

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN**

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

OP (WAKF).No. 38 of 2014 (R)

**-----
AGAINST THE ORDER IN IA 117/14 IN WOS 43/13 OF WAKF TRIBUNAL, ERNAKULAM
DATED 6.11.2014.**

PETITIONER(S):

- 1. C.M. ISMAYIL AGED 41 YEARS
S/O.MARAKKAR, CHUNDAKADAN HOUSE, PONJASSERY P.O.
VENGOLA, KUNNATHUNADU TALUK.**
- 2. M.S.KAREEM AGED 51 YEARS
S/O.SAIDU MOHAMMED, MALEKKUDI HOUSE, PONJASSERI
VENGOLA, KUNNATHUNADU TALUK.**

**BY ADVS.SRI.T.H.ABDUL AZEEZ
SRI.V.A.AJMAL**

RESPONDENT(S):

- 1. CHEMBARATHUKUNNU MUSLIM JAMA-ATH
CHEMBARATHUKUNNU, PONJASSERI, VENGOLA
KUNNATHUNADU TALUK, REPRESENTEDBY ITS PRESIDENT
683 554.**
- 2. PRESIDENT
CHEMBARATHUKUNNU MUSLIM JAMA-ATH, CHEMBARATHUKUNNU
PONJASSERI, VENGOLA, KUNNATHUNADU TALUK
683 554.**
- 3. SECRETARY
CHEMBARATHUKUNNU MUSLIM JAMA-ATH, CHEMBARATHUKUNNU
PONJASSERI, VENGOLAA, KUNNATHUNADU TALUK-683 554.**
- 4. THE KERALA WAKF BOARD
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER
KERALA WAKF BOARD, VIP ROAD, KALOOR-682 017.**

**R1 & R2 BY ADVS. SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU
SRI.K.A.NOUSHAD
SRI.P.U.VINOD KUMAR
SRI.KANDAMPULLY RAHUL
SRI.J.RAMKUMAR**

**R3 BY ADVS. SRI.ABDUL JALEEL.A
SMT.M.A.SULFIA**

R4 BY SRI.K.SHIBILI NAHA, SC, KERALA STATE WAKF BOARD

**THIS OP (WAKF) HAVING COME UP FOR ADMISSION ON 18-02-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP (WAKF).No. 38 of 2014 (R)

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT-P1: TRUE COPY OF THE COMMISSION REPORT DATED 13.1.2014 IN I.A.NO.427/2013 IN W.O.S.NO.43/2013 FILED BEFORE THE WAKF TRIBUNAL, ERNAKULAM.
- EXHIBIT-P2: TRUE COPY OF THE INTERIM REPORT DATED 30.10.2014 FILED BY THE COMMISSIONER.
- EXHIBIT-P3: TRUE COPY OF THE ELECTION NOTIFICATION PUBLISHED BY THE COMMISSIONER ON 17.10.2014.
- EXHIBIT-P4: TRUE COPY OF THE ORDER DATED 12/9/2014 IN I.A.NO.427/2013 IN W.O.S.NO.43/2013 PASSED BY WAKF TRIBUNAL, ERNAKULAM.
- EXHIBIT-P5: TRUE COPY OF THE REVIEW PETITION FILED BY THE RESPONDENTS HEREIN BEFORE THE WAKF TRIBUNAL, ERNAKULAM.
- EXHIBIT-P6: TRUE COPY OF THE DECISIONS OF THE COMMITTEE MEETING HELD ON 21.6.2014.
- EXHIBIT-P7: TRUE COPY OF THE ORDER IN THE REVIEW PETITION (I.A.NO.117/14) DATED 6/11/2014.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

VPV

P.N.RAVINDRAN & ANIL K.NARENDRA, JJ.

=====

O.P.(Wakf).No.38 of 2014

=====

Dated this the 18th day of February, 2015

JUDGMENT

P.N.Ravindran, J.

The petitioners are the plaintiffs in W.O.S.No.43 of 2013 on the file of the Wakf Tribunal, Ernakulam. The respondents are the defendants therein. The relief sought in W.O.S.No.43 of 2013 is for a mandatory injunction directing defendants 1 to 3 to conduct elections to the Managing Committee of the first defendant Jamaath and Madrasa under the supervision of an Advocate Commissioner appointed by the Wakf Tribunal. The petitioners have in the plaint also prayed for a permanent prohibitory injunction restraining defendants 1 to 3 and their men and agents from convening the general body and conducting the elections without preparing a voters list and without the help of an Advocate Commissioner appointed by the Wakf Tribunal. The petitioners have in the plaint in W.O.S.No.43 of 2013 averred that though bye-laws were framed in the year 1995 for administration and management of the Mosque and the Madrasa, till date, elections have not been held in accordance with the bye-laws. It is

contended that instead of holding the elections as envisaged in the bye-laws, the second respondent would prepare a list containing the names of some persons in whom he is interested, bring it to the general body, call out their names and declare them elected. The petitioners have in the plaint averred that the next elections to the Jama-ath are to be held in December, 2013.

2. The petitioners had along with the plaint in W.O.S.No.43 of 2013 filed I.A.No.427 of 2013 for an interim order of injunction restraining respondents 1 to 3, their men and agents or anybody acting under them from convening the general body of the first respondent Jama-ath and conducting the elections without an Advocate Commissioner appointed by the Wakf Tribunal and without preparing a voters list. On the said application, by order passed on 16.12.2013, the Wakf Tribunal appointed Sri.P.A.Abdul Jabbar, Advocate as Commissioner to observe and report to the Wakf Tribunal about the procedure and formalities adopted to conduct the elections in the meeting to be held on 27.12.2013. The Advocate Commissioner was also directed to report whether the elections are held in a democratic manner as per the bye-laws of the Jama-ath. The Advocate Commissioner appointed by the Wakf Tribunal attended the general body meeting held on 27.12.2013 in which 89

members of the first respondent Jama-ath participated. The Advocate Commissioner thereafter filed Ext.P1 report dated 13.1.2014. Paragraphs 2 to 4 of Ext.P1 report are extracted below for easy reference:-

"2) It is submitted that the general body meeting was started at 2 P.M. immediately after the Juma prayer. The meeting was presided over by the Jama-ath President Mr.Ummer and a welcome speech was made by its Secretary Mr.M.E.Ashraf. Thereafter one Mr.Abdul Rahiman Musliyar, the Secretary of the Madrassa and Mr.M.E.Ashraf the Secretary of the Jama-ath respectively presented the statement of accounts of the Madrassa and Jama-ath. Both the accounts were approved by the general body after discussion.

3) After the approval of the statement of accounts the President announced that the next item of the agenda is "Discussion" and he further announced that the committee had received two representations and one resolution from the Jama-ath Members. Thereafter he read over the same one after the other before the general body. Out of the two representations one was in respect of an issue relating to a school and one was regarding the request of certain Jama-ath members residing near Muhuyudeen Juma Masjid to get exemption from payment of subscription etc. The resolution was seeking election through secret ballot to the Jama-ath Committee. The representations and resolution were discussed in the general body and took decisions.

4) It is submitted that the resolution relating to the introduction of secret ballot system to the Jama-ath election was submitted by two members of

the Jama-ath. On the said resolution the general body had made discussions and majority of the members were in favour of the secret ballot system. After the discussions the president announced that since there are difference of opinion in the matter the decision can be taken only by voting. Accordingly a voting was conducted by raising hands to count the number of members supporting and objecting the secret ballot system. In the voting 67 members supported the secret ballot system and 22 persons objected the introduction of the secret ballot system to the Jama-ath election. On the basis of the voting the president declared that the resolution as to the secret ballot system is accepted. In view of the decision in the said resolution, the President asked the general body as to what is to be done in the next agenda of the meeting ie "election" to the jama-ath committee. Then it was decided by the general body to permit the present committee to continue as such till a new committee is elected as per secret ballot system in accordance with the orders of the Wakf Tribunal. The meeting was concluded thereafter with the vote of thanks of Mr.Abdul Rahman, the Secretary of the Madrasa."

3. The substance of Ext.P1 report is to the effect that in the general body meeting held on 27.12.2013 a resolution seeking elections to the Jama-ath Committee through secret ballot was moved, that it was supported by 67 members and opposed by 22 members, that thereupon the President of the Jama-ath declared that the resolution proposing the secret ballot system has been

accepted, that the President thereupon asked the general body as to what is to be done regarding the next agenda of the meeting namely, elections to the managing committee of the Jama-ath and thereupon, the general body decided to permit the office bearers then in office to continue till a new committee is elected as per the secret ballot system in accordance with the orders of the Wakf Tribunal. The Wakf Tribunal after considering Ext.P1 report, passed further orders on 12.9.2014 on I.A.No.427 of 2013 whereby it appointed Sri.P.A.Abdul Jabbar, as Advocate Commissioner and Returning Officer for the elections to be conducted in the first respondent Jama-ath. The Advocate Commissioner was directed to conduct the elections within 45 days. The Advocate Commissioner thereafter sent a letter dated 25.9.2014 to the third respondent, the Secretary of the Jama-ath to make available the list of members who have voting rights. Thereupon, a list containing the names of 1224 members of the Jama-ath was furnished to the Advocate Commissioner and he in turn published a draft voters list along with a notification dated 17.10.2014 inviting objections, if any, to the voters list and giving the members time up to 30.10.2014 for submitting requests for additions to or deletions from the draft voters list. A hearing was also fixed on 2.11.2014 on the objections

thus received. The Advocate Commissioner thereafter submitted Ext.P2 interim report dated 30.10.2014 seeking 45 days further time to conduct the elections.

4. After the Advocate Commissioner submitted Ext.P2 report, defendants 1 and 2 filed I.A.No.117 of 2014 under Order XLVII Rule 1 read with section 151 of the Code of Civil Procedure seeking a review of the order passed by the Wakf Tribunal on 23.12.2013 on I.A.No.427 of 2013. In the said review petition, defendants 1 and 2 contended that as per the bye-laws, the elections have to be conducted by convening a general body meeting, that the bye-laws do not provide for elections by secret ballot, that a poll by show of hands after discussions and deliberations is not an undemocratic practice, that there is no prayer in the plaint or in I.A.No.427 of 2013 that the elections should be conducted by secret ballot, that the will of the majority is determined by show of hands and therefore, there is no reason or justification to hold the elections by secret ballot.

5. The Wakf Tribunal considered I.A.No.117 of 2014 and by Ext.P7 order passed on 6.11.2014, partly allowed the application for review and directed as follows:-

"19. In the circumstances, I find that this

I.A. for review has to be partly allowed and it is disposed of as follows:- Since there is no prohibition for secret ballot in the byelaw or in the direction of the Waqf Board, it is for the Jama-ath to decide as to what is to be the mode of election. It can be by secret ballot or raising of hands etc. As already agreed by both sides, Sri.P.A.Abdul Jabbar is appointed as the observer for the election to be held in the Jama-ath. As already ordered, Rs.5,000/- should be paid as bata. The election should be held within a time frame of 45 days from the date of receipt of this order by the Advocate Commissioner and he shall make arrangements to ensure that the election is held as per the democratic principles within the said period. At the risk of repetition, it is mentioned that the election can be by secret ballot or by raising of hands."

The plaintiffs have in this original petition filed under Article 226 of the Constitution of India challenged the said order.

6. We heard Sri.T.H.Abdul Azeez, learned counsel appearing for the petitioners, Sri.Babu Karukapadath, learned counsel appearing for respondents 1 and 2, Sri.A.Abdul Jaleel, learned counsel appearing for the third respondent and Sri.K.Shibili Naha, learned standing counsel appearing for the Kerala State Wakf Board. Sri.T.H.Abdul Azeez, learned counsel appearing for the petitioners contended that the general body had at the meeting held on 27.12.2013 for the purpose of holding the elections resolved to hold the elections through the secret ballot system and therefore, the Wakf Tribunal ought to have instead of once again leaving it

open to the general body to decide upon the manner in which the elections have to be held under the supervision of the Advocate Commissioner, directed that elections should be held by the secret ballot system. The learned counsel contended that if elections are held by show of hands, in the event of a dispute arising as to the result of the elections there will be no contemporaneous record or evidence as regards the number of votes secured by each candidate and thereby the parties will be at a disadvantage. The learned counsel contended that if the elections are held by secret ballot, the ballot papers will be available in the event of a dispute arising as regards the result of the elections.

7. Per contra, Sri.Babu Karukapadath, learned counsel appearing for respondents 1 and 2 contended that the bye-laws do not provide that the elections have to be held by secret ballot, that hitherto elections were being held by show of hands, that a poll by show of hands cannot be said to be undemocratic, that it is a well accepted method of ascertaining the will of the majority, that the question as to whether the elections should be held by secret ballot or by show of hands was not an item on the agenda of the meeting held on 27.12.2013 and therefore, no reliance can be placed on the decision stated to have been taken on 27.12.2013 that the elections

have to be held by secret ballot. The learned counsel contended that there is no averment in the plaint to the effect that elections have to be held by secret ballot and therefore, the plaintiffs cannot be said to be aggrieved by the impugned order. The learned counsel appearing for respondents 3 and 4 on the other hand submitted that there is no provision in the bye-laws which prohibits elections being held by secret ballot, that the general body which met on 27.12.2013 had resolved that elections can be held by secret ballot and therefore, respondents 3 and 4 have no objection in the elections being held by secret ballot.

8. We have considered the submissions made at the Bar by learned counsel appearing on either side. We have also gone through the pleadings and the materials on record. Ext.P1 report submitted by the Advocate Commissioner appointed to observe and report about the procedure and formalities adopted to conduct the elections originally scheduled to be held on 27.12.2013 has reported that at that meeting in which 89 members had participated, a resolution was moved proposing elections through the secret ballot system and that 67 persons favoured the proposal and only 22 persons opposed it. The Advocate Commissioner has also reported that the resolution was carried and the general body resolved to

hold the elections through the secret ballot system. The only objection taken by the respondents to the said resolution is that the question as to whether the elections should be held by secret ballot or by show of hands was not an item on the agenda of the meeting and therefore, no reliance can be placed on the resolution stated to have been adopted in the general body meeting held on 27.12.2013. The records disclose that though pursuant to Ext.P1 report submitted by the Advocate Commissioner, the Wakf Tribunal had passed a further order on 12.9.2014 directing the Advocate Commissioner and Returning Officer to hold the elections within 45 days, the elections could not be held on account of the review petition which resulted in Ext.P7 order. Both sides do not dispute the fact that elections are long over due. There is consensus as regards the fact that the elections have to be held at the earliest. The only dispute is as regards the method to be adopted in the elections. While the petitioners contend that it should be by secret ballot, respondents 1 and 2 contend that it should be by show of hands as was the practice hitherto. In our considered opinion, as the bye-laws do not prohibit elections being held by secret ballot and it is also not stipulated that it shall be by show of hands, notwithstanding the fact that the question whether the elections

have to be held by secret ballot or by show of hands was not an item on the agenda of the meeting held on 27.12.2013, as the majority of the members then present had resolved that elections should be by secret ballot and the managing committee of the Jama-ath now in office has approved the resolution at the meeting held on 27.12.2013, we find no reason why the elections should not be by secret ballot. If elections are held by secret ballot no prejudice whatsoever will be caused to any member of the Jama-ath. None of their rights as members of the Jama-ath or as citizens will be infringed or denied. The general body of the Jama-ath admittedly consists of more than 1,200 members. If more than half the number of persons participate in the general body and a poll is held by show of hands, it can lead to confusion and consequential disputes. On the other hand, even if all the members of the Jama-ath participate in the elections and the elections are held by secret ballot system, it will avoid confusion and also avert possible disputes regarding the result of the elections from arising. A poll by show of hands in a large assembly consisting of hundreds of persons can lead to confusion and avoidable disputes. If disputes arise there will be no contemporaneous material except the report of the Returning Officer and Observer as regards the result of the

elections. If there is a contest in the elections to the managing committee of the first respondent Jama-ath and a poll is held by show of hands, the result can be questioned very easily by contending that the votes cast in favour of a particular candidate have not been accounted for. The voters may also contend that the votes polled by them have not been taken into account. Such disputes cannot be raised if the elections are held by secret ballot. In such circumstances, as elections by secret ballot have an advantage over a poll by show of hands and the holding of the elections through secret ballot does not affect the personal or individual rights of any member of the Jama-ath, we are of the opinion that the Wakf Tribunal ought to have instead of leaving it to the general body to decide upon the method of election, especially in the absence of any stipulation in the bye-laws, directed that the elections should be held under the supervision of the Advocate Commissioner/Returning Officer by secret ballot.

We accordingly allow the original petition, set aside Ext.P7 order and direct that the elections to the managing committee of the first respondent Jama-ath shall be held by secret ballot. We also deem it appropriate to appoint Sri.P.A.Abdul Jabbar as Returning Officer for conducting the elections to the managing committee of

the first respondent Jama-ath and Madrassa in accordance with the provisions contained in the bye-laws. The elections shall be held at the stage from which it was let off namely from the stage immediately after the finalisation of the voters list and shall be completed within one month from the date on which the petitioners submit a certified copy of this judgment before the Returning Officer. The Returning Officer shall, after the elections are held, submit a report to the Wakf Tribunal, Ernakulam, where W.O.S.No. 43 of 2013 is pending. The remuneration payable to the Advocate Commissioner is fixed at Rs.10,000/-, to be shared equally by the petitioners and respondents 1 and 2. The payment of the sum of Rs.10,000/- shall be made before the elections are held. Needless to say, the expenditure for printing the ballot papers shall be met by the first respondent Jama-ath.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**ANIL K.NARENDRA
JUDGE**

vps/vpv