfaction of the Board shall be reflected from the reasons assigned in the order of supersession.

10. That a part, as held by the Courts in a catena of decisions an order which is devoid of reasons, particularly if it is penal in nature, is in violation of principles of natural justice and constitutes a valid ground for exercising judicial review under Article 226 of the Constitution of India. (Vide *Damoh Panna Sagar Rural Regional Bank v. Munna Lal Jain* 2005 (1) SCJ 59, *Cyril Lasrado (dead) by Lrs. and Others Vs. Juliana Maria Lasrado and Another, and Union of India (UOI) and Others Vs. Essel Mining and Industries Ltd. and Another*, .

11. In the light of the settled principles of law and particularly having regard to the language employed in Sub-section (2) of Section 67 of the Act, I am of the opinion that it is mandatory for the Board to record the reasons while passing an order of supersession of the Committee of Management.

12. Hence, I do not find any substance in the contention of the respondents that the reasons stated in the show cause notice form part of the final order and therefore absence of the reasons in the order of supersession is of no consequence.

13. In the order impugned in this Writ Petition, the 1st respondent has only stated that the explanation of the petitioner was examined and found not satisfactory. No other reasons were assigned as required under Sub-section (2) of Section 67 of the Act. For better appreciation the relevant portion of the impugned order may be extracted hereunder.

The District Wakf Committee Krishna District was constituted in the reference 1st read above for a period of 2 years.

On receipt of complaints in the reference 2nd read above against the President of District Wakf Committee, a Show Cause Notice was issued in the reference 5th read above for which the President submitted his explanation in the reference 6th read above which has been examined and found not satisfactory.

As such the District Wakf Committee constituted in the reference 1st read above is dissolved with immediate effect.

14. As can be seen on the face of it, the impugned order is cryptic and lacks reasons. Thus, being in violation of the principles of natural justice as well as being contrary to the mandatory requirements under Sub-section (2) of Section 67, it is liable to be set aside on that ground alone.

Point No.2:

15. It is true that where a remedy of appeal is available under a statute, resort must be had to that statutory remedy of appeal before seeking the discretionary remedy under Article 226 of the Constitution of India. Normally, this Court would decline to interfere in the exercise of its discretion until all statutory remedies are exhausted. However, the existence of alternative remedy is not an absolute bar to grant the relief under Article 226. In a catena of decisions, the Apex Court recognized at least two exceptions to the doctrine with regard to exhaustion of statutory remedies. Firstly, where the proceedings are taken before the forum under a provision of law, which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent, without a party being obligated to exhaust the alternative remedies, and secondly, the doctrine has no application where the impugned order has been made in violation of the principles of natural justice. Having reiterated the above principle, the Supreme Court in *State of H.P. v. Gujarat Ambuja Cements Ltd.* 2005 (5) SCJ 713 added one more exception that where

the proceeding itself is an abuse of process of law, the High Court in appropriate cases can entertain a Writ Petition.

16. That apart, as held by the Supreme Court in *L. Hirday Narain Vs. Income Tax Officer, Bareilly*, . if the High Court had entertained a Petition despite availability of alternative remedy and heard the parties on merits, it would be ordinarily unjustifiable for the High Court to dismiss the same on the ground of non-exhaustion of statutory remedies; unless the High Court finds that factual disputes are involved and it would not be desirable to deal with them in a Writ Petition.

17. The ratio laid down in the above cases squarely attracts to the case on hand. As expressed above, since the competent authority failed to assign reasons as required under the statute, *ex facie* the impugned order is illegal and unsustainable. Therefore, existence of the alternative statutory remedy cannot be held to be a bar to entertain this Writ Petition under Article 226 of the Constitution of India. Accordingly, I am of the opinion that the petitioner can maintain this Writ Petition notwithstanding the availability of an alternative remedy of appeal under the Wakf Act.

18. The Writ Petition is, therefore, allowed and the impugned order is set aside. However, it is made clear that this shall not preclude the 1st respondent to pass appropriate orders afresh following due principles of law. No costs.