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C.R.P.(NPD).No.1617 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(NPD).No.1617 of 2023 &
C.M.P.No.10521 of 2023

Dr.Mohamed Meeran

... Petitioner

-Versus-

1.The Tamil Nadu Waqf Board,
Rep.by its Chief Executive Officer,
No.1, Jaffar Sirang Street,
Vallal Seetakathai Nagar, Chennai – 600 001.

2.The Waqf Superintendent,
139, Doctor Besant Road,
Ice House, Chennai – 600 005.

3.Niyamathullah @ Munna Bhai

4.R.Syed Yakoob

5.S.Mohammed Kalimullah

6.M.Mohamed Saleem

7.Mohamed Abdul Subhaan

8.P.Nasurdeen

9.K.Mohamed Ali

... Respondents

Revision filed under Article 227 of the Constitution of India against the
order dated 02.01.2023 passed in O.A.No.25 of 2022 on the file of the Tamil



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Nadu Waqf Tribunal at Chennai.

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For Petitioner : Mr.E.Mohammed Abbas

*For Respondents : Mr.Haja Mohideen Gisthi
1 & 2*

*For Respondents : Mr.L.Gavaskar
3 to 9*

ORDER

This civil revision petition arises against an order passed by the learned Waqf Tribunal at Chennai in O.A.No.25 of 2022 dated 02.01.2023. By the said order, the learned Waqf Tribunal came to the conclusion that the said O.A. is liable to be dismissed and accordingly dismissed the same. Invoking the powers vested under Proviso to Section 83 (9) of the Waqf Act 1995, the present civil revision petition has come up before me.

2. Notice regarding admission had been ordered on 12.06.2023. Mr.Haja Mohideen Gisthi entered appearance for the respondents 1 and 2 and Mr.L.Gavaskar appeared for respondents 3 to 9.

3. I have heard Mr.E.Mohammed Abbas in support of this revision and the two counsels named above opposing it.

4. The fact relating to the dispute is very limited. There are two Waqfs



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which were surveyed and notified by the State of Tamil Nadu. One is Hazarath Syed Hussain Sha Khadiri @ Dimmasami Dargah and the other is Hazarath Syed Hussain Sha Khadiri @ Dimmasami Dargah Mosque. Both the Waqfs were surveyed and were given survey numbers viz., G.S.No.235/Chennai and G.S.No.236/Chennai respectively.

On the request of Mr.Haja Mohideen Gisthi, the files relating to both the Waqfs were placed before me. A perusal of the files as well as the orders and the petition reveals that the Waqf Tribunal cum I Assistant City Civil Judge at Chennai by an order dated 20.12.2007 had directed the Tamil Nadu Waqf Board to take over direct management of both the Waqfs. The Tamil Nadu Waqf Board accordingly passed a resolution in item No.80/2008 on 28.05.2008, taking both the Waqfs under its direct management.

6. The Waqf Board appointed the Superintendent of Waqfs, Chennai, as the executive officer and further directed him to hold elections for both the Waqfs together. Accordingly, elections were held following the secret ballot procedure and the committee headed by Jana Mohamed Abibulla assumed office for a period of three years from 2013 to 2016.



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7. It is relevant to refer to the proforma report which has been filed by the Waqf Board before the Waqf Tribunal at Chennai. As per the proforma report, the appointment of Mutawallis to both the institutions was by way of “nomination by the local Jamathars”. By the efflux of time, as the Mussallis increased in number, the Waqf Board has decided the nomination of members would be concluded by way of conducting election by secret ballot. On this tactic, the committee of Jana Mohamed Abibullah had been appointed for the aforesaid Waqfs. This process of election seems to have been followed for the subsequent years as well

8. For the year 2017, after the expiry of appointment of Jana Mohamed Abibullah, when the elections were called for afresh, sufficient number of nominations were not made to fill the office of the committee. Therefore, the Waqf Board yet again brought the committees of both the Waqfs under direct management by way of a resolution in Item 97/2018 dated 28.08.2018. The Waqf Board, by this resolution, further ordered election/selection of eligible persons for the management of both the Durgah as well as the Mosque.



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9. One Janath R.Syed Yacoob Sahib, when the Waqfs were under the direct management of the Board, requested that a committee be appointed in order to conduct the litigations which had arisen on account of encroachments on the Waqf property. The Waqf Board, taking into consideration this situation de hors the proforma, appointed an ad hoc committee. This ad hoc committee consisting of seven members were appointed for the management of Syed Hussain Shah Khadhiri/Dhimmasami Dargah alone, leaving the direct management with respect to the Mosque to continue with the Waqf Board.

10. Subsequently one Mohamed Habibullah @ Mohamed Nadeem and two others made out an application to the Waqf Board to form a management committee for the Mosque also. When this application was pending, the Waqf Board took into consideration the resolution passed in Item No.97/2018, previously referred to by me, and decided to call for election for both the Mosque and Dargah and decided that they would be under the same management committee.

11. In the meantime, the tenure of the *ad hoc* committee had also come to an end. Therefore, the Board resolved to constitute a single management



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committee for both the Waqfs. The files denote that the entire papers were placed before the Chief Executive Officer, who ordered nomination by secret ballot and had appointed one Zabeer as the election officer. Pursuant to the order passed by the Chief Executive Officer of the Tamil Nadu Waqf Board, the election notifications were called for by the Superintendent of Waqfs. It is pertinent to point out that the election notification reads as follows:

**உறசரத் சையது உறஸைன் ஷா காதிரி தர்கா
மற்றும்
உறசரத் சையது உறஸைன் ஷா காதிரி தர்கா
மஸ்ஜித்
திம்மசாமி தர்கா தெரு, பெரம்பூர், சென்னை - 600 011.**

நிர்வாக குழு தேர்தல் - 2021

அறிவிப்பு எண் - 4

நாள் : 16.11.2021

அன்புடையீர் அஸ்ஸலாமு அலைக்கும் வரஉற்

சென்னை மாவட்டம், பெரம்பூர், உறசரத் சையது உறஸைன் ஷா மாதிரி தர்கா **மற்றும்** உறசரத் சையத் உறஸைன் ஷா காதிரி தர்கா மஸ்ஜித் வக்.:புகளின் நிர்வாகத்திற்கு இரகசிய வாக்குப்பதிவு மூலம் புதிய நிர்வாகக்குழுவினை தேர்வு செய்ய தமிழ்நாடு வக்.:ப் வாரிய முதன்மை செயல் அலுவலரின் அவர்களின் குறிப்பாணை ந.க.எண்.15953/10/ஆ9/தெ நாள் : 18.08.2021ன்படி மேற்படி வக்.:புகளின் நிர்வாகத்திற்கு 12 உறுப்பினர்களை கொண்ட புதிய நிர்வாகக்குழுவினை இரகசிய வாக்குப்பதிவு மூலம் தேர்வு செய்ய 26.08.2021 அன்று 18 வயது பூர்த்தி அடைந்த ஆண் வாக்காளர் கொண்ட வரைவு வாக்காளர்



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பட்டியல் வெளியிடப்பட்டது. அதனை தொடர்ந்து பெயர் சேர்க்க/நீக்க/திருத்தம் செய்ய உரிய கால அவகாசம் வழங்கப்பட்டு இன்று இறுதி வாக்காளர் பட்டியல், தேர்தல் கால அட்டவணை மற்றும் தேர்தல் விதிமுறைகள் மேற்படி வக்.புகளின் அறிவிப்பு பலகை மற்றும் வக்.ப் கண்காணிப்பாளர் அலுவலகம், சென்னை ஆகிய இடங்களில் வெளியிடப்படுகின்றன.

தேர்தல் கால அட்டவணை

வரிசை எண்.	விபரங்கள்	நாள்	நேரம்	இடம்
1.	இறுதி வாக்காளர் பட்டியல் மற்றும் தேர்தல் அட்டவணை	16.11.2021 செவ்வாய் கிழமை	காலை 11.00 மணிக்கு	உறசரத் சையது உறசைன் ஷா காதிரி தர்கா மற்றும் உறசரத் சையது உறசைன் ஷா காதிரி தர்கா மஸ்ஜித்
2.	வேட்புமனு தாக்கல்	22.11.2021 திங்கட் கிழமை	காலை 10.00 மணி முதல் மாலை 4.00 மணி வரை	வக்.ப் கண்காணிப்பாளர் அலுவலகம் எண்.139, டாக்டர் பெசன்ட் ரோடு, ஜஸ் உறவுஸ், திருவல்லிக்கேணி, சென்னை - 5.
3.	வேட்புமனு தாக்கல் செய்தவர்களின் பட்டியல் வெளியிடுதல்	22.11.2021 திங்கட் கிழமை	மாலை 6.00 மணி	உறசரத் சையது உறசைன் ஷா காதிரி தர்கா மற்றும் உறசரத் சையது உறசைன் ஷா காதிரி தர்கா மஸ்ஜித்
4.	வேட்புமனு பரிசீலனை	23.11.2021 செவ்வாய் கிழமை	காலை 11.00 மணி	வக்.ப் கண்காணிப்பாளர் அலுவலகம் எண்.139, டாக்டர் பெசன்ட் ரோடு, ஜஸ் உறவுஸ், திருவல்லிக்கேணி, சென்னை - 5.
5.	ஏற்றுக்கொள்ளப்பட்ட வேட்பாளர்கள் பட்டியல் வெளியிடுதல்	23.11.2021 செவ்வாய் கிழமை	மாலை 4.30 மணி	உறசரத் சையது உறசைன் ஷா காதிரி தர்கா மற்றும் உறசரத் சையது உறசைன் ஷா காதிரி தர்கா மஸ்ஜித்
6.	வேட்புமனு திரும்ப பெறுதல்	26.11.2021	காலை 11.00 மணி	வக்.ப் கண்காணிப்பாளர் அலுவலகம்



வரிசை எண்.	விபரங்கள்	நாள்	நேரம்	இடம்
		வெள்ளிக் கிழமை	முதல் பிற்பகல் 1.00 மணி வரை	எண்.139, டாக்டர் பெசன்ட் ரோடு, ஐஸ் உறவுஸ், திருவல்லிக்கேணி, சென்னை - 5.
7.	இறுதி வேட்பாளர் பட்டியல் வெளியிடுதல் மற்றும் சின்னம் ஒதுக்குதல்	26.11.2021 வெள்ளிக் கிழமை	மாலை 6.00 மணி	உறசரத் சையது உறூசைன் ஷா காதிரி தர்கா மற்றும் உறசரத் சையது உறூசைன் ஷா காதிரி தர்கா மஸ்ஜித்
8.	வாக்குப்பதிவு	05.12.2021 ஞாயிற்றுக் கிழமை	காலை 9.00 மணி முதல் மாலை 4.00 மணி வரை	உறசரத் சையது உறூசைன் ஷா காதிரி தர்கா மற்றும் உறசரத் சையது உறூசைன் ஷா காதிரி தர்கா மஸ்ஜித்
9.	வாக்கு எண்ணிக்கை	05.12.2021 ஞாயிற்றுக் கிழமை	மாலை 5.00 மணி	உறசரத் சையது உறூசைன் ஷா காதிரி தர்கா மற்றும் உறசரத் சையது உறூசைன் ஷா காதிரி தர்கா மஸ்ஜித்
10.	தேர்தல் முடிவுகள் அறிவிப்பு	05.12.2021 ஞாயிற்றுக் கிழமை	வாக்கு எண்ணிக்கை முடிந்தவுடன்	உறசரத் சையது உறூசைன் ஷா காதிரி தர்கா மற்றும் உறசரத் சையது உறூசைன் ஷா காதிரி தர்கா மஸ்ஜித்

12. This election notification was called on 16.11.2021. The election schedule specified several dates on which the elections had to be conducted. It is pertinent to note that this election notification had regulations which had been published therewith. One such regulation reads as follows:

“இத்தேர்தல் பள்ளிவாசல் மற்றும் தர்கா வக்ஃபின் நிர்வாகக்குழு தேர்தலாக இருப்பதால் அரசியல் கட்சிகளின் சின்னங்களையோ, கொடிகளையோ பயன்படுத்தக்கூடாது.”



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13. Pursuant to this election notification, on 22.11.2021, 15 persons had filed their applications for participating in the elections. On 26.11.2021 out of the 15, 3 persons withdrew their nominations, leaving only 12 in the fray. With the number of posts being equivalent to the number of validly received nominations, the Election Officer cum Superintendent of Waqfs, Chennai came to a conclusion that the 12 persons had been elected unopposed. Consequently, he issued a notification in ந.க.எண்.235&236/செ/தே.அ/2021 dated 05.12.2021, declaring that the 12 persons whose names found in the list annexed to the notification have been elected and that they would hold office from 05.12.2021 to 04.12.2024.

14. It is pertinent to note that this order was passed on the basis of the original notification issued on 16.11.2021, which contemplated a single management committee for both Dargah as well as the Mosque. As already premised by me, on going through the files, it was the decision of the Waqf Board that there should be a single management committee for both the institutions. After the election proceedings were over, the person who had been elected as president of Mutawalli for the Mosque and Dargah held a meeting on



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08.12.2021 and appointed persons to the respective offices. He met the Superintendent of the Tamil Nadu Waqf Board and called upon him to hand over the accounts so as to enable the newly formed committee to start managing the affairs of the Dargah and Mosque. These papers were placed before the Waqf Board for passing appropriate orders. The Waqf Board met on 25.01.2022. Instead of approving the election results, it went against it and appointed 12 persons who had been elected by the common notification as the committee only for the Mosque and appointed the respondents before me as the members of the committee for the Dargah.

15. It becomes relevant for me to point out at this instance that the private respondents before me never filed their nominations nor did they contest the election at any point of time. Their only claim to the office is by virtue of the fact that they had been appointed as ad hoc committee members by the Waqf Board after revoking the direct management order of the year 2019. This order of the Waqf Board dated 25.01.2022 was communicated to the civil revision petitioner and the other members by a communication of the Chief Executive Officer on 03.03.2022.



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16. This was put to challenge before the Waqf Tribunal on the simple and sole ground that the Waqf Board, having elected the petitioner by a common election notification for the Mosque and Dargah, is not entitled to bifurcate the notification and appoint two sets of persons, namely the elected persons to the Mosque and the unelected persons to the Dargah. This challenge was objected to by the private respondents. The learned Tribunal had accepted the arguments of the respondents and had dismissed the petition as stated above.

17. Mr.E.Mohammed Abbas would submit that the Tamil Nadu Waqf Board, having issued the common notification for the Dargah as well as the Mosque, is not entitled to turn around and plead that it will appoint the elected persons only to the Mosque and not to the Dargah.

18. Rejecting these arguments, Mr.L.Gavaskar would state that when the Dargah and the Mosque have two separate general survey numbers, elections would have to be held separately, and calling for a common notification by the Waqf Board is wrong. He would expand his argument and state that the Waqf Board had treated the two committees separately, as would be clear from the



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Gazette notification of the year 2019, whereby the direct management for the

Dargah was revoked whereas it was continued for the Mosque.

19. He would further state that the respondents, by virtue of being the *ad hoc* committee members, had a vested right to continue in their office till the expiry of their tenure mentioned in the order, and therefore, no exception can be taken to the order of the Waqf Board dated 03.03.2022 holding that the elected office bearers will be appointed only to the Mosque and not to the Dargah. He would then plead that the election procedure had not been followed as no elections were conducted and 12 persons were merely declared elected by the Superintendent of Waqf Board.

20. He would state that after the order was passed by the Waqf Board on 03.03.2022, an extension was granted to the private respondents to continue with the management of the Dargah till 2025, and the extension not having been challenged by the civil revision petitioner, I have to sustain the order in O.A.No.22 of 2022. He would further argue that the order dated 25.01.2022 of the Waqf Board not having been challenged by the petitioner, the proceedings would have to fail.

21. He would point out that on 03.03.2022, the meeting was conducted



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between the elected office bearers as well as the ad hoc committee members under the presidentship of Alhaj Syed Ali Akbar and the said proceedings had been suppressed by the petitioner and therefore, he is not entitled to any relief in the said proceedings.

22. Last but not least, he would state that as the Chief Executive Officer did not have the power to call for elections, the entire election procedure that had been followed by the Tamil Nadu Waqf Board deserves to be set aside. He would rely upon *Ezhome Sunni Valiya Juma Masjid vs. Kerala State Waqf Board, (2019) 3 KLT 1064* in order to press on his point.

23. Mr.Haja Mohideen Gisthi had sought a passover when the matter was taken up to produce the entire file before me. He would state that the Waqf Board had followed the election procedure and had declared the petitioner and 11 others as elected. He would state that for the purpose of better administration of the Dargah and Mosque, the Waqf Board on 25.01.2022 had decided that the Dargah and Mosque would have separate committees. He would state that the Waqf Board has the power to pass such an order and it cannot be interfered with by the tribunal or by this court sitting in revision as against the order. He would add to the submission made by L.Gavaskar that the



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order dated 25.01.2022 was passed after hearing the petitioner and the private respondents and therefore, they had knowledge of the said proceedings. Since they did not challenge that order, this revision has to fail.

24. I have carefully considered the arguments on either side. I have gone through the order of the Tribunal, Proforma and the original files that have been produced by Mr.Haja Mohideen Gisthi.

25. I need not go into the history of the Waqf, for there is no dispute that both the Waqfs have been surveyed and notified by the Tamil Nadu Waqf Board in GS.NO.235/Chennai and 236/Chennai. By virtue of this notification, both the Waqfs come under the superintendence and control of the Tamil Nadu Waqf Board in terms of Section 32 of Waqf Act, 1995. The proforma of both the Waqfs have been filed as Ex.R3 and Ex.R4 before the Tribunal. Mr.L.Gavaskar was kind enough to produce the certified copy of the same.

26. A perusal of both the proforma would show that both the Waqfs are adjacent to each other. Apart from that with respect to the rule of Succession that had been notified after the survey, insofar as the mosque is concerned, it



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would state that “no specific rules. By nomination by local Muslims by usage” and insofar as the Dargah is concerned, the rule of succession would always read similarly “by nomination by local Muslims as per the usage”.

27. As premised above, the Waqf Board in its wisdom had decided that there must be a single committee for both the Dargah as well as the Mosque, since they are adjacent to each other. Pursuant to the orders of the Waqf Tribunal in 2007, both the Waqfs were brought under direct management. In order to continue with the litigation with respect to the encroachments that had been made in relation to the Dargah, a few of the Musallis had petitioned the Waqf Board to appoint them as ad hoc committee members in order to continue the said proceedings.

The Waqf Act, 1995 does not authorise the waqf Board to appoint an *ad hoc* committee

28. A perusal of the Waqf Act, 1995, would show that there is no provision for the Waqf Board to appoint the *ad hoc* committee members. But it is seen from regular practice that the Waqf Board, being with limited staff, is unable to send them everywhere as the number of Waqfs are a few thousand. Therefore, it has become customary for the Waqf Board to take the assistance

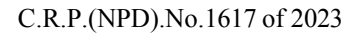


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of the few believers in the local area and appoint them as *ad hoc* Committee members. This is done as a practice, and it is not referable to any of the provisions of the Waqf Act. If at all, it can be referred to the provision under Section 65. However, the order of appointment of the respondents which has been placed before me has not been traced to the said provision.

The tenure of the ad hoc committee will terminate upon the appointment of the validly elected committee

29. Any person, even a stranger, in management of the Waqf property is treated as a Mutawalli for the purposes of the Waqf Act. This is because the person in management should not claim an adverse right as against the Waqf. This does not mean that an *ad hoc* committee member has a vested right to continue an office as long as the period of appointment exists. If the Waqf Board decides to hold elections for the Waqf and the duly elected persons are appointed, then the *ad hoc* committee members' tenure, being co terminus with the completion of elections, would come to an end after the appointment of the duly elected members. Their right to continue an office has to give way to the persons who have been elected to the said office. This is because election by nomination is the manner in which the rule of succession has to be decided for



30. The argument of L.Gavaskar that the Mutawalli has vested right to continue in office and his clients, who are the private respondents, having been appointed from 2019 to 2022 and thereafter till 2025 are entitled to continue, though sounds very attractive, I am not persuaded with the same. The reason being that the Waqf Board, being vested with the authority of superintendence over all Waqfs, has decided to hold elections after following the due process of law. Calling for elections as pointed out above is in terms of clause 9 of the proforma of both the Waqfs.

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32. *Pro tem* or *ad hoc* appointment will not give any such right to the parties. If a person is regularly appointed in terms of proforma, he is entitled to continue in office till he is removed and he is also entitled to the benefit of Section 68. In fact, this Court speaking through Justice V.Ramasubramaniam in ***Janab. Abdul Ali Mohammed and Others vs. The Tamil Nadu Wakf Board and Others, W.P.Nos.2170 and 6457 of 2011 dated 25.07.2012*** has held that any person who continues an office after the expiry of his turn continues at the mercy of the Waqf Board.

33. If I were to accept the argument of Mr.L.Gavaskar, then if the Waqf Board decides to hold regular election and appoint persons, the *ad hoc* committee members can plead that they had a vested right in the office and cannot be removed from the management committee except in terms of Section 69. As pointed out above, this argument was raised and it was rejected by this Court.



34. In the light of the above discussion, I conclude that an *ad hoc* committee member who is appointed on a temporary basis cannot have the superior right than a person who has been elected following the procedure as established by the proforma. To make this clear, an *ad hoc* committee member will continue in his office till the period is over or till the regularly elected Mutawalli assumes office. In the eventuality of both, the *ad hoc* committee members cannot claim any vested right in the management of the Waqf. This leads me to the other argument of Mr.L.Gavaskar.

**Common elections for both the Waqfs, being an established practice,
cannot be questioned in the revision**

35. Mr.L.Gavaskar would state that two waqfs being separately notified, election would have to be called separately. Under Section 32(1) of the Waqf Act, the power of the general superintendence is vested with the statutory body namely the Waqf Board. As to how the Waqf Board decides to manage the Waqf is entirely the discretion of the Waqf Board. The only caveat is that the Waqf Board would have to follow the school of Islam to which the institution conforms as well as to the proforma which is applicable to the respective Waqfs.



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36. Applying the said principle to the Waqfs in question, I am able to see that in both the Waqfs, though notified separately, the manner of selection of the management committee is by nomination by the local jamathars. The Waqf Board has devised the system by which nomination is done by way of a secret ballot. The process of nomination, which was founded in the year 1950s, when the Waqf Board was established, cannot be reasonably followed today with the number of Jamathars/Musallis increasing. If I were to state that the Waqf Board can call for an election by way of a show of hands, then it would only lead to utter confusion in the process of identifying those jamathars who have been nominated to manage the Waqfs. It is in those circumstances, the nominees as required by the proforma are identified by way of a secret ballot.

37. With respect to the Waqfs in question, the Waqf Board has decided, as early as 2008, that the management committee for both the Waqfs should be one and the same. The private respondents, having accepted this state of affairs for 15 years, today cannot turn around and say that the notification for the Waqfs being separate, separate nominations should be done. As already stated



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by me the Waqf Board in its wisdom, the Waqfs being adjacent to each other namely the Dargah and Mosque, had decided to hold the elections together for both the institutions. This not having been questioned for more than a decade, It does not lie in the mouth of Mr.L.Gavaskar or his client to plead otherwise.

**Temporary appointment cannot supersede the result
of a validly held election**

38. Turning to the next point of Mr.L.Gavaskar that in 2019, a separate committee had been appointed to the Dargah and not to the Mosque as it continued under the direct management of the Waqf Board, and therefore an election could not have been called for. This argument had already been addressed above. In the year 2019, when the appointment of the private respondents have been made, it was merely an *ad hoc* or temporary appointment as the Waqf Board found it difficult to identify the nominees by elections. I have held that the tenure of *ad hoc* committee members being *pro tem* or temporary, it would not give a vested right to continue in the office. Therefore, the argument that they have vested right stands rejected.

**Non-communication of election notification to every intending contender
does not vitiate the election**

39. Having failed in his substantial points, Mr.L.Gavaskar would plead that the election procedure had not been followed. The files, which have been



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produced before the Waqf Tribunal as well as before me, would show that prior to calling of the election, the Chief Executive officer had ordered the Superintendent of the Waqfs to hold the same. Thereafter, the Superintendent of Waqfs had issued an election notification in the Mosque as well as in the Dargah. The notification reads that the election is going to be held in common for both the Waqfs. To reiterate this, a common election notification was issued on the basis of the direction given by the Waqf Board previously. Having done so, the process of election will be entitled to the benefit of Section 114 of the Indian Evidence Act. It would state that the officials acts, which have been done, deserve protection by virtue of the same.

40. Of course, it is always open to a person challenging the process of election to prove before the Tribunal that the process that was contemplated was not followed. Unfortunately for the private respondents, they have not challenged the election notification before the Waqf Tribunal. When this was pointed out, he would state that the election notification was not communicated to the private respondents.

41. The process of election does not contemplate a private intimation



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about the election to each and every person who wants to stand for election or who desires to hold office. Election notifications are published and pasted in the respective Institutions like Mosques and Dargah etc., if a party feels that the notification is bad, it is up to him to take a copy and challenge the same. It would be too much on part of the private respondents to expect the Waqf Board to serve a copy of the notification on them.

**Tenure of the ad hoc committee cannot be extended
after the completion of election**

42. The next point of Mr.L.Gavaskar is that the extension of the tenure of *ad hoc* committee members was not challenged and therefore, they have a right to continue in office. As I have already stated above, an *ad hoc* committee exists till the regular persons are appointed to the office. The extension, which is the subject matter of the proceedings, does not enure in favour of the private respondents.

An uncommunicated order need not/cannot be challenged

43. Now turning to the aspect that the original order of the Waqf Board dated 25.01.2022 was not challenged, though the order dated 25.01.2022 was passed in the presence of the parties, the records do not reveal that the order



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had been communicated to the parties. This is different from the communication of election notification. Number of persons who had appeared before the Waqf Board were the 12 persons who have been elected pursuant to the election notification issued by the Superintendent of Waqf Board. Therefore, it was not impossible for the Waqf Board to communicate the said orders to those parties. Furthermore, an order being an instrument that affects the rights of the parties, the parties before the Waqf Board have a right to know the contents of the same. Therefore, the non-communication of an order cannot be equated to non-communication of an election notification. For the reasons best known to it, the Waqf Board had not communicated the order to the persons who had appeared before it.

44. An uncommunicated order or an order which is signed and kept in the files, does not have any legal significance. Nonetheless the order, which gave a cause of action for the proceedings, was the order of the Chief Executive Officer dated 03.03.2022. This is the executable order of the order dated 25.01.2022. This order having been put into force, the argument that the original uncommunicated order of the Waqf Board not having been challenged, and therefore, this revision has to fail, does not appeal to either logic or to law.



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The plea of suppression would be material only when a right is claimed under equitable jurisdiction

45. The next argument of Mr.L.Gavaskar was that the proceedings dated 03.03.2022, namely the meeting that had been convened of the ad hoc committee members and the elected officer bearers, had not been disclosed by the petitioner before the court. He would argue that this amounts to suppression of material facts and therefore, the petition deserves to be rejected on that ground.

46. Suppression of material facts was a principle which was developed by the courts in equity. This was based on the principle that a person who seeks equity must do equity. It is the duty of the litigant to come with a clean breast to the court, and only thereafter, he should place his submissions. It seems to be a principle that one can seek equity when one derives a right from this position. That is to say, this would apply in a case where equitable jurisdiction confers a right to equity in one's claim. Here it is not the right to equity that is claimed by the petitioner, but the right which has been declared in them by virtue of a validly held election.

The Waqf Board is not empowered to bifurcate the election results



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47. On the declaration of the result, the petitioner and the 11 other persons who have been elected along with him have a vested right to be issued with the consequential orders of appointment. The Waqf Board has the power to conduct the election. The Waqf Board also has the power to stop the election midway in case of any discrepancies in the conduct of the election. In this case, the election has been validly held and declared. If there is any dispute with respect to the election, the remedy for any aggrieved person or the Waqf Board is only to approach the jurisdictional tribunal to set aside the same.

48. The Waqf Board, in my view and after a reading of the Waqf Act, does not have the power to bifurcate the election result and state that though the elections were held in common for the Dargah and Mosque, it would declare the result only for the Mosque and not for the Dargah. The Waqf Board had the option to hold elections separately for the Dargah and Mosque. But, it did not exercise that power. In its wisdom, as stated above, it decided that the management of both the Waqfs should be under one single committee. Having come to that conclusion, it cannot bifurcate the result or dissect the result and appoint the persons who were not elected at all for the management of Dargah.



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49. If I were to concede that this power to bifurcate the election results may be considered by the Waqf Board, it would lead to disastrous consequences. The Waqf Board will then not obey the sanctity of the validly conducted election by it. It would state that it would pick and choose the members who have been elected by the Jamath. Such a power, in my view, is not available in the Waqf Board. The election having been conducted and declared, the Waqf Board can only decide to appoint the persons who have been so elected if they do not suffer from any of the disqualifications like being addicted to liquor etc. If they are not otherwise disqualified, I am afraid that I am not in a position to accept Mr.L.Gavaskar's argument or that of Mr.Haja Mohideen Gisthi that the Waqf Board has the power to pick and choose the person it wants.

50. The Waqf Board is only a superintending institution and it does not possess all powers of the almighty to decide who should manage the Waqfs. If the Jamathars select any particular person and that person as stated above does not suffer from any disqualification, the appointment order should follow. Otherwise, the democratic process that is followed would be put at *jeopardy*.



Private proceedings are not susceptible of being challenged

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51. Apart from that a perusal of the proceedings dated 03.03.2022 would show that no finality had been arrived at on that date. The elected members of the committee had met with the *ad hoc* committee members at the request of Al-haj Syed Ali Akbar, the then Waqf Board member. It was decided, in the said meeting, that they would take a final decision subsequently. When no final decision has been taken and the parties have challenged the proceedings dated 03.03.2022 of the Chief Executive Officer, nothing turns on a private committee meeting that is held by a Waqf Board member.

52. Perhaps the learned member wanted to mediate the dispute that had been raised by the *ad hoc* committee members as regards the right of the elected members. Such private mediations cannot be treated as an official proceeding of the Waqf Board. Had the official proceedings of the Waqf Board been passed and communicated, it could always be challenged by the civil revision petitioner and 11 others before the Tribunal.

53. I do not attach any legal sanctity to the inchoate mediation efforts of the Hon'ble member. I can only conclude that since finality was not reached on



15.03.2022, the mediation efforts failed, and it remained a piece of proceedings

recorded for the purpose of the satisfaction of the respective parties.

Chief Executive Officer, authorized by the Waqf Board, has the power to call for election under Section 25 of the Waqf Act

54. Turning to the last point of Mr.L.Gavaskar that the Chief Executive Officer does not have the power to call for the election, I only have to refer to Section 25 of the Waqf Act 1995. Under Section 25 of the Waqf Act, the power of the Chief Executive Officer is co-terminus with such powers of the Waqf Board in order to do such things as may be necessary for the control, maintenance, and superintendence of the auqafs.

55. As seen from the files and proceedings of the Waqf Board, the Waqf Board had already decided that both the waqfs would come under the same management. There is unity in the manner of selection of the Mutawallis. There is a pre-existing order of the Waqf Board to call for the elections for both institutions together. All that the Chief Executive Officer did was to call for the elections in terms of the order passed by the Waqf Board. The Chief Executive Officer is an ex-officio Secretary of the Waqf Board, and it is the duty of the Chief Executive Officer to implement the orders of the Waqf Board. It was not a unilateral decision of the Chief Executive Officer to hold the elections for both



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institutions. The Chief Executive Officer had merely implemented the pre-existing order of the Waqf Board.

56. Insofar as the judgment relied in *Ezhome Sunni Valiya Juma Masjid vs. Kerala State Waqf Board, ILR 2019 (3) KER 805* is concerned, the learned Division Bench was called upon to consider the scope of Section 27 of the Waqf Act. The Parliament, which brought in amendments to Section 27 of the Waqf Act, was aware of the existence of Section 25 (1)(c) of the Waqf Act. While it chose to amend Section 27, it did not touch or restrict the power under Section 25.

57. I am unable to accede to the request of Mr.L.Gavaskar that the judgment rendered under Section 27 would have to be telescoped and thereby the powers of the Chief Executive Officer under Section 25 also must be restricted. The Chief Executive Officer, as already stated above, is duty bound to implement the resolutions of the Waqf Board, unless and until she feels that it is contrary to Section 26. Even in such cases, the decision that would be taken is only by the State Government.

58. If I were to accept the argument of Mr.L.Gavaskar, then I would be



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giving power to the Chief Executive Officer not to follow the valid resolutions

that have been passed by the Waqf Board. Such is not the purpose of the Act.

The Chief Executive Officer cannot supersede the Waqf Board and it is only the Government under Section 26 which can do so. The power under Section 25 having been continued by the Parliament even after the amendment of the Waqf Act in 2013, this argument of Mr.L.Gavaskar that I should read the limitation of Section 27 into Section 25 stands rejected.

Decision

59. In the light of the above discussion, I come to the conclusion that as the Waqf Board had held the elections validly for Hazarath Syed Hussain Sha Khadiri @ Dimmasami Dargah and Hazarath Syed Hussain Sha Khadiri @ Dimmasami Dargah Mosque together pursuant to the common election notification, the civil revision petitioner and the 11 others, whose names were found in the proceedings dated 05.12.2021, get a vested right to manage the institution for the period between 05.12.2021 and 04.12.2024.

60. It is always open to the Waqf Board to decide whether it wants to continue with the previous resolution of having the Mosque and Dargah under



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the same management after the expiry of the period that has been specified in the order. As long as the elections have been held for both institutions in common and the persons who have been declared elected by the Waqf Board are not suffering from any disqualifications, they are entitled to continue in the office.

61. In the present case, as the Waqf Board has come to a conclusion that the civil revision petitioner and 11 others do not suffer from any disqualification, they are entitled to continue in management in terms of the election notification for the period set forth above. The Waqf Tribunal, not having considered these issues and having taken into consideration irrelevant facts, has rendered an order which requires interference by this Court.

62. With the above observation, **the Civil Revision Petition is allowed.** The order passed by the Waqf Tribunal in O.A.No.25 of 2022, dated 02.01.2023, is set aside. O.A.No.25 of 2022 stands allowed. The petitioner and 11 others found elected by the Superintendent of Waqfs in his order dated 05.12.2021, as stated above, will continue in office till the expiry of their period. The private respondents, who are the *ad hoc* committee members, not



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having any vested right to continue in office, shall not interfere with the functioning of the elected committee with respect to Dargah also. No costs.

Consequently, the connected miscellaneous petition is closed.

10.06.2024

nl

Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order

To

1.The Tamil Nadu Waqf Tribunal, Chennai.



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V.LAKSHMINARAYANAN, J.

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