

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

CRP(WAKF).No. 673 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RP 198/2015 IN W.O.S.NO.19/2014 OF WAKF
TRIBUNAL, ERNAKULAM DATED 19-09-2015

PETITIONER(S)/REVISION PETITIONERS:

1. V.M.KUNJUMOHAMMED AGED 65 YEARS
S/O.MUHAMMEDALI, VYSLAM VEETIL, MANAKOT HOUSE
VENMANAD P O, PAVARATTY , THRISSUR

2. V T NOORUDHEEN AGED 56 YEARS
S/O.MUHAMMED, KARAPURATH HOUSE, VENMANAD
PAVARATTY P O, THRISSUR

3. P K MUSTHAF A, AGED 46 YEARS
S/O.ABDUL RAHIMAN, MANKUZHIIYIL HOUSE, VENMANAD
PAVARATTY P O, THRISSUR

4. A M ABDUL MAJEED AGED 61 YEARS
S/O.MOHAMED, ARCHAN VEETIL, VENMANAD
PAVARATTY P O, THRISSUR

BY ADVS.SRI.G.S.REGHUNATH
SRI.P.K.MOHAMMED PUZHAKKARA

RESPONDENT(S)/RESPONDENTS:

1. VENMANAD MAHALLU HAYATHUL ISLAM COMMITTEE, AGED 57 YEARS
REP BY ITS PRESIDENT SHRI YOUSUF, S/L.AHAMEDKUTTY
VENMANAD, PAVARATTY P O, THRISSUR 680124

2. SHRI YOUSUF N P, AGED 57 YEARS
S/O.AHAMEDKUTTY, POVIL HOUSE, PRESIDENT
VENMANAD MAHALLU HAYATHUL ISLAM COMMITTEE, VENMANAD
PAVARATTY P O, THRISSUR 680124

3. N A BASHEER, AGED 35 YEARS
S/O.MUHAMMED ABDUL KHADER HAJI, NAALAKATH ARAKKAL
VENMANAD, VENMANAD, PAVARATTY P O
THRISSUR 680124

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4. R V ABDUL RASHEED, AGED 56 YEARS
S/O.LATE KUNJAHAMMED, RAYAMARAKKAR VEETIL HOUSE
MARUDAYUR P O, PAVARATTY, THRISSUR 680124

5. VENMANAD MUSLIM JAMA-ATH, REP BY ITS PRESIDENT
SHRI N P MUHAMMED, S/O.IBRAHIM MUSALIYAR
VENMANAD MAHALLU HAYATHUL ISLAM COMMITTEE, VENMANAD
PAVARATTY P O, THRISSUR 680124

6. N P MUHAMED, AGED 76 YEARS
S/O.IBRAHIM MUSALIYAR, MANJHIYIL HOUSE
VENMANAD MUSLIM JAMA-ATH, VENMANAD, PAVARATTY P O
THRISSUR DISTRICT 680124

7. T C MUHAMMED MON, AGED 66 YEARS
S/O.AHAMED, PONGOTTIL HOUSE, P O VENMANAD
VENMANAD MUSLIM JAMA-ATH, VENMANAD, PAVARATTY P O
THRISSUR DISTRICT 680124

8. ADV.P A ABDUL JABBAR
ADVOCATE, APPOINTMENT AS RETURNING OFFICER

9. KERALA STATE WAKF BOARD,
REP BY ITS CHIEF EXECUTIVE OFFICER, VIP ROAD, KALOOR
PIN 682017.

R1 BY ADV. SRI.BABU KARUKAPADATH(CAVEATOR)
BY ADV. SRI.P.A ABDUL JABBAR (B/O)
R5-R7 BY ADV. SRI.T.K.HASSAN
R5-R7 BY ADV. SRI.K.MOHAMMED ANAS
SRI.K.SHIBILI NAHA, SC, KERALA STATE WAKF BOARD

THIS CRP (WAKF ACT) HAVING COME UP FOR ADMISSION ON
18-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**THOTTATHIL B.RADHAKRISHNAN
&
ANU SIVARAMAN, JJ.**

C.R.P.(Wakf).No. 673 of 2015

Dated this the 18th December, 2015

O R D E R

Thottathil B.Radhakrishnan, J.

Heard learned counsel for the parties.

2. This matter relates to the Venmanad Muslim Mahallu Jama-ath, the Managing Committee of which is the Muthavally of that Wakf.

3. Five persons filed the suit from which this revision arises, seeking, among other reliefs, perpetual prohibitory injunction restraining defendants 2 and 3 from interfering with the affairs of the aforesaid Jama-ath and also for necessary directions to have an election conducted to the Committee of the Mahallu Jama-ath.

4. It appears that on 8.10.2014, the parties had agreed before the Tribunal that election should be held to elect the office bearers of the Jama-ath as per the bye-laws and as per the voters' list. The Tribunal appointed an Advocate Commissioner to conduct election and directed him to prepare voters' list on the basis of relevant documents like family register etc. The election was to be conducted within a period of three months therefrom. The

Advocate Commissioner filed an interim report and published a draft voters' list. The Tribunal thereupon issued order dated 5.5.2015 ordering that if anybody has objection to the draft voters' list, that can be raised before the Commissioner and the Commissioner can rely on the voters' Identity Card, Aadhar Card etc. to find out the secular identity of the voter and co-relate the same with the family register etc.

5. Thereafter, R.P.No.198 of 2015 was filed by defendants 1 to 3 seeking variation of the directions in the order dated 5.5.2015. The principal issue attempted to be pointed out was that the family register is a newly created one and it is not a reliable or acceptable one. Commissioner expressed difficulty to proceed with the election process on the basis of those documents. The Tribunal accepted the suggestion of the Commissioner and consequently issued the impugned order dated 19.9.2015. The parties were directed to produce draft voters' list on the basis of bye-laws and the Commissioner was required to publish a consolidated draft list inviting objections thereto. The Commissioner was directed to consider the objections and prepare the voters' list on the basis of bye-laws of the Jama-ath and to complete the electoral process on the basis of the bye-laws.

6. In this revision, impeaching the last among the orders noted above, the primary contention is that the power of review could not have been exercised to take away the efficacy of the earlier orders, which are essentially based on consent. Secondly, it is argued that the family register reflects the identity of the persons who are eligible to vote, since that is prepared on the basis of the register which contains the names of those who pay subscription to the Mahallu. It is argued that the Tribunal erred in excluding the family register from being applied to prepare the voters' list.

7. The contesting respondents argued that the terms of the bye-laws clearly show that the family register has no bearing on the identity of the voters for preparation of the voters' list and that the earlier orders issued by the Tribunal were found to be unworkable even according to the Commissioner. The pointed plea is that the socalled family register stated to be now available is a document created to suit the convenience of the persons who are now in office of the Committee of the Mahallu. It is also submitted that payment of subscription was never insisted for membership or vote in the Mahallu.

8. We have looked into the bye-laws. That bye-laws was passed on 31.5.1961. Clause 6 deals with membership. Clause 5-b is among the amendments to the bye-laws which were brought on 26.9.1989. That provides the condition that a candidate for the election should not be a defaulter of dues to the Mahallu. The plaintiffs and the supporting defendants plead that without subscriptions being made, an identity of a person as a member of the Mahallu cannot be established. It is submitted that the family register is made on the basis of another register which deals with subscriptions and after local enquiries are made by and on behalf of the committee in office, among the Muslims who are to be treated as members of the Mahallu.

9. Though this revision is focused and laid as if it is against the correctness or otherwise of the exercise of power by the Tribunal, on an application for review, what looms large is the fact that the members of the community, who are the beneficiaries of the Mahallu and Wakf are unable to find a proper method to arrive at the process relating to the election. The laws relating to Mahallu management, in so far as elections are concerned, would primarily turn around the bye-laws. In the bye-laws in hand, there is no geographical area of operation unless the term 'Mahallu' is

indicative of that. Similarly, clause 6, if read verbatim, its wide amplitude includes males of the Mahallu aged above 18 years. Clause 5-b introduced by way of amendment puts the prescriptive regulation as to paid up subscriptions, to make a person eligible to contest in the election.

10. But, it is pointed out on behalf of the Mahallu Committee and the plaintiffs that as a matter of practice and going by the records of the Mahallu, it can be seen that subscriptions are paid and collected and persons paying subscriptions are included in a register which is called the 'subscription register' and that the said register forms the basis of the family register, which is prepared also on the basis of local enquiry.

11. While submissions in the aforesaid lines are made before us in this revision under Section 83 of the Wakf Act, we do not see any consideration or adjudication on this issue at any point of time by the Tribunal.

12. The fact that the bye-laws of the Mahallu is the one which were referred to above is not in dispute. The interpretation of clauses 6, 5-b and other matters in relation to the Mahallu and the Mahallu Committee, have to be deliberated upon to decide the rules of the game in connection with the process of election.

To our query, we are told that no election was conducted in the recent past following any particular system of drawing up an indisputable or undisputed voters' list. We are also shown an order passed by the Wakf Board way back on 14.8.2013 noticing that though election has to be conducted, there is no prepared ready draft voters' list for the Mahallu.

13. When the onerous responsibility of conducting election is put by a Court or Tribunal on a Commissioner, even if that person be an Advocate, adjudication relating to settling the rules governing the election cannot be left to be done by the Commissioner who will be, essentially, the Returning Officer. Though in the process of carrying on the electoral process and in the course of conducting the election, the Returning Officer has to issue notification and consider disputes in relation to inclusion and exclusion of persons in the voters' list, the yardstick for consideration of the alleged inclusions or exclusions of voters has to be done on the basis of indisputable set of principles and rules which are to be available to the Returning Officer. In the case in hand, there is considerable dispute as to whether a person whose name does not appear in the 'family register', which 'register' is itself in dispute, could be permitted to vote. The reliability of other

documents in the custody of the Mahallu Committee is also charged with unreliability; as can be seen even from the order impugned in this revision and also the Commissioner's report, which was placed before the Tribunal.

14. The ultimate purpose of the process commenced through the Wakf Tribunal and the issuance of different orders by that authority, is to ensure that there is free, fair and transparent election to the Committee of Mahallu. For this, it is necessary that, at the first instance, the Tribunal considers the materials and decides on the question as to what are the rules and principles relating to and governing the election to the Committee of the Mahallu. The bye-laws, different other materials including registers, and, other relevant aspects, such as practice, prior conduct etc. may fall for consideration, depending upon the issues which would be germane. The Tribunal has to carry out this exercise and lay down definite rules relating to the election and then require the Commissioner to proceed to notify the election and conduct it. This calls for a process of adjudication. That cannot be left to the Commissioner who would be the Returning Officer.

15. In the aforementioned contextual situation, we are satisfied that, to secure the ends of justice, the order impugned in this revision and the prior orders noted above, except the appointment of the Commissioner, have to be set aside in the interest of the Mahallu Jama-ath and its members in exercise of the revisional jurisdiction under Section 83 of the Wakf Act and also in exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India to pave way for the Tribunal to carry out the exercise as is indicated above. Resultantly, we set aside the impugned order and its earlier orders, except to the extent of the appointment of the Commissioner, and order that further proceedings shall be carried on in the light of what are stated hereinabove and hereunder.

16. We may immediately notice that the Committee which is in office is essentially overstaying its term, even going by the laws. But the fact of the matter remains that there has to be somebody to manage the affairs of the Mahallu Jama-ath and the Wakf, for the time being. Therefore, the Mahallu Committee now in office will continue for a further period of six months and deal with the day-to-day affairs and management of that institution; however, under the supervision of the Chief Executive Officer of

the Wakf Board. The court below will ensure that the consideration of materials to conclude on the aforesaid issue is carried out at the earliest, so that the election can also be concluded within the said period.

17. This revision is ordered as aforesaid. Though we have made different observations touching the materials, including the bye-laws, we clarify that none of those expressions is conclusive and binding on the parties and all issues are left upon for the Tribunal to decide and it shall do so untrammelled by anything stated in this order.

**THOTTATHIL B.RADHAKRISHNAN
JUDGE**

**ANU SIVARAMAN
JUDGE**

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