
(2009) 08 MP CK 0011
In the Madhya Pradesh High Court
Case No : C.R. No. 383 of 2008

Syed Masood Ali	Vs	APPELLANT
M.P. Wakf Board		RESPONDENT

Date of Decision : 11-08-2009

Acts Referred:

Waqf Act, 1954 — Section 3, 43
Waqf Act, 1995 — Section 3, 63, 64, 64, 67(1)

Citation : (2009) 4 MPJR 356

Hon'ble Judges : U.C. Maheshwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

U.C. Maheshwari, J.

The applicant has directed this revision u/s 83 (9) of Wakf Act, 1995 being aggrieved by the order dated 7.7.2008 passed by M.P. State Wakf Tribunal, Bhopal in appeal No. 6/08 affirming the order dated 13.2.2008 passed by M.P. Wakf Board, Bhopal/respondent No. 1 appointing the new Management Committee for Baital Maal Yatim Khana, Khandwa (M.P.) headed by Shri Riyaz Hussain S/o Anwar Hussain.

The facts giving rise to this revision in short are that the Baital Mall Yatim Khana, Khandwa the institution comes under the administration of M.P. Wakf Board and the same is managed by the respondent No. 1, by appointing a committee under the provision of thw Wakf Act. The earlier Management Committee of Baital Mall Yatim Kahna, Kahndwa headed by applicant was appointed for three years by the respondent No. 1 vide order dated 6.7.2001 (Annexure A-2).

The respondent No. 1 vide order dated 7.2.2008 (Annexure A-1) appointed a new Committee for the aforesaid Baital Mall Yatim Khana, Khandwa for further three years in which one Riyaz Hussain S/o Anwar Hussain is appointed to be the "Sadar" of such Committee. Such order of constituting the new Committee was

challenged by the applicant in appeal u/s 67 (4) of the Wakf Act before the Wakf Tribunal on the grounds that the aforesaid institution of Khandwa was looked after by the Committee headed by the applicant with full devotion for the welfare of the poor and orphan muslims. Such Committee has not given any chance to make any complaint against them. Despite it without giving any show cause notice or extending the opportunity of hearing u/s 67 (2) of the Act, the respondent No. 1 has passed the order appointing the new Committee for the aforesaid institution. The applicant came to know about the aforesaid order dated 7.2.2008 on 22.2.2008. When he was informed about such order with a direction to hand over the charge to the new Committee under intimation to the respondent No. 1. Such order was also challenged on the ground that the same is against the principle of natural justice and also the mandatory provision of Section 67 (2) of the Wakf Act.

After hearing the parties, on consideration, the Wakf Tribunal dismissed the appeal holding that after constituting the new Committee by the respondent No. 1, the old Committee is not having any right to manage the affairs of the aforesaid institution. It was also held that after completing the tenure of the Committee, for constituting the new Committee, the show cause notice or opportunity of hearing to the "Sadar" and the other persons of the Old Committee are not required under the Act and the new Committee is entitled to take the charge and manage the affairs of the Wakf institution. Being dissatisfied with such order the applicant has come forward to this Court with this revision.

Shri A.G. Dhande, learned Senior Advocate assisted by Shri Dharmendra Soni after taking me through the impugned orders and the other papers placed on record argued that the respondent No. 1 did not have any authority to constitute the new Committee unless the earlier constituted Committee headed by the applicant is superseded by issuing the show cause notice and extending the opportunity of hearing by the respondent No. 1 in accordance with the provision of Sections 63 and 64 of the Wakf Act. But without following such prescribed procedure and under violation of the principle of natural justice the respondent No. 1 has appointed new Committee vide order dated 7.2.2008. On challenging such order before the appellate forum, the appeal was also dismissed under the wrong premises contrary to the aforesaid provision, and prayed for setting aside the impugned orders by allowing this revision.

On other hand, while responding the aforesaid arguments, Shri S.A. Wakil, counsel for the respondent No. 1 justified the aforesaid order of the Wakf Board and said that the same is based on well versed, legal position and, does not require any interference at this stage. He further said that under the provision the Wakf Board is having the authority to appoint the Management Committee to look after the affairs of the Wakf institution. Such appointed Committee after completing its tenure and on constituting the new Committee by respondent No. 1 did not have any authority to manage or look after such Wakf institution. He further said that it is apparent that the tenure of the applicant Committee had

come to an end long back and subsequently on appointing the new Committee, the applicant did not have any authority to challenge the appointment of the new Committee, the applicant did not have any authority to challenge the appointment of the new Committee and prayed for dismissal of the revision.

The counsel for the respondent No. 2 Shri Rakesh Sharma has adopted the argument of the counsel of respondent No. 1.

Having heard the counsel at length, I have gone through impugned orders along with papers placed on record. I am of the considered view that the Wakf Tribunal has not committed any error in passing the impugned order.

It is undisputed facts on record that earlier the Committee was headed by the present applicant who was also nominated/appointed by the respondent No. 1 for three years vide order dated 8.7.2001 Annexure-A/2 and the period of such Committee has already been expired long back, but in the lack of nomination the new Committee, such old Committee was continuing to look after the affairs of the said institution as care taker. It is also apparent on record that vide order dated 8.7.2001 Annexure-A/1 the new Committee headed by Shri Riyaz Hussain has been nominated and constituted by the respondent No. 1 and the intimation to hand over the charge to new Committee has also been given to the applicant.

The respondent No. 1 by virtue of Section 67 (1) of the Wakf Act, 1995 is having the authority to appoint Committee of management for the Wakf. Before proceeding further or giving any finding on merits of the revision, I would like to reproduce the relevant abstract of Section 67 (1) of the Wakf Act, 1995 the same reads as under:-

67. Supervision and suppression 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 provisions 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 there under

Mere reading of the aforesaid provision, reveals that the Committee appointed by the Wakf 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. Although, other provision for supencession of the Committee before expiry of the terms are also made under in sub sections of this Section. The same are not very relevant in the present scenario. The question involved in the present revision could be resolved in view of the provision of 67 (1) of the Wakf Act.

It is undisputed fact that the tenure of the applicant Committee, on completing three years, has expired in the year 2004 and thereafter, no extension order has been passed in favour of the applicant. Although, the applicant's Committee was continuing the function, but subsequent to expiry of the term, the respondent No. 1 had right and authority to constitute and appoint the new Management Committee, and for which the show cause notice or extending any opportunity of having to the earlier Committee is not required under the law.

In the aforesaid premises it is revealed that the old Management Committee headed by the applicant did not have any right or authority either to challenge the constitution of a new Committee or to interfere in the affairs of managing the institution by the new Committee. Such view is fully fortified by the decision of this Court in the matter of Haji Moosakhan and Another Vs. M.P. Wakf Board and Others, , it is held as under.

Action of respondent No. 1 is thus found to be on firm founcation and deserves to be permitted to prevail. The order Annexure-B is thus legal, valid and tenable in-law. The period fixed therein is required to be computed from the date of obtaining charge. The order of stay put its operation under "eclipse". The order Annex. B is absolute in its terms, absolute in intent and is absolute in effect. The exercise of the petitioners, is thus inept and, insipid. Annex. A foins the plea, I, therefore, I told that petitioners ceased to be Mutawally after 19.5.1990 and operated thereafter only as "caretakers" till constitution of new Committee. Section 3 (f) or Section 43 thus does" not benefit them

It is noted that Section 3 (i) and 64 of the new Act are the paramateria of Section 3 (f) and 43 of the old Wakf Act, 1954.

In view of the aforesaid, I have not found any perversity in the impugned order of the Tribunal requiring kany interference in the revision, hence, by affirming the same this revision petition is hereby dismissed. In the facts and circumstances, there shall be no order as to costs.