

(2003) 04 AP CK 0057

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4498 of 2003

Zaheer Ahmed Khan

APPELLANT

Vs

A.P. State Wakf Board

RESPONDENT

Date of Decision : 18-04-2003

Acts Referred:

Waqf Act, 1995 — Section 64(3), 64(5)

Citation : (2003) 3 ALD 469 : (2003) 4 ALT 288 : (2003) 2 APLJ 33

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : Y. Anupama Devi, for the Appellant; A.M. Qureshi, for the Respondent

Final Decision : Dismissed

Judgement

G. Rohini, J.—This writ petition is filed seeking a declaration that the proceedings No. JC/RR/2000/B2 dated 28.2.2003 issued by the respondent-A.P. State Wakf Board, as arbitrary and illegal and contrary to Section 64(5) of the Wakf Act, 1995."

2. The facts which are not in dispute are as follows:

The writ petitioner was appointed as temporary Mutawalli of Dargah-E-Kohe-Moula Ail on 25.1.1993. When his services were terminated by order dated 26.11.1993, he filed W.P.No. 17879 of 1993. This Court by order dated 6.12.1999 allowed the writ petition and the order of termination was set aside, observing that if the Wakf Board decides to proceed against the petitioner u/s 64 of the Wakf Act, it is open to the Board to do so and that till the enquiry is conducted, the petitioner shall not deal with movable or immovable property of the Dargah.

3. In pursuance of the said order, an enquiry officer was appointed to go into the allegations levelled against the petitioner and it appears that a detailed enquiry was conducted and a report was also submitted. The said report, was considered by the Wakf Board on 10.5.2000 and after going through the findings of the

Enquiry Officer the earlier order of termination was cancelled, subject to the condition that he gets audited the accounts for the previous years. In pursuance thereof the petitioner continued as Mutawalli. While so, on the basis of certain complaints received against the petitioner alleging that he sold out the properties of the institution illegally, an Enquiry Officer was appointed to enquire into the allegations by invoking the powers u/s 71 of the Wakf Act. The said action was questioned by the petitioner by filing W.P.No. 3287 of 2002, which was dismissed. However, W.A.No. 1103 of 2002 filed by the petitioner was allowed by a Division Bench of this Court holding that the Chief Executive Officer has no jurisdiction to issue orders initiating enquiry u/s 71 of the Wakf Act.

4. It appears that during that time the respondent-Board was not functioning. Subsequently after constitution of the Board, the matter was again considered and a notice dated 10.2.2003 was issued calling upon the petitioner to submit his explanation for the allegations levelled against him within 7 days from the date of receipt of the said notice and placing him under suspension for a period of 10 days invoking the provisions u/s 64(5) of the Wakf Act, 1995. In response to the said notice the petitioner submitted his detailed explanation on 22.2.2003. It is also not in dispute that the petitioner was heard by the Board on 22.2.2003.

5. Thereafter by impugned proceedings dated 28.2.2003, the suspension order has been extended beyond 22.2.2003 i.e., till the completion of the enquiry pending against the petitioner. The said action of the respondent-Board in placing the petitioner under suspension beyond 10 days is assailed in this writ petition contending that the same is contrary to Section 64(5) of the Wakf Act.

6. The learned Senior Counsel Sri P. Gangaiah Naidu appearing for the petitioner contended that under Sub-section (5) of Section 64 of the Act before extending the period of suspension beyond 10 days, it is mandatory to afford a reasonable opportunity of being heard so the petitioner and since no such opportunity was given to the petitioner the impugned proceedings are liable to be set aside. The learned Senior Counsel also contended that the allegations levelled against the petitioner are all false and baseless and particularly the complaint made by the complainant was not supported by an affidavit as required u/s 70 of the Act, and therefore initiation of enquiry itself is arbitrary and illegal and the enquiry cannot be continued.

7. On the other hand, the learned Counsel appearing for the 1st respondent-A.P. State Wakf Board, submitted that the petitioner was heard before passing the impugned order u/s 64(5) and the respondent-Board having taken into consideration all the facts and circumstances and having been satisfied that it is a fit case to continue the suspension of the petitioner till the conclusion of the enquiry unanimously passed a resolution and accordingly the suspension of the petitioner was extended beyond 22.2.2003. The learned Counsel contends that the impugned order has been issued after following due process of law and there is absolutely no reason to hold that the same is arbitrary or in violation of the statutory provisions.

8. I have also heard Sri Syed Shareef Ahmed, learned Counsel appearing for the 2nd respondent who got himself impleaded.

9. Admittedly, the enquiry initiated against the petitioner into certain alleged irregularities is pending. Therefore, I am not inclined to express any opinion with regard to the contention of the petitioner as to the compliance with Section 70 of the Wakf Act nor regarding the correctness of the irregularities alleged. It is always open to the petitioner to raise all the objections before the Enquiry Officer.

10. The only question that requires consideration in this writ petition is whether the action of the respondent in continuing the suspension of the petitioner beyond 22.2.2003 till the conclusion of the enquiry pending against him is in accordance with law.

11. Section 64 of the Wakf Act, 1995 provides for removal of Mutawalli. The grounds on which a Mutawalli can be removed from his office have been specified under Clauses (a) to (k) of Sub-section (1) of Section 64. Sub-section (5) of Section 64, which provides for suspension of Mutawalli, pending enquiry runs as under:

64(5): Where any inquiry under Sub-section (3) is proposed, or commenced, against any Mutawalli, the Board may, if it is of opinion that it is necessary so to do in the interest of the Wakf, by an order suspend such mutawalli until the conclusion of the inquiry:

Provided that no suspension for a period exceeding ten days shall be made except after giving the mutawalli a reasonable opportunity of being heard against the proposed action.

12. A plain reading of Sub-section (5) of Section 64 shows that the Board is empowered to place a Mutawalli under suspension until the conclusion of the enquiry. However, as per the proviso, the period of suspension cannot exceed ten days without giving the Mutawalli a reasonable opportunity of being heard against the proposed action.

13. The question is whether in the case on hand a reasonable opportunity of being heard has been afforded to the petitioner before extending the period of suspension beyond 22.2.2003.

14. In pursuance of the order of this Court the learned standing Counsel for the 1st respondent produced the entire record relating to the matter. On a perusal of the record it is clear that the petitioner was initially suspended for 10 days by order dated 10.2.2003. Under the same proceedings dated 10.2.2003 the petitioner was called upon to submit his explanation. Accordingly on 22.2.2003 the petitioner submitted his explanation. It is also not in dispute that the petitioner appeared in person before the respondent-Wakf Board on 22.2.2003. Having heard the petitioner in person, the respondent Board thought it fit to continue the suspension beyond 22.2.2003 and accordingly the impugned order was passed.

15. The contention of the learned Counsel for the petitioner is that the respondent ought to have issued a fresh notice intimating the proposed action of extension of period of suspension for more than 10 days and ought to have given him a reasonable opportunity of being heard against the said proposed action. The learned Counsel vehemently contended that the "proposed action" referred to under the proviso to Sub-section (5) of Section 64 is the extension of period of suspension and therefore without affording an opportunity of being heard against the said action, the period of suspension cannot be extended. I am unable to agree with the said contention. In my considered opinion the purport of the proviso to Sub-section (5) of Section 64 is that the suspension for a period exceeding 10 days cannot be automatic or as a matter of course, but it shall be after application of mind to the facts and circumstances of the case and after giving the effected party a reasonable opportunity of being heard, on the merits of the case regarding the action proposed u/s 64(1).

16. In the case on hand it is pertinent to note that in the show-cause notice dated 10.2.2003 it is clearly stated that the respondent-Board after discussing the matter and perusing the record and the allegations made against the petitioner, prima facie, found that it is a fit case to take action against the petitioner and resolved to conduct an enquiry u/s 64(3) of the Act against the petitioner and for the said purpose resolved to suspend the petitioner for a period of 10 days and to give him an opportunity to submit his explanation with regard to the allegations levelled against him.

17. Section 64(3) states that no action shall be taken by the Board for removal under Sub-section (1) unless an enquiry is held into the matter in a prescribed manner and a decision is taken by a majority of not less than 2/3rd of the members of the Board.

18. Thus it is clear that the action proposed was for removal of the petitioner from the Office of Mutawalli u/s 64(1) of the Act and in that context an enquiry u/s 64(3) was initiated and the petitioner was called upon to submit his explanation to the allegations leveled against him and he was also afforded an opportunity of being heard. The reference to the "proposed action" made under the proviso to Sub-section (5) of Section 64 is only the removal contemplated under Sub-section (1) of Section 64, but not the extension of period of suspension.

19. The petitioner, in pursuance of the show-cause notice has already submitted a detailed explanation and he also appeared in person before the respondent-Board. Having considered the facts and circumstances, the respondent-Board passed a well-reasoned order stating that it is a fit case to continue the suspension beyond 22.2.2003 till the conclusion of the enquiry pending against him. Accordingly the Board unanimously passed a resolution to that effect. Therefore the impugned order cannot be said to be in violation of the requirements of the proviso to Sub-section (5) of Section 64.

20. For the aforesaid reasons, I do not see any reason to hold that the impugned

order is in breach of Section 64(5) of the Act nor the impugned order can be termed as arbitrary or illegal. The writ petition is devoid of merit and is accordingly dismissed. No costs.