

Case :- WRIT - C No. - 26916 of 2023

Petitioner :- Committee of Management Waqf No. 856, Moradabad
(Now Amroha)

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Pradeep Kumar Sharma

Counsel for Respondent :- C.S.C., Amit Kumar Srivastava, Punit
Kumar Gupta

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard Sri Amit Saxena, learned Senior Advocate assisted by Sri Pradeep Kumar Sharma for petitioner; Sri Ambrish Shukla, learned Additional Chief Standing Counsel alongwith Sri Fuzail Ahmad Ansari, learned Standing Counsel for the State respondent nos.1 to 3; Sri Punit Kumar Gupta, learned counsel for U.P. Sunni Central Waqf Board, Lucknow (respondent nos. 4 & 5) and Sri Shashi Nandan, learned Senior Advocate assisted by Sri Amit Kumar Srivastava, learned counsel for the contesting respondent no.6.

2. Pleadings have been exchanged and with the consent of learned counsel for the parties, this writ petition is being finally disposed of under the Rules of the Court.

3. Present Writ Petition under Article 226 of the Constitution of India is preferred with request to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 26.07.2023 passed by the "U.P. Sunni Central Waqf Board, Lucknow" (hereinafter referred to as the 'Waqf Board' for the sake of brevity) and consequential Office Memorandum (hereinafter referred to as the 'OM' for the sake of brevity) dated 31.07.2023, issued by the Assistant Secretary of Waqf Board.

4. The present writ petition pertains to management of a Waqf property known as "Waqf-Alal-Khair", Waqf No.856 Moradabad/Amroha, which is duly recorded in the record of Waqf

Board. The question involved in the present writ petition lies in a narrow compass. Few facts, however, need mention to appreciate the same.

5. As per earlier order dated 10.02.2015 passed by the Waqf Board, a Committee was appointed in exercise of powers conferred under Section 67 of the “Waqf Act, 1995” (hereinafter referred to as “the Act” for the sake of brevity) by which Aslam Hussain (petitioner) was appointed as President of the Committee consisting with 10 other members to manage the affairs of the said Waqf for a period of three years. Thereafter, the said order was notified by the Assistant Secretary of the Waqf Board vide OM dated 23.03.2015. As the term of the petitioner Committee was about to expire on 22.03.2018, it applied for extension of its term. The Chairman of the Waqf Board vide his order dated 06.03.2018 had extended the period of the Committee of Management for a further period of three years w.e.f. 10.2.2018.

6. The said order was challenged by one Mobin Shah before the U.P. Waqf Tribunal, Lucknow, which was registered as Waqf Petition No.19 of 2018 (Mohammad Mobin Shah vs. U.P. Sunni Central Board of Waqfs and two others) on the ground that the Waqf Board had failed to apply its judicious mind to the entire facts and circumstances of the case and relied upon the report submitted to it by an officer without giving any opportunity of hearing to Mohd. Mobin Shah. The said order was also challenged on the ground of wrong findings. The main plank of argument was that the said order was passed against the will and wishes of Waqif and the appointment of the Committee by the Board as per order dated 06.03.2018 was not fair and reasonable. The same could not sustain in view of provisions contained under the Act and therefore, the order of appointment of the Committee was also liable to be set aside. The Waqf Tribunal vide order dated 13.03.2020 had allowed the waqf petition and set aside the order dated 06.3.2018 passed by the Chairman of the Waqf Board and remitted back the matter to the Board to pass the speaking order, after giving opportunity to the parties. While remitting

the matter, in order to fill up the vacuum in the administration of the Waqf, the Waqf Tribunal further observed that the parties shall maintain status quo as on the said date, and till finalization of the proceeding. The Waqf Board upon remand had reconsidered the entire matter and passed detailed order on 13.6.2022.

7. It is relevant to indicate here that prior to passing an order dated 13.6.2022 the Circle Inspector was also directed to conduct a fact finding enquiry vide an order dated 25.6.2021 passed by the Chairman of the Waqf Board. The Circle Officer/Executive Officer had accorded an opportunity to Mobin Shah and Aslam Hussain (petitioner) and submitted its report on 25.8.2021. The parties had also submitted their written arguments in the said proceeding. By an order dated 13.06.2022 the Waqf Board had passed an order and approved the claim set up by the petitioner Committee for further five years. In the said proceeding, Mobin Shah had put up his claim that he is Sajjadanashin of the Dargah and also belongs to the same Fakir community of Bhure Khan, whose Mazaar (waqf) was created and therefore, he had better rights to manage the waqf. The claims set up by Mobin Shah were rejected by the Board on 13.06.2022. Relevant portion of the order is extracted herein below:-

“So far as, the claim of Aslam Hussain is concerned, the record of the Board reveals that during his tenure, the income of the Waqf has been increased substantially and in the Financial Year 2019-2020, the income of the Waqf has been shown as Rs.14,19,111/- and contribution of the board has been paid regularly and his committee has also maintained the Waqf and Mazar by constructing the boundary wall and gate, Wazukhana, Toilet, Water Tank and Main Gate after taking permissions from the Board vide Office Memorandum dated 18.03.2021. In view of the above, the appointment of 10 members managing committee under the Presidentship of Mr. Aslam Hussain is in the interest of Waqf.

In view of above, we do not find the claim of Mobin Shah to appoint his 3-members committee in the interest of Waqf, accordingly, his claim is rejected and for the management of Waqf No.856, Moradabad, the following committee under the Presidentship of Shri Aslam Hussain is appointed for a period of 5 years.

- | | | | |
|----|---------------------------------|---|-----------|
| 1. | Aslam Hussain S/o Zaheer Ali | - | President |
| 2. | Wajid Ali S/o Rashid Hussain | - | Secretary |
| 3. | Mohammad Tayyab S/o Mohd. Yunus | - | Treasurer |

4.	Mahir Hussain S/o Maqsood Hussain	-	Member
5.	Najim S/o Zaheer Ali	-	Member
6.	Margoob S/o Haji Chhidda	-	Member
7.	Jamshed S/o Salik	-	Member
8.	Wajid S/o Mohd. Hanif	-	Member
9.	Aasid S/o Dhasi	-	Member
10.	Afsal S/o Talib Hussain	-	Member

All resident of village Sheonali, Tehsil & District Amroha (U.P.

Chief Executive Officer is directed to issue Office Memorandum accordingly.”

8. Thereafter, the Chief Executive Officer, Waqf Board has also made publication vide OM dated 15.6.2022, which is extracted herein under:-

“The U.P. Sunni Central Waqf Board having considered the matter at length, vide it’s order dated 13.06.2022 has rejected the claim of Sri Mobin Shah to appoint his 3 member committee to manage the affairs of Waqf Mazar Bhoorey Khan Shaheed situated at Qasba Sheonali, District Amroha, Waqf No.856-Moradabad (Amroha) as his claim for appointing his proposed three member managing committee is not found to be in the interest of the waqf. Further the Board vide the same order dated 13.06.2022 has appointed the following Committee to manage the affairs of the above waqf for a period of five years:-

1.	Aslam Hussain S/o Zaheer Ali	-	President
2.	Wajid Ali S/o Rashid Hussain	-	Secretary
3.	Mohammd Tayyab S/o Mohd. Yunus	-	Treasurer
4.	Mahir Hussain S/o Maqsood Hussain	-	Member
5.	Najim S/o Zaheer Ali	-	Member
6.	Margoob S/o Haji Chhidda	-	Member
7.	Jamshed S/o Salik	-	Member
8.	Wajid S/o Mohd. Hanif	-	Member
9.	Aasid S/o Dhasi	-	Member
10.	Afsal S/o Talib Hussain	-	Member

All resident of village Sheonali, Tehsil & District Amroha (U.P.).”

9. It appears from the record that after recognizing the petitioner Committee by the Waqf Board on 13.6.2022, which was duly published

vide OM dated 15.6.2022 the rival Committee/6th respondent had for the first time appeared before the Waqf Board on 20.06.2022 and filed an application dated 06.5.2022 alongwith election proceedings of the same very date i.e. 06.05.2022. In the said application, it was claimed that the Committee is validly elected Committee to manage the Waqf and accordingly, his election, which took place on 06.05.2022, is to be recognized. By the order impugned dated dated 26.7.2023, the Chairman of the Waqf Board had withdrawn the earlier order dated 13.06.2022 by which the petitioner Committee was recognized and appointed for a period of five years and also withdrawn the OM dated 15.06.2022.

10. Sri Amit Saxena, learned Senior Advocate for the petitioner, invited this Court's attention to the impugned order and submitted that the same is patently illegal and without jurisdiction. Therefore, the same as well as action taken pursuant thereto deserves to be quashed and set aside. He vehemently contended that the Chairman of the Waqf Board had no jurisdiction to review his earlier order. He contended that in the instant case there existed no ground or eventuality, which could have justified to recall the earlier order. He submitted that the main question, which is to be adjudicated in this writ petition, is that whether the Chairman can recall/review his earlier order or not?. He further argued that the Chairman of the Waqf Board inhere power under Section 67 of the Act only under certain exigencies for supervision and supersession of the Committee of Management. Even that too, in absence of procedure provided therein the said action is unsustainable. The impugned order had been passed without adhering the principles of natural justice. Therefore, the entire action is per se illegal and such an order or action pursuant thereto would be nullity.

11. Learned Senior Counsel further submitted that once the matter was remitted back by the Tribunal to the Waqf Board on 13.3.2020, even though the said proceeding continued for substantial long time i.e. two years, and meanwhile, the petitioner Committee was in effective

control. After considering the claim and counter claim set up by the parties, specially Mobin Shah and Nanhu Shah, the claims of Mobin Shah and Nanhu Shah were rejected and petitioner Committee was accorded approval to run the management of the Waqf for further five years. He submitted that in most arbitrary manner, the Chairman of the Waqf Board had entertained the alleged application dated 06.05.2022 on 20.06.2022, wherein for the first time the rival Committee had set up its case on the basis of some alleged election, which took place on 06.05.2022. In support of his submission, he has also placed reliance upon the judgement and order passed in **Haroon Al Rasheed vs. U.P. Sunni Central Waqf Baord through C.E.O. & 2 ors**¹ and also heavily relied upon the order dated 09.11.2022, which was passed by the Waqf Board in similar matter in respect of Waqf No.68A, Allahabad, wherein the Waqf Board itself had opined and declined to recall its earlier order of appointment of Committee of Management on the ground that it had no power to review or recall its previous order. He has also contended that the Chairman alone could not take any action in the name of power. It is his contention that the impugned order dated 26.07.2023, which has been passed by the Chairman, is not a decision of the Board and therefore, the impugned order is illegal and requires to be set aside.

12. Per contra, Shri Shashi Nandan, learned Senior Advocate for the contesting respondent no.6 elaborately contended that the present writ petition is not maintainable as the impugned order has been passed under the ambit of the Act and pertaining to the Waqf matters, the Tribunal is created, which has ample powers to give relief in appropriate cases. The facts are disputed which can only be pressed before the Tribunal and therefore, the writ petition under Article 226 of Constitution of India should not be entertained. He submitted that once the petitioner has efficacious remedy, he may approach to the Waqf Tribunal for appropriate remedy. Even on merits, the present writ petition is liable to be dismissed on the ground of concealment and suppression of relevant material. In the present matter, prior to passing

1. Misc. Bench No.6306 of 2006 decided on 22.01.2014

of the impugned order the Waqf Board had held an enquiry and the report was submitted on 25.08.2021. Even though, the same was confined to the claim set up between the petitioner Committee and one rival Committee headed by Mobin Shah. In the said proceeding, the Board had accorded leave to the parties to submit written submission on 22.09.2021. He had submitted that in most arbitrary manner, neither the petitioner nor the Waqf Board had brought on record the enquiry report dated 25.8.2021, which also dealt one of the application, which was moved by the petitioner (Aslam Hussain) wherein he had claimed certain rights on the basis of alleged election proceeding.

13. Sri Shashi Nandan, learned Senior Advocate further submitted that in the said election, it was also claimed that the meeting was convened in the “Sahen of Mosque” of the Waqf in question in which a Committee of 10 persons was elected. The said election was farce as the major portion of mosque belonging to the Waqf in question had already been demolished on account of widening of the road. Therefore, there was no possibility of such an election and without ascertaining these facts, the Waqf Board had accorded earlier recognition to the petitioner Committee. He submitted that even though in the said enquiry the petitioner had participated and also submitted written submission to the Board. Therefore, it is absolutely incorrect that no opportunity was given to the petitioner. He submitted that in fact the enquiry was conducted by the Senior Officer of the Board, who visited on the spot and recorded the statement of parties. Even the Committee of Management of Aslam Hussain (petitioner) had also participated in the enquiry and recorded his statement. Thereafter even the notice was also issued on 07.06.2023 inviting the written submission. The allegation, that no notice was given to the petitioner, is absolutely baseless and deliberately suppressed these facts to mislead the Court. The enquiry report dated 29.05.2023 and the notice dated 07.06.2023 are reiterated, which are appended alongwith counter affidavit filed by the contesting respondent. He submitted that in view of the law laid down by the

Apex Court in **K. Jayaram v. Bangalore Development Authority**²; **In Re: Prestige Lights Ltd. v. State Bank of India**³; **In Re: Udyami Evam Khadi Gramodyog Welfare Sastha v. State of Uttar Pradesh**⁴ and **In Re: K.D. Sharma v. Steel Authority of India Limited**⁵, in case the petitioner has not made disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. Lastly, he has contended that the present matter does not relate to a case under Section 67 of the Act and the petitioner Committee had submitted a fake election proceeding and on the basis of fake proceeding held in the year 2021 the petitioner Committee was appointed on 13.06.2022. Therefore, the earlier order has rightly been recalled and there is no infirmity in the order impugned and the writ petition is liable to be dismissed.

14. The learned Senior Advocate while raising an argument that there is an alternative efficacious remedy available to the petitioner to seek adjudication from the Waqf Tribunal, was candid enough to say that the jurisdiction of the Writ court cannot be said to be barred. It was argued that since disputed question of facts arose for consideration and there was also some concealment of fact, therefore, Writ Court was not the appropriate forum to decide the disputed question of facts.

15. Sri Punit Gupta, learned counsel for the Waqf Board had submitted that the waqf in question is purely charitable waqf and the office of Mutwalli/Chairman is not an office of profit. Even though there is no waqf deed providing any appointment of Mutwalli or Committee and in such cases the Committee is to be appointed, which is elected by the local residents where the waqf is situated. He submitted that in response to the earlier order dated 13.3.2020 passed by the Chairman of the Waqf Board and submitted its report on 25.07.2021. In the said proceeding

2. 2021 SCC Online SC 1194

3. (2007) 8 SCC 449

4. (2008) 1 SCC 560

5. (2008) 12 SCC 481

the parties had also submitted written arguments on 29.12.2021 and finally, the Waqf Board had rejected the claim of one Mobin Shah and passed an order on 13.06.2022 by which the petitioner Committee was recognized. Once it has been brought into the notice that meanwhile, the Muslims of the locality convened a meeting on 06.05.2022 and elected a Committee of Management (6th respondent) to manage the affair of the waqf. Therefore, in such situation the Board had an ample power to rectify the discrepancy and accordingly, the order was passed giving recognition to the decision of the local residents, who had elected the rival committee (6th respondent) on 06.05.2022 much prior to the appointment of petitioner Committee on 13.06.2022 and accordingly, on the basis of previous enquiry the order impugned was passed and once the correct position was brought on record through an application dated 20.06.2022 and considering the election proceeding dated 06.05.2022 a Senior Officer of the Board conducted spot enquiry. He met with the parties and recorded their statements including the statements of Aslam Hussain (petitioner) and like previous occasions notice was issued to the parties on 07.06.2022 asking them to file their written submission. He reiterates the written statement of Aslam Hussain, which is brought on record as CA-1 to the counter affidavit. Lastly, he contended that the order dated 13.06.2022 was passed without considering and ascertaining the election of the petitioner Committee by the local residents, where the waqf is situated. The petitioner had concealed notice as well as the enquiry dated 26.07.2022 and for suppression of these facts the petitioner is not entitled for any reprieve by this Court. The petitioner Committee does not derive any right from deed or scheme of appointment for its continuance in the management. The order impugned does not warrant any interference and the writ petition is liable to be dismissed.

16. In order to appreciate the arguments advanced by the learned counsel for the parties regarding maintainability of the writ petition, it would be apt to refer to certain case laws, which are being considered hereinafter.

17. In **Babubhai Muljibhai Patel v. Nandlal Khodidas Barot and others**⁶ Hon'ble Apex Court held that the High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. In a petition under Article 226, the High Court has jurisdiction to try issues both of fact and law. It was held as under:

“9. A writ petition under Article 226, it needs to be emphasised, is essentially different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceedings of a petition under Article 226. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is no doubt discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises complex questions of fact, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute should not appropriately be tried in a writ petition, the High Court may decline to try a petition

18. Hon'ble Apex Court in **Radha Krishan Industries v. State of H.P.**⁷ examined the question of maintainability of a writ petition before the High Court even when there was an alternative remedy available under the Goods and Services Tax Act, 2017 and held as under:-

“25. In this background, it becomes necessary for this Court, to dwell on the “rule of alternate remedy” and its judicial exposition. In *Whirlpool Corpn. v. Registrar of Trade Marks v. Registrar of Trade Marks*, (1998) 8 SCC 1] , a two-Judge Bench of this Court after reviewing the case law on this point, noted : (SCC pp. “.....”

27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.3. Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that

6. (1974) 2 SCC 706

7. (2021) 6 SCC 771

particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

19. The Constitution Benches of Hon’ble Apex Court in **K.S. Rashid and Son v. Income Tax Investigation Commission**⁸, **Sangram Singh v. Election Tribunal**⁹, **Union of India v. T.R. Varma**¹⁰, **State of U.P. v. Mohd. Nooh**¹¹ and **K.S. Venkataraman and Co. (P) Ltd. vs. State of Madras**¹² had held that though Article 226 of Constitution of India confers very wide powers in the matter of issuing writs on the High Court, the remedy of writ is absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of the principles of natural justice or the procedure required for decision has not been adopted. Therefore, the objections raised by Sri Shashi Nandan, learned Senior Advocate are not sustainable and accordingly, the same stand rejected.

20. The Wakf Board is a statutory authority established under the Act and is a “State” within the meaning of Article 12 of the Constitution. A constitution Bench of Hon’ble Apex Court in a judgment reported as **Rajasthan State Electricity Board, Jainpur v. Mohan Lal & ors**¹³ held “that the expression “other authorities” in Article 12 of Constitution will include all constitutional or statutory authorities on whom powers are conferred by law. It is not at all material that some of

8. AIR 1954 SC 207

9. AIR 1955 SC 425

10. AIR 1957 SC 882

11. AIR 1958 SC 86

12. AIR 1966 SC 1089

13. AIR 1967 SC 1857

the powers conferred may be for the purpose of carrying on commercial activities”. Similar view, that an authority created by a Statute is State within the meaning of Article 12, was considered in a judgment reported as **State of U.P. v. Neeraj Awasthi & ors**¹⁴ wherein it was held that the U.P. Agricultural Produce Market Board constituted by a statute “UP Krishi Utpadan Mandi Adhiniyam, 1964” is a State within the meaning of Article 12 of the Constitution. Since, the Wakf Board is state, it has to act fairly and reasonably. Hon’ble Apex Court in a judgment reported as **Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay**¹⁵ held that the action of a statutory authority must be reasonable and taken only upon lawful and relevant grounds of public interest. Relevant portion of the judgement is reproduced herein under:-

“25. Therefore, Mr Chinai was right in contending that every action/activity of the Bombay Port Trust which constituted “State” within Article 12 of the Constitution in respect of any right conferred or privilege granted by any statute is subject to Article 14 and must be reasonable and taken only upon lawful and relevant grounds of public interest. Reliance may be placed on the observations of this Court Where there is arbitrariness in State action, Article 14 springs in and judicial review strikes such an action down. Every action of the executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, it should meet the test of Article 14. The observations in paras 101 and 102 of the Escorts case [(1986) 1 SCC 264 : 1985 Supp 3 SCR 909] read properly do not detract from the aforesaid principles.”

21. As the Waqf Board exercises the quasi judicial functions and since such an order is final, subject to an appeal before the Wakf Tribunal, it has to be a reasoned and speaking order as in the appeal, the correctness of the reasons recorded by the Board would be required to be examined. As a quasi- judicial function stands midway between a judicial and an administrative function, the primary test is as to whether the authority alleges to be a quasi-judicial one, has any express statutory duty to act judicially in arriving at the decision in question. Hon’ble Apex Court in **State of Himachal Pradesh v. Raja Mahendra Pal & ors**¹⁶ held that if the reply is in the affirmative, the authority would be

14. (2006) 1 SCC 667

15. (1989) 3 SCC 293

16. (1999) 4 SCC 43

deemed to be quasi-judicial, and if the reply is in the negative, it would not be. It was held as under:-

“9. It follows, therefore, that an authority is described as quasi-judicial when it has some of the attributes or trappings of judicial functions, but not all. This Court in *Province of Bombay v. Khushaldas S. Advani* [AIR 1950 SC 222 : 1950 SCR 621] dealt with the actions of the statutory body and laid down tests for ascertaining whether the action taken by such a body was a quasi-judicial act or an administrative act. The Court approved the celebrated definition of the quasi-judicial body given by Atkin, L.J., as he then was in *R. v. Electricity Commrs.* [(1924) 1 KB 171 : 130 LT 164] in which it was held:

“Whenever any body of persons having legal authority to determine questions affecting rights of subjects, and having the duty to act judicially act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.”

The aforesaid definition was accepted as correct in *R. v. London County Council* [(1931) 2 KB 215 : 144 LT 464] and many subsequent cases both in England and in India. Again this Court in *Radeshyam Khare v. State of M.P.* [AIR 1959 SC 107 : (1959) 1 MLJ 5 (SC)] relying upon its earlier decision held:

“It will be noticed that this definition insists on three requisites each of which must be fulfilled in order that the act of the body may be quasi-judicial act, namely, that the body of persons (1) must have legal authority, (2) to determine questions affecting the rights of parties, and (3) must have the duty to act judicially. Since a writ of certiorari can be issued only to correct the errors of a court or a quasi-judicial body, it would follow that the real and determining test for ascertaining whether an act authorised by a statute is a quasi-judicial act or an administrative act is whether the statute has expressly or impliedly imposed upon the statutory body the duty to act judicially as required by the third condition in the definition given by Atkin, L.J.

Relying on paras 114 and 115 of Halsbury's Laws of England, 3rd Edn., Vol. 11 at pp. 55-58 and citing the case of *R. v. Manchester Legal Aid Committee* [(1952) 2 QB 413 : (1952) 1 All ER 480] learned counsel for the appellants contends that where a statute requires decision to be arrived at purely from the point of view of policy or expediency the authority is under no duty to act judicially. He urges that where, on the other hand, the order has to be passed on evidence either under an express provision of the statute or by implication and determination of particular facts on which its jurisdiction to exercise its power depends or if there is a proposal and an opposition the authority is under a duty to act judicially. As stated in para 115 of Halsbury's Laws of England, Vol. 11 at p. 57 the duty to act judicially may arise in widely differing circumstances which it would be impossible to attempt to define exhaustively. The question whether or not there is a duty to act judicially must be decided in each case in the light of the circumstances of the particular case and the construction of the particular statute with the assistance of the general principles laid down in the judicial decisions. The principles deducible from the various judicial decisions considered by this Court in *Khushaldas S. Advani* [AIR 1950 SC 222 : 1950 SCR 621] at p. 725 (of SCR) : (at p. 260 of AIR) were thus formulated”.

22. The grievance of the petitioner is that the Chairman of the Waqf Board had no powers to dissolve the earlier Managing Committee or to appoint a new Managing Committee in its place. Learned Senior Counsel for the petitioner had pointed out the provision of Section 67 of the Act. It also transpires from the record that initially, proceedings were initiated qua the Waqf in question in the year 2015 under Section 67 of the Act. The Waqf Board had finalized the proceeding vide order dated 10.02.2015 and the petitioner Committee had superseded the earlier Managing Committee and accorded approval for running the affairs of the Waqf for a period of three years. It is undisputed that the petitioner Committee was in effective control of the Waqf and later on, the term of the petitioner committee was further extended for a period of three years vide an order dated 06.03.2018. The said extension was objected by Mobin Shah and Nanhu Shah. They challenged the order dated 06.03.2018 before the U.P. Waqf Tribunal, Lucknow, which was allowed by the Waqf Tribunal vide an order dated 13.03.2020 and the matter was remanded back to the Waqf Board for fresh decision after hearing to all the parties concerned.

23. In the present matter, no material has been placed before us to substantiate that the rival Committee had ever agitated against the continuance of the petitioner Committee since 10.02.2015. In response to the order of the Waqf Tribunal dated 13.03.2020 the Waqf Board had considered rival claims and accepted the claim set up by the petitioner Committee regarding its election, which was accorded due recognition by the Waqf Board on 13.06.2022 and accordingly, the publication was also made vide OM dated 15.06.2022. Even though, the matter was remanded back by the Waqf Tribunal on 13.03.2020 and proceeding before the Waqf Tribunal continued for substantial long two years. Even in the said proceeding, at no point of time the rival claimant had ever set up its case. Only after passing an order of extension of five years of the Waqf Board, the alleged claim was set up by the 6th respondent and for the first time, he appeared before the Waqf Board on

20.06.2022. On the said date, he filed an application dated 06.05.2022 and set up his case on the basis of election dated 06.05.2022.

24. In para 12 of the counter affidavit, which was filed by the Waqf Board, it is averred that once the election proceeding dated 06.05.2022, which was set up by the 6th respondent, has been brought into the notice of the Waqf Board, then the Senior Officer of the Board conducted spot enquiry. He met with the parties and recorded their statements including the statement of Aslam Hussain (petitioner). The notice was issued to the parties on 07.06.2023 asking them to file their written submissions. We have occasion to have a glance of the averments contained in para-12 of the said counter affidavit and the same is reproduced herein under:-

“12. The contents of paragraphs 12, 13 & 14 of the writ petition are false and incorrect hence vehemently denied. The petitioner has deliberately suppressed the relevant facts from this Hon’ble Court. The correct position is that upon the application dated 20.06.2022 and considering the election proceedings dated 06.05.2022 a Senior Officer of the Board conducted spot enquiry. He met with the parties and recorded their statements including the statement of Aslam Hussain and like previous occasion, notice was issued to the parties on 07.06.2023 asking them to submit their written submissions. Copy of statement of Aslam Hussain is enclosed herewith as Annexure No.CA 1.”

25. We are surprised that while filing the aforesaid counter affidavit it is claimed that the notice was given to the parties on 07.06.2023 but the same is not appended alongwith the counter affidavit. Only a copy of the statement of Aslam Hussain (petitioner) in Urdu alongwith translated copy of the statement (Hindi) is appended alongwith the counter affidavit and the same is also reproduced herein under:-

“ असलम हुसैन वल्द जनाब जहीर अली साहब शाकिन ग्राम शोनाली तहसील व जिला अमरोहा ने अपना बयान दिया कि मुर्सलीन के जरिए दाखिल शिकायती दर्खास्त में जो लिखा है कि मेरे जरिए दाखिल कार्यवाही व एजेण्डा के बारे में फर्जी लिखा है वो गलत है उसका हकीकत से कोई ताल्लुक नहीं है इस कार्यवाही में दर्ज सारे दस्तक असल है और इस समेटी के इत्तखाप में आवाम की मनसा शामिल थी दूसरी शिकायत यह कि की नाजिम और एहसान मेरे चचेरे भाई नहीं हैं अन्यथा रिस्ते के दूर के भाई होते हैं। इस गाँव में 60% तर्क बिरादरी है और 20% जखैव और परजापति और 20% बाबर तपके और फकीर विरादरी के है और इस फकीर बिरादरी में ही वक्फ नमामा कब्जा कर रखा था इसलिए उनको कमेटी में शामिल नहीं किया गया था यह लोग कमेटी को हमेशा नुकसान पहुँचाते रहे है और अवामी वक्फ को नुकसान पहुँचाने की कोशिश करते रहते हैं इस वक्फ का मुकरल इन्तिजाम व इन्सराम कमेटी ही करती है वक्फ से होने वाली आमदनी को वक्फ मजार व मस्जिद पर रगाई पोताई और सफाई के इस्तेमाल में लाया जाता है किसी जायरीन के साथ

कोई बदसलूकी नहीं की जाती है कमेटी के जरिए वक्फ के इन्तिजाम में तावु देने के लिए रखा गया स्टाप जायरीन की खिदमत करते हैं और चपरासी वगैरह उनको मुक्त में देते हैं। दरगाह में बराबर तिलावत होती है कमेटी में दो हाफिज शामिल हैं और इमाम साहब भी बराबर दरगाह पर तिलावत करते हैं वक्फ से होने वाली आमदनी का पूरा लेखा-जोखा कमेटी के पास रहता है वक्फ आमदनी वक्फ की आमदनी को खुर्द-बुर्द नहीं किया जाता है इसा पूरा इमानदारी के साथ आडिट कराकर मुतालवा बोर्ड अदा किया जाता है और बोर्ड से दर्खास्त है कि कमेटी के खिलाफ लगाये गये सारे इल्जाम फर्जी बेबुनियाद है लिहाजा दर्खास्तों को खारिज किया जाय।

बयान पढ़कर दस्तक किये।"

26. Much emphasis has been placed by Sri Punit Kumar Gupta, learned counsel for the Waqf Board on the basis of averments contained in para-15 of the counter affidavit and the same is also reproduced herein under:-

"15. The contents of paragraph 24, 25, 26 & 27 of the writ petition are based upon misconception of law and false hence vehemently denied. Section 17 (1) of the Waqf Act, 1995 empowers the Board to convene a meeting of the Board for its day-to-day working. This section is not applicable over the controversy in hand. The order dated 13.06.2022 was passed without considering and ascertaining the election of the petitioner's Committee by the local residents where the waqf is situated. The notice as well as the enquiry dated 26.07.2022 has been concealed by the petitioner from this Hon'ble Court and for suppression of these facts the petitioner is not entitled for any relief from this Hon'ble Court. The committee represented by respondent no.6 is entitled for management of the Waqf in question. The petitioner's committee does not derive any right from any deed or scheme of appointment for its continuance in management. The Office of Mutawalliship is not an office of profit. The petitioner has also not disputed the impugned order that petitioner's committee is a committee of outsiders and has also not been elected on spot by local residents therefore, petitioner is not entitled for any relief. The order dated 26.07.2023 has been passed in accordance with law considering the desire/inclination of the local residents where the Waqf is situated."

27. While filing the counter affidavit by the Board, neither the enquiry dated 26.07.2022 nor any notice dated 07.06.2023 is brought on record. Therefore, we have no hesitation to quote that prior to passing the impugned order, no notice or opportunity was given to the petitioner Committee. It is admitted position that when the matter was relegated by the Waqf Tribunal vide its order dated 13.3.2020 and set aside the earlier order dated 06.03.2018 passed by the Waqf Board by which the extension of three years was accorded to the petitioner Committee and thereafter, the Waqf Board after considering the rival claims had passed a detailed order on 13.06.2022 and rejected the claim set up by one Mobin Shah. Even though since 13.03.2020 till 13.06.2022 the

petitioner Committee was in effective control of the Waqf and no further claim was ever set up except one Mohd. Mobin Shah, who had succeeded in the Court proceeding before the Waqf Tribunal and the matter was remitted to the Board.

28. In this factual backdrop of the aforesaid case, before proceeding further in the matter it would be apt to have a glance of the provisions of the Act, which would be relevant for adjudication as under:-

“3(i) **“mutawalli”** means any person appointed, either verbally or under any deed or instrument by which a wakf has been created, or by a competent authority, to be the mutawalli of a wakf and includes any person who is a mutawalli of a wakf by virtue of any custom or who is a naib-mutawalli, khadim, mujawar, sajjadanashin, amin or other person appointed by a mutawalli to perform the duties of a mutawalli and save as otherwise provided in this Act, any person, committee or corporation for the time being managing or administering any wakf or wakf property.

42. Change in the management of [auqaf] to be notified.—(1) In the case of any change in the management of a registered 1 [waqf] due to the death or retirement or removal of the mutawalli, the incoming mutawalli, shall forthwith, and any other person may notify the change to the Board.

(2) In the case of any other change in any of the particulars mentioned in section 36, the mutawalli shall, within three months from the occurrence of the change, notify such change to the Board.

64. Removal of mutawalli :- (1) Notwithstanding anything contained in any other law or the deed of wakf, the Board may remove a mutawalli from his office if such mutawalli -

(a) has been convicted more than once of an offence punishable under section 61; or

(b) has been convicted of any offence of criminal breach of trust or any other offence involving moral turpitude, and such conviction has not been reversed and he has not been granted full pardon with respect to such offence; or

(c) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him unfit to perform the functions and discharge the duties of a mutawalli; or (d) is an undischarged insolvent; or

(e) is proved to be addicted to drinking liquor or other spirituous preparations, or is addicted to the taking of any narcotic drugs; or

(f) is employed as a paid legal practitioner on behalf of, or against, the wakf; or

(g) has failed, without reasonable excuse, to maintain regular accounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by sub-section (2) of section 46; or

(h) is interested, directly or indirectly, in a subsisting lease in respect of any wakf property, or in any contract made with, or any work being done for, the wakf or is in arrears in respect of any sum due by him to such wakf; or

(i) continuously neglects his duties or commits any misfeasance, malfeasance, misapplication or funds or breach of trust in relation to the wakf or in respect of any money or other wakf property; or

(j) willfully and persistently disobeys the lawful orders made by the Central Government, State Government, Board under any provision of this Act or rule or order made thereunder;

(k) misappropriates or fraudulently deals with the property of the wakf.

(2) The removal of a person from the office of the mutawalli shall not affect his personal rights, if any, in respect of the wakf property either as a beneficiary or in any other capacity or his right, if any, as a sajjadanashin.

(3) No action shall be taken by the Board under sub-section (1), unless it has held an inquiry into the matter in a prescribed manner and the decision has been taken by a majority of not less than two-thirds of the members of the Board.

(4) A mutawalli who is aggrieved by an order passed under any of the clauses (c) to (i) of sub-section (1), may, within one month from the date of the receipt by him of the order, appeal against the order to the Tribunal and the decision of the Tribunal on such appeal shall be final.

(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.

(6) Where any appeal is filed by the mutawalli to the Tribunal under sub-section (4), the Board may make an application to the Tribunal for the appointment of a receiver to manage the wakf pending the decision of the appeal, and where such an application is made, the Tribunal shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), appoint a suitable person as receiver to manage the wakf and direct the receiver so appointed to ensure that the customary or religious rights of the mutawalli and of the wakf are safeguarded.

(7) Where a mutawalli has been removed from his office under sub-section (1), the Board may, by order, direct the mutawalli to deliver possession of the wakf property to the Board or any officer duly authorized in this behalf or to any person or committee appointed to act as the mutawalli of the wakf property.

(8) A mutawalli of a wakf removed from his office under this section shall not be eligible for re-appointment as a mutawalli of that wakf for a period of five years from the date of such removal.

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) Notwithstanding anything contained in the foregoing sub-sections, the Board may, instead of superseding any committee under sub-section (2), remove any member thereof if it is satisfied that such member has abused his position as such member or had knowingly acted in a manner prejudicial to the interests of the wakf, and every such order for the removal of any member shall be served upon him by registered post:

Provided that no order for the removal of the member shall be made unless he has been given a reasonable opportunity of showing cause against the proposed action:

Provided further that any member aggrieved by any order for his removal from the membership of the committee may, within a period of thirty days from the date of service of the order on him, prefer an appeal against such order to the Tribunal and the Tribunal may, after giving a reasonable opportunity to the appellant and the Board of being heard, confirm, modify or reverse the order made by the Board and the order made by the Tribunal in such appeal shall be final.”

(emphasis supplied)

29. From bare reading of the aforesaid provision, it is apparent that whenever the supervision or management of a wakf is vested in any committee appointed by the wakf, it may continue to function until it is superseded by the Board or until the expiry of its term, as may be specified by the Board, whichever is earlier on having satisfaction that the action of the committee is inconsistent to the scheme for the management of the Wakf. The power of Section 67 of the Act can be exercised for supervision of a committee. Thus, as per the language of the said provision it can safely be accepted that the Board is having a power to appoint a committee for management of the affairs of the Wakf and as per the definition specified under Section 3(i), it may be treated as a Mutawalli, however, the power is vested with the Board to appoint a committee. Under Section 65 of the Act, the Wakf is having a power to take the direct management if there is a mismanagement, misfeasance, malfeasance, misapplication and also that function of the Wakf is inconsistent to the object of the scheme of the Wakf and deed or instrument of the said Wakf. The State Government is also having power of removal of Mutawalli as conferred by Section 66 of the Act. In the scheme of the Act, it is clear that if the Wakf is registered it may function through Mutawalli as defined under Section 3 (i) of the Act. In case of mismanagement, action may be taken for removal as per the procedure prescribed under Section 64 of the Act. The Board may directly take the management as per Section 65 of the Act while the power of supervision and supersession of the committee is with the Board as per Section 67 of the Act. In view of the foregoing discussion, it is to be examined whether the removal of the petitioner on the allegation as revealed from the record is in accordance to law and the appointment of the rival committee (respondent no.6) without taking recourse as specified under sub-section (2) of Section 67 of the Act is justifiable.

30. In view of the foregoing discussion, it is apparent that while passing the impugned order the Board has not proceeded in consonance with the provisions under Section 67 of the Act, wherein 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 with further rider that 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.**

31. It is a trite law that the Court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. Whereas in the present matter, there is no ambiguity in the language of the Act, which may warrant for any interpretation of the provisions contained therein. We find that in case of any eventuality or counter claim was set up by the rival Committee before the Board, it was appropriate to the Board to take recourse under Section 67 of the Act.

32. A liberal construction does not justify an extension of the statute's scope beyond the contemplation of the Legislature. The fundamental and elementary rule of construction is that the words and phrases used by the Legislature shall be given their ordinary meaning and shall be constructed according to the rules of grammar. When the language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the Act speaks for itself. It is a well recognized rule of construction that the meaning must be collected from the expressed intention of the Legislature.

33. In **Nasiruddin and ors vs. Sita Ram Agarwal**¹⁷, Hon'ble Apex Court has held that the court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when

17. Appeal (Civil) No.5077 of 1998 decided on 28.01.2003

the language of provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well-settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression 'shall or may' is not decisive for arriving at a finding as to whether statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well-settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character.

34. It is apparent that the Waqf Board has no express power to dissolve the earlier Managing Committee or to appoint new Managing Committee in its place without taking recourse of the provisions of Section 67 of the Act, which deals with the supervision and supersession of the Committee of Management, whenever the supervision or management of the 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. Proviso to sub-section (1) of Section 67 also provides 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. Sub-section (2) of Section 67 of the Act further provides that 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. It also

provides 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.

35. In the present matter, facts are undisputed. Admittedly, the term of the present Committee was extended by the Board vide an order dated 06.03.2018 and while moving an application by the rival Committee a purported election was shown and the said application was entertained by the Board. In such eventuality the Board must be satisfied that the approval, which was accorded in favour of the petitioner Committee, was incorrect and proceeding had to be drawn, wherein the reasons are 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. Even such action is to be initiated after recording satisfaction and thereafter giving 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.

36. Contrarily, in the present matter, no proceeding has admittedly been drawn. Merely an application of the rival committee was entertained and without recording satisfaction, the proceedings were initiated even without according any show cause notice as contemplated in sub-section (2) of Section 67. The entire action is vitiated on this count itself. In the Act there is no ambiguity and therefore, the objection, which has been raised and pressed by the respondent counsels that the General Clauses Act gives such a power to the Board to rescind or review, is unsustainable. The order of recognition and further extension of the petitioner Committee could be withdrawn/recalled by the Waqf Board only when such eventualities were there and at the said stage the Board was of the opinion that it had

to take a recourse as contemplated under Section 67 of the Act. Therefore, the general power under Section 21 of the General Clauses Act to rescind a notification or order has to be understood in the light of the subject matter, context and effect of the relevant provisions of the statute under which the notification or order is issued and the power is not available after an enforceable right has accrued under the notification or order. Moreover, Section 21 of the General Clauses Act has no application to vary or amend or review of quasi judicial power. A quasi-judicial order can be generally varied or reviewed when obtained by fraud or when such power is conferred by the Act or Rules under which it is made. Relying upon the admitted facts of the case, this Court is of the opinion that the Waqf Board has exercised its power in most arbitrary manner and without taking recourse as available under the Act.

37. We further would like to observe that only vague and evasive response has been filed by the Waqf Board. Even though categorical objection was taken by the petitioner in para-24 of the writ petition, wherein it is alleged that the order impugned has been passed in arbitrary manner without holding any Board's meeting, which is mandatory under Section 17 (1) of the Act as there was neither any agenda before the Board for supersession of the Committee of the Management nor any such meeting was convened for the said purpose. In absence of any material before us, we presume that there was no such agenda before the Board for supersession of the petitioner Committee as there is no categorical objection in the counter affidavit. This also creates a doubt regarding the working of the Waqf Board. We are not inclined to proceed further regarding the working of the Board but we leave it open to the Board to introspect and adhere the law in this regard.

38. In view of the foregoing discussion, the writ petition is allowed and the order dated 26.07.2023 passed by the Waqf Board as well as the consequential OM dated 31.07.2023 issued by the Assistant Secretary of the Waqf Board are set aside. The Waqf Board is directed to pass

speaking order in relation to the appointment of the Committee of Management of the aforesaid Waqf after hearing all the parties concerned in accordance with law within six weeks from the date of receipt of certified copy of the order. Meanwhile, in order to avoid the vacuum in the administration of the Waqf, we direct that the status quo as on today shall be maintained by the parties.

Order Date :- 20.11.2023
RKP/