

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

WP(C).No. 16665 of 2015 (G)

PETITIONER(S):

- 1. A.C.USMAN, AGED 64 YEARS,
AMMANATU CHITTARAYIL HOUSE, PERUMPADAPPU P.O.,
PUTHANPALLI, MALAPPURAM DISTRICT.**
- 2. MAJEED MARATHAYIL,
MARATHAYIL HOUSE, PERUMPADAPPU P.O.,
MALAPPURAM DISTRICT.**

**BY ADVS.SRI.A.JAYASANKAR,
SRI.MANU GOVIND.**

RESPONDENT(S):

- 1. THE KERALA STATE WAQF BOARD,
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER,
V.I.P. ROAD, KALOOR, KOCHI-682 017.**
- 2. THE CHIEF EXECUTIVE OFFICER,
KERALA STATE WAQF BOARD, V.I.P. ROAD,
KALOOR, KOCHI-682 017.**
- 3. THE RETURNING OFFICER, EXECUTIVE OFFICER,
PUTHANPALLI JARAM MADRASA AND
HOSPITAL PARIPALANA COMMITTEE,
PERUMPADAPPU, MALAPPURAM DISTRICT-679 580.**

BY ADV. SRI.K.SHIBILI NAHA, SC.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 04-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

WP(C).No. 16665 of 2015 (G)

APPENDIX

PETITIONER'S EXHIBITS:-

**EXT.P1 COPY OF THE NOTIFICATION NO.E.O.3/15 (ELECTION)
DATED 21/05/2015.**

EXT.P2 COPY OF THE ORDER NO.E6-4332/2013/MLP DATED 23/05/2015.

EXT.P3 COPY OF THE MODEL BALLOT PAPER.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

K. VINOD CHANDRAN, J.

W.P.(C) No. 16665 of 2015 (G)

Dated this the 4th day of June, 2015

J U D G M E N T

The petitioners are aggrieved with Ext.P2 order by which the affairs of Puthanpally Jaram Madrasa and Hospital has been taken over by the Waqf Board and the election scheduled to be conducted on 7.6.2015, is cancelled.

2. The learned counsel for the petitioners would assail Ext.P2 on the ground that the same is void ab initio for reason of there being no hearing granted to the petitioners. The learned counsel would also rely on the judgment reported in **Union of India v. Natarajan [2010 (2) KLT 743]** and **Manager, S.N. Trust, Kollam v. Dr. N. Unnikrishnan and Another [2011 (3) KLT 322]** to contend that if there is no express bar of hearing, then necessarily it has to be inferred that the principles of audi alteram partem has to be complied with. The petitioners

hence contend that the election scheduled on 7.6.2015 has to be carried on and that the taking over of the affairs by the Waqf has to be stayed, insofar as the newly elected committee be allowed to take over and then a fresh order passed under Section 65(1) of the Waqf Act after hearing the concerned parties. The petitioners' further contention is that an order under Section 65(1) has to be notified in the Official Gazette.

3. The learned Standing Counsel for the Waqf Board, however, contends that the provision under sub-section (1) of Section 65 does not contemplate a hearing and that a mere satisfaction of the Board is sufficient, which satisfaction is evident from Ext.P2 Order. The emergent situation and the compelling circumstances, as has been stated in Ext.P2, forced the hand of the Board to take over the management and to suspend the election. It is also stated that the petitioner has an alternate remedy under sub-section (2) of Section 65 of the Waqf Act, which

entitles any person to file an application against the order passed by the Board; to the State Government.

4. This Court is of the opinion that the matter can be disposed of without looking at the legal contentions, especially considering the fact that the period of the elected committee in which the petitioners are members expires today. In such circumstance, the assumption of management of the Waqf by the Board need not be interfered with. The revocation of election also is found to be on compelling circumstances, which is evident from Ext.P2. However, this Court is also of the opinion that hearing cannot be altogether excluded, especially, since it brings in serious consequences to the members and in the context of the impending election, it prejudices the entire members of the Waqf. In such circumstance, this Court would not interfere with Ext.P2 to the extent of assumption of management by the Waqf Board. However, with respect to the question of assumption for a specified period of one

year and the consequent decision not to conduct election for the said period would have to be re-considered by the Waqf, after hearing the outgoing committee members. In such circumstance, the committee members shall be issued with notice and there shall be a notice placed in the Notice Board of the Waqf and the hearing date shall be fixed sometime within this month itself. After hearing any parties interested and appearing before the Board, an order shall be passed within one month from the date of hearing.

The Writ Petition would stand disposed of.

Sd/-
K.VINOD CHANDRAN,
JUDGE

jjj

[true copy]